

THE CONSTITUTIONALITY OF THE STATE COUNCIL ELECTION THAT WAS HELD IN THE TIGRAY NATIONAL REGIONAL STATE IN 2020

BY: NARDOS TADESSE

ADVISOR: SISAY ALEMAHU (PhD; ASSOCIATE PROFESSOR)

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR MASTER OF LAWS DEGREE IN HUMAN RIGHTS LAW AT THE SCHOOL OF LAW, COLLEGE OF LAW AND GOVERNANCE STUDIES OF ADDIS ABABA UNIVERSITY

NOVEMBER 2022

ADDIS ABABA, ETHIOPIA

Declaration

I, the undersigned graduate student, hereby declare that this work is original and has not been presented before at any other institution. Besides, every source used or quoted in this work has duly been acknowledged with a proper citation.

Name: Nardos Tadesse

Signature: _____

Date: _____

I, the undersigned advisor, can confirm that this thesis has been submitted for examination with my approval.

Advisor's Name: Dr. Sisay Alemahu

Signature: _____

Date: _____

Approval sheet Board of Examiners

Nardos Tadesse's thesis titled as "**The Constitutionality of the State Council Election That Was Held in the Tigray National Regional State In 2020**", is approved by the undersigned members of the examining board.

Board of Examiners	**Signature**	**Date**
_____	_____	_____
_____	_____	_____
_____	_____	_____

Acknowledgement

First, I would like to thank the Almighty God for giving me the strength to finalize this journey. I would also like to extend my heartfelt gratitude to my Advisor Dr. Sisay Alemahu on his kind guidance and support while writing this paper. I am also thankful to my friends and family for their unwavering support. Finally, I would like to thank all those who encouraged me to pursue through this journey.

Table of Contents

Declaration i
Approval sheet Board of Examiners ii
Acknowledgement iii
Acronyms vi
Abstract vii
CHAPTER ONE: INTRODUCTION 1
1.1 Background 1
1.2 Statement of the Problem 3
1.3 Objective of the Study 4
1.3.1 General objective 4
1.3.2 Specific objective 4
1.4 Research Questions 4
1.5 Scope of the Study 4
1.6 Methodology of the Study 4
1.7 Organization of the Study 5
1.8 Literature Review 5
CHAPTER TWO: GENERAL OVERVIEW OF ELECTORAL MANAGEMENT BODIES 8
2.1 Meaning and Nature of Election Management Bodies 8
2.2 Types of Election Management Bodies 10
2.3 Election Management Bodies in Federal States 12
2.4 Election Management Bodies in Ethiopia 14
2.4.1 Historical background 14
2.4.2 National Election Board of Ethiopia 16
2.4.3 Structure and Functions of NEBE 16
CHAPTER THREE: ELECTION POSTPONEMENT AND THE CONSTITUTIONAL REMEDIES 20
3.1 The Effects of COVID-19 Pandemic on Elections 20
3.2 Postponement of the Sixth General Election and the Following Measures 24
3.2.1 Dissolve the House of Peoples Representatives 24
3.2.2 Declare State of Emergency 25
3.2.3 Constitutional Amendment 26
3.2.4 Constitutional Interpretation 27

3.3 The Constitutional Interpretation Process 28
3.4 Constitutional Term of Office and Election Postponement under the FDRE Constitution 32
CHAPTER FOUR: THE CONSTITUTIONALITY OF CONDUCTING STATE COUNCIL ELECTION AT REGIONAL LEVEL 36
4.1 Arguments Presented in Support of Holding State Council Election 36
4.1.1 Division of Power under the FDRE Constitution 37
4.1.2 The Duty to Enforce Human Rights under the Constitution 39
4.2 Self-determination 41
4.2.1 Meaning and Development of the Right to Self-Determination 41
4.2.2 Self-determination under the FDRE Constitution 43
CHAPTER FIVE: CONCLUSION AND IMPLICATION 46
BIBLIOGRAPHY 49

Acronyms

ACHPR African Charter on Human and Peoples' Right

EPRDF Ethiopian People's Revolutionary Democratic Front

FDRE Federal Democratic Republic of Ethiopia

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

NEBE National Electoral Board of Ethiopia

NNP Nation Nationalities and Peoples

No. Number

Para Paragraph

TPLF Tigray People Liberation Front

UDHR Universal Declaration of Human Rights

UN United Nations

Vol. Volume

Abstract

Periodic elections are key to a democratic political order and a peaceful transfer of power. They are instruments of public political participation. However, unforeseen natural and manmade circumstances may require the postponement of elections. Some Constitutions provide for those exceptional circumstances and mechanism of postponing elections while others do not. The COVID-19 pandemic became a reason for postponing the sixth general election in Ethiopia, which was originally scheduled for August 29, 2020. This decision unveiled a number of political and constitutional issues with opposing arguments. The disagreements on the decision to postpone the elections and the accompanying political tensions led to the organization of elections in the Tigray National Regional State without the approval of NEBE, the only constitutionally mandated election management body in Ethiopia. The purpose of this study is to examine the constitutional basis for the state council election that was held in the Tigray regional in 2020 from the perspectives of the constitutional mandate to administer elections, the exercise of the right to vote and to be elected as well as the exercise of the right to self-determination.

CHAPTER ONE: INTRODUCTION

1.1 Background

An election is a formal process of selecting a given candidate for public office.[1] It is usually conducted based on a legally set timeline. Such predictability of electoral events makes them the cornerstones of political stability.[2] However, due to different reasons election may not be conducted within the preset timeframe. Covid-19, one of the world's deadliest pandemics of all time, becomes one of such reasons to disrupt the timely election. As it continues to threaten the life of millions the world is forced to stop functioning all at once and hide behind closed doors. Governments are required to suspend most of their plans and devote their time and resources to combating the disease.

Due to this pandemic, as of May 2021, 119 election events were postponed in 69 countries and eight territories across the globe.[3] In its March 31st, 2020 announcement, the National Electoral Board of Ethiopia (NEBE) also announced that, due to COVID-19 it's unable to commence the preparation for the August 29, 2020 election and decided to cancel the election timetable.[4] The Federal government also declared a state of emergency decree to control the spread of the virus and mitigate its impact.[5] As per this decree, people's constitutional rights were limited for five months.[6]

On the other hand, article 58 (3) and 67(2) of the Federal Democratic Republic of Ethiopia Constitution (the Constitution, Constitution) states that members of the House of Peoples' Representatives (HoPR) and House of Federation (HoF) shall be elected for the term of five years and election to the new House shall be concluded one month before the expiry of the House's term.[7] The term of office for the then house which was elected on May 24, 2015, ended

---

[1]Roger Gibbins, 'Election | History, Polls, Results, Date, & Facts' (*Encyclopaedia Britannica*, 2022) <https://www.britannica.com/topic/election-political-science> accessed 20 May 2022.

[2] Dahl, R., '*Democracy and Its Critics'* (1989) New Haven: Yale University Press

[3]International Foundation for Electoral Systems, 'Elections Postponed Due to COVID-19 - As of May 11, 2021' <https://www.ifes.org/sites/default/files/elections_postponed_due_to_covid-19.pdf> accessed, 19 May 2022.

[4] የኢትዮጵያ ብሔራዊ ምርጫ ቦርድ፣ የኮሮና ቫይረስ ወረርሽኝ የምርጫ 2012 ኦፕሬሽን እቅድ እና የጊዜ ሰሌዳ ላይ የፈጠረውን ችግር ገምግሞ ያሳለፈው ውሳኔ መግለጫ (መጋቢት 22 ቀን 2012 ዓ.ም) https://nebe.org.et/am/node/256

[5] The State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact, 2020, Proc. No. 3

[6] Id, Art. 8

[7] Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No. 1, Neg. Gaz. Year 1, no. 1.

on October 5, 2020, and election was supposed to have taken place before September 5, 2020. Since NEBE decided that it could not organize the elections in time, the term of office of elected officials at the Federal as well as regional levels was to expire and the country would have been left without a constitutionally recognized government. Alleging that the Constitution does not provide any solution for this kind of problem the government suggested four alternative solutions to the concerned bodies. The proposed alternatives were: dissolving the parliament and extending the term of the then government, declaring a state of emergency and extending the election timetable, constitutional amendment, or seeking constitutional interpretation from HoF. In its 3rd extraordinary meeting on May 5, the HoPR endorsed the option of requesting the HoF for constitutional interpretation by majority vote[8]. The HoF in its 5th ordinary meeting on June 10, 2020, decided that the term of office of the HoPR, the HoF, State Councils, and the Federal and State Executive bodies shall be extended for the period of the state of emergency proclamation 3/2012 and up to the time when next elections are held.[9] It also decided that the election shall be held within nine to twelve months after international and regional health organizations, the Ministry of Health and the Institute of Public Health confirmed that COVID-19 is no longer a threat to public health and this confirmation has been approved by the HoPR.

However, this decision faced opposition from different parties especially from Tigray People Liberation Front (TPLF), the then Tigray region ruling party, alleging that the HoF decision is unconstitutional argued that election should be conducted within the constitutionally set time frame. While this controversy was going on the executive committee of TPLF decided to conduct the state council election and requested NEBE to accept this decision and pursue the preparation for the election as per the Constitution. However, NEBE rejected the request stating that the Board is the only institution with the constitutional authority to decide on the election timetable and related matters and reminded its decision not to hold the election.[10] Following this the then state council enacted proclamation 351/2020 on July 6, 2020, establishing its own

[8] House of Peoples Representatives, <https://www.hopr.gov.et/web/guest/-/parliament-endorses-Constitution_al-interpretation-option-for-national-election> accessed, 19/10/2020

[9] Etenesh Abera, 'News Alert: HoF approves CCI's recommendation to extend both Houses, state councils term limit; constitutional expert raises concern' *Addis Standard* (JUNE 10, 2020) <https://addisstandard.com/news-alert-hof-approves-ccis-recommendation-to-extend-both-houses-state-councils-term-limit-constitutional-expert-raises-concern/>

[10] National Electoral Board of Ethiopia, *Statement in Response to the Tigray Regional State Council's Request for NEBE to Conduct Regional Council Elections*, <https://drive.google.com/file/d/1zvUjOAkplVpbbsU6dtUtRSxLl0lmmGA6/view?fbclid=IwAR2T8auPia0audhbe9zT4lKyQ1JAkJpH8G6u_jORh5cIf1_KgvuvTPa4tCA> accessed, 25/10/2020

regional election commission mandated with the overall execution of the regional state council's election. The commission conducted a state council election on September 9, 2020. However, the constitutionality and democratic nature of the electoral process have been questioned. The main thrust of this research paper is to assess the constitutionality of this regional election.

1.2 Statement of the Problem

Lack of political participation and failure to consider diverse political views are deep-rooted problems in Ethiopian political history. Both the imperial and *Derg* regimes were officially intolerant to diverse political views and maintained a closed-door policy for public participation in the political process. However, change has occurred after the adoption of the 1995 FDRE Constitution, which places high emphasis on human and democratic rights. Since then, there are constitutionally established mechanisms for citizens' political participation and periodic elections.

Since its constitutional establishment, NEBE has conducted periodic elections every five years throughout the country. However, many would agree that the electoral practices fell short of democratic standards which undermined the political culture. The 2018 political transition that led to ousting of the long-running political regime of the Ethiopian People's Revolutionary Democratic Front (EPRDF) from the Country's central politics created high anticipation as to how the process and the outcome of the 6th general election would be. With the political tension that followed the transition, NEBE's decision to postpone the election was rejected by TPLF, as it considered it paving the way for illegal power grab by the newly established political party leading the country at the time.

As a response to the Board's decision, the Tigray regional administration decided to proceed by itself with organizing the state council election, which should have been conducted as a part of the general election. This election has arguably transgressed the constitutional authority of NEBE and undermined the political community based on which the Constitution is enacted. Hence, the study will examine the constitutionality of conducting state council elections by a regional administration.

1.3 Objective of the Study

1.3.1 General objective

The overall objective of the study is to examine the constitutionality of the state council election that was organized in Tigray regional state on 9 September 2020.

1.3.2 Specific objective

The specific objectives of this study are

- To examine and evaluate constitutional mandate to administer elections.
- To determine the constitutional role of regional states in general elections.
- To assess the constitutional basis for the state council election in Tigray regional state- in 2020.

1.4 Research Questions

Based on the above statement of the problem the research will answer the following questions

- Does the Constitution allow authorities other than NEBE to organize elections in Ethiopia?
- What is the FDRE Constitution's stance towards the role of regional administrations in elections?
- Is there any constitutional basis for organizing the state council election in 2020 by the then Tigray regional state administration?

1.5 Scope of the Study

The research will be confined to analyzing the constitutional basis of the state council election conducted by the then regional administration of Tigray. In doing so, the constitutional provisions regarding election administration and the reasons stipulated by the then regional administration to justify the constitutionality of the election will be the main bases of discussion.

1.6 Methodology of the Study

The methodology the research adopts will be doctrinal legal research. Doctrinal research methodology involves the systematic analysis of legal principles and statutory provisions as the main base of the study[11]. This research is also an analytical one. It will analyze substantive provisions of the Constitution relating to election. Although there will be a description

[11] Dr. Rattan Singh, *Legal Research Methodology* (1st ed., LexisNexis 2013)

concerning the general practices of election in Ethiopia, most of the study will be devoted to analyzing the major arguments advanced in support of conducting the state council election at the regional level against that of the FDRE Constitution to make a critical evaluation.

Moreover, the quality of doctrinal research depends upon the sources of materials on which the researcher depends upon for the study[12]. Therefore, the primary sources of this research are the FDRE Constitution, National Electoral Board of Ethiopia Establishment Proclamation No. 1133/2019[13], The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019[14], the Tigray Regional State Election Proclamation no. 351/2020[15] and other related laws. Books, articles, journals, reports, and websites will be used as secondary sources.

1.7 Organization of the Study

This research will be divided into four chapters. The first chapter introduces the subject matter of the study with some background and the research objectives. Chapter Two is all about the general overview and the normative framework of Elections management in Ethiopia. In Chapter Three, the 6th general election postponement and the role of HoF will be discussed. Chapter four analyzes the constitutional basis for the state council election in Tigray regional state. Lastly, chapter five provides a conclusion and recommendation.

1.8 Literature Review

Different arguments are forwarded concerning the problem where postponement of election becomes debatable due to different emergency situations creating difficulty to conduct elections. To deal with such hiccups many countries provide a solution in their Constitution and electoral laws. In Ethiopia, the Constitution does not provide such a way out and the ruling parties were unable to settle on the postponement of the election. This issue is a new development in the Ethiopian constitutional and political debates and there is nearly no academic literature on the matter. However, there are different articles published on online platforms by academicians and researchers which mainly reflected two lines of argument as presented below.

---

[12] Dr. S.R.Myneni, *Legal Research Methodology*, (5th ed., Allahabad law agency, Haryanna India 2005)
[13] National Electoral Board of Ethiopia Establishment Proclamation, 2019, Art 4, Proc. No. 1133, Neg. Gaz. Year 25th, no. 71.
[14] The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation, 2019, Proc. No. 1162, Neg. Gaz. Year 25th, no. 97.
[15] Tigray Regional State Election Proclamation, 2020, Proc. no. 351, Neg. Gaz. Year 27th, no. 15

Professor Alex De Waal in his article where he discussed the interpretation of the right to self-determination in the FDRE Constitution argued that the rationale for the inclusion of the right to self-determination in Constitutions is to let regions exercise their democratic rights when a democratic failure happens in the center and the administrative procedure for organizing elections should be subordinate to the democratic self-determination norm[16]. Hence, the argument goes, regions can organize elections in the exercise of their internal self-determination.

On the other hand, Marshet Mohammed Hamza in his comments on the HoF decision and Tigray region election argued that the election of state council had a remote impact on the exercise of the right to self-determination, unlike the zonal and local councils which are not part of the general election conducted by the region[17]. Moreover, Markos Debebe, contends that regions cannot conduct elections without the Federal government approval alleging that both the Constitution and electoral laws specifically mandated the Federal government regarding general elections. He stated that the FDRE Constitution empowered the Federal government to enact laws concerning election (articles 51(15) and 55(2(d)), to establish a national electoral Board under Article 102(1)) and Proclamation No. 1133/2019. He further argued that when the reason for not holding the election is a mere luck of willingness on the part of the Federal government regions may have the chance to conduct elections however as long as the reasons for deferral are legitimate like that of the public health issue regions cannot hold a legitimate general election without the approval of the electoral Board and the HoPR.[18]

The third viewpoint regarding this issue is presented by Marshet Mohammed Hamza[19] who argues that both the HoF and the Tigray regional state acted unconstitutionally. On the part of the HoF, he argued, it surpassed its constitutional mandate and extend the regional council's term, and the regional government in Tigray transgressed the constitutional power of the Federal government.

---

[16] Alex de Waal, 'Talking and fighting about self-determination in Ethiopia' (2021) <https://blogs.lse.ac.uk/africaatlse/2021/01/11/talking-fighting-about-self-determination-Constitution -civil-war-ethiopia/ > accessed, 25/10/2020

[17] በማርሸት ሙሀመድ ሀምዛ, 'አስተያየት: የፌዴሬሽን ም/ቤት ውሳኔ፣ የትግራይ ክልላዊ ምርጫ እና ቀጣይ እውነታዎች' (አዲስ ስታንዳርድ ሴፕቴምበር 9፣ 2020) <https://addisstandard.com> accessed, 25/10/2020

[18]Markos Debebe, 'Ethiopian Regions cannot Hold Elections without Federal Approval' (*Ethiopian Insight*, 5 May 2020) <https://www.ethiopia-insight.com/2020/05/05/ethiopian-regions-cannot-hold-elections-without-federal-approval/> accessed, 25/10/2020

[19]Marishet Mohammed Hamza, 'Tigray-Federal Tit-For-Tat Threatens Trouble' (*Ethiopian Insight*, 10 August, 2020) <https://www.ethiopia-insight.com/2020/08/10/tigray-federal-tit-for-tat-threatens-trouble/> accessed, 25/10/2020

In addition to the above-mentioned lines of arguments, the regional election has a major constitutional implication that requires further scrutiny. Hence, this research paper further analyzes it in light of the constitutional division of power, the scope of the right to self-determination under the Constitution and the legal mandate of election management in Ethiopia.

CHAPTER TWO: GENERAL OVERVIEW OF ELECTORAL MANAGEMENT BODIES

Introduction

The right to take part in the conduct of public affairs, the right to vote, and to be elected are universally upheld human rights of citizens.

Electoral management bodies are important institutions for democracy-building[20]. A critical element in maintaining election integrity is sound management of elections by a credible election management body[21]. The Global Commission on Democracy Election and Security identified developing professional and competent electoral management bodies with full independence of action as one of the major challenges to the conduct of elections with integrity.[22] The credibility, neutrality, impartiality, and fairness of electoral activities highly depend on the independence of EMBs.

2.1 Meaning and Nature of Election Management Bodies

An electoral management body is a legally constituted organ with the responsibility of managing some or all of the elements that are essential for the conduct of elections including determining who is eligible to vote, validating the nominations of electoral participants, conduct polling, counting and tabulating the votes.[23] It generally involves the administration and organization of pre-election, Election Day, and post-election activities.

Elections need to be conducted to serve the interests of all citizens and election participants and not for the sake of serving as façade of democracy. According to Indraneel Datta 'Successful elections are not merely about efficient and impartial management of the voting process, but also depend very much on perceptions by voters and contestants that the polling process was "free and fair".[24]

---

[20]Rafael Lopez-Pintor, 'Electoral Management Bodies as Institutions of Governance' (2000) UNDP Bureau for Development Policy

[21]The Electoral Knowledge Network, Electoral Integrity, (2012) 3rd ed <https://aceproject.org/ace-en/topics/ei/eif/eif01/default>

[22] Global Commission on Elections, Democracy and Security, 'Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide' (September 2012)

[23]Helena Catt and others, *Electoral Management Design* (ISBN: 978-91-87729-66-9) (IDEA, 2nd edn, 2014)

[24] Indraneel Datta, 'Are Centralized Election Management Bodies Suitable for Federal Structure?'(2008) 5 Unity in Diversity Learning from Each Other, 160, 161

In this regard, EMBs role is crucial by ensuring that the electoral process is free, fair and impartial citizens will be able to trust that their vote actually did make a difference. It will also help the government to acquire popular legitimacy. The International Institute for Democracy and Electoral Assistance provides fundamental guiding principles to ascertain that EMBs ensure the legitimacy and credibility of an electoral process.[25] Some of these principles are summarized below.

Independence and Impartiality: Independence of an EMB can be structural, exiting outside government organs, and having the autonomy and freedom in the decision making power.[26] Such independence needs to be guaranteed by the law. The EMBs are required to avoid any partisanship towards the government, political parties, or any other body in their action and should treat all election participants equally, fairly, and even-handedly. These will instill the credibility of the electoral process.

Integrity: An election with integrity is define as 'any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle'.[27] Rule of law, building professional, competent EMBs with full independence of action, creating institutions and norms of multiparty competition, removing barriers to universal and equal political participation, and regulating uncontrolled political finances are believed to enhance the integrity of elections.[28] EMB with full independence of action and control of all essential electoral processes, including budgets and staffing can easily maintain the integrity of the election.[29]

Transparency: Transparency is a way the EMB regularly communicates with the public and electoral stakeholders about the overall electoral activities.[30] It helps an EMB to minimize electoral fraud and gain public trust and shows its impartiality and integrity.

[25] Helena Catt and others (n.23) 21.
[26] ibid
[27] Global Commission on Elections, Democracy and Security (n. 16)
[28] ibid
[29] Helena Catt and others (n.17)
[30] ibid

Efficiency: Electoral finances need to be managed wisely enough to maintain the quality of the electoral process and avoid unnecessary wastage of resources at the same time.

Professionalism and Service-mindedness: Qualified and service-oriented members of an EMB enable a smooth implementation of electoral activities.

2.2 Types of Election Management Bodies

There are different kinds of electoral management bodies in various electoral systems. It is understood that election management is sensitive to the unique context of the country where it happens.[31] Countries' different forms of governmental structure and electoral systems also affect the EMBs formation. Globally there are three different models of EMBs, the independent model, the government model, and the mixed model.

1. Independent Model

In the independent model, electoral management is established as an independent and autonomous organ that has its own budget, administration and decision making power independent of the executive branch of the government.[32] It is accountable for the legislature with members outside the executive branch and neutral from any government or party affiliations. This nature of independent model EMB's allowed it to have better public trust and confidence.[33] Moreover, according to Professor López-Pintor, independent electoral bodies serve democratic stability better than elections run by the executive branch.[34] This model is mostly adopted by new and emerging democracies such as Armenia, Bosnia and Herzegovina, Burkina Faso, Canada, Costa Rica, Estonia, Georgia, India, Indonesia, Liberia, Ethiopia, Mauritius, Nigeria, Poland, South Africa, Thailand, and Uruguay[35].

There is also a double-independent framework under the independent model in which two bodies independent of the executives are established to manage elections. One of these bodies will be

[31]United Nations Development Program, 'Principles for Independent and Sustainable Electoral Management; International Standards for Electoral Management Bodies' (Forum Report, Cairo, Egypt, 9-11 April 2012) (UNDP forum report)
[32] Rafael Lopez-Pintor, 'Electoral Management Bodies as Institutions of Governance' (n 20)
[33] ibid
[34] ibid
[35] Helena Catt and others, Electoral Management Design (n.23), P.7

responsible for policy decisions concerning the electoral process and the other one will conduct and implement the electoral process. Jamaica and Romania can be examples of this model[36].

2. Governmental Model

In the governmental model of electoral management, elections are managed by the executive branch of the government. It is led by a ministry and answerable to the cabinet minister with their budget falling under the government authorities. Countries that use this model include Denmark, Sweden, Singapore, Switzerland, and the United States[37].

3. Mixed Model

In the mixed model, there are independent and governmental components. The governmental component is located under the department of the state with the implementation responsibility. It is led by a minister or civil servant and fully accountable to the executives. The budget allocated for this component is part of the governmental ministry's budget. The independent component, like that of the independent model, is autonomous from the executive branch of the government with the monitoring and supervisory mandate. It is formally accountable for the legislature and it has a separately allocated budget. The independent component has powers to develop an electoral regulatory framework independently under the law. It monitors or supervises the implementation of electoral activities by the governmental component[38]. It is composed of members outside the executive branch such as judges and political party representatives[39].

Most of the countries with older democratic and electoral history adopted the governmental model while those states with a relatively newer democratic culture preferred the independent model.[40] Countries with older democracy have over 100 years of experience in conducting elections which progressively created a condition in which the executive branch responsible for the conduct of the election is under the close scrutiny of external social and political agents such as independent judiciaries, media and a parliament vested with real authority on legislation and checks on executive power.[41]

---

[36] ibid
[37] ibid
[38] Ibid, page 11
[39] Rafael Lopez-Pintor, 'Electoral Management Bodies as Institutions of Governance' (n 20)
[40] Rafael Lopez-Pintor, 'Electoral Management Bodies as Institutions of Governance' (n 20)
[41] UNDP, Principles for Independent and Sustainable Electoral Management (n 25)

In newly developing democracies on the other hand, government institutions' integrity is usually in question. Creating a level playfield for political parties, being autonomous in electoral activities, and having the integrity required for the conduct of fair, free, and participatory election requires governmental neutrality. Moreover, the absence of strong independent media, civil society, and labor unions allow for the accumulation of unchecked power in the executive branch, which creates mistrust in the government. Due to these reasons establishing an independent electoral management body has become preferable. Such independent institutions are taken as a guarantee for the conduct of democratic elections.[42]

In any electoral activity, the key element is to conduct the election having the public trust and confidence throughout the process. Despite the different models the election management body is structured on, it is the practical ability of the EMB to implement their mandate independently[43] and avoid unfair practices that will determine the public trust.

2.3 Election Management Bodies in Federal States

A country's form of government and political system highly affects the concentration and devolution of EMB's power and its geographical jurisdiction. Electoral laws determine the vertical division of authorities and functions of an EMB. There may be a single centralized organ with different branch offices which administer elections throughout the country or it can constitute different sub-national, regional, and local EMBs.[44]

When the election management is centralized a single, nationwide institute will be mandated to organize and administer the whole electoral activities throughout the country having the liberty to assign nonessential activities to a different organ. In countries like Costa Rica, Ghana, and the Philippines central EMB is responsible for all elections but with subordinate offices at both provincial and local levels.[45]

A decentralized EMB refers to the existence of separate electoral bodies at a national, regional, and local level with their respective authorities. The most highly decentralized EMBs can be found in Federal countries, where different EMBs may operate at national and each Federal or

[42] Ibid
[43] International Institute for Democracy and Electoral Assistance, IDEA, '*International Obligation for Election: Guidelines for Legal Framework*' (ISBN: 978-91-87729-56-0) (2014),
[44] Muhammad Al-Musbeh, 'Managing Elections: Definition and Classification of Elections Management Bodies' (2011) DOI:10.2139/ssrn.2271279 SSRN Electronic Journal <www.researchgate.net/publication/255698302>
[45] IDEA International Obligation for Election (n 43) page 17

state level[46]. The nature of their relationship, the distribution of authorities, and responsibilities among the different level EMBs will be determined by the law.

In decentralized EMBs, the national EMB can be responsible for national elections while state-level EMBs administer provincial and local elections. In countries like Australia and Canada, the national EMB is responsible for Federal elections while provincial EMBs are responsible for provincial and local elections.[47] In Nigeria, the national EMB assumes responsibility for Federal and state elections and referendums, whereas the provincial EMBs are only responsible for local elections.[48] In the Russian Federation, a central EMB at the national level is responsible for all Federal elections while regional EMBs are responsible for elections in regions and lower level EMBs are responsible to the central EMB for Federal elections and to the regional EMB for the republic, regional and local elections.[49]

There are also instances where regional EMBs are responsible for all kinds of electoral activities and national EMBs are only responsible for policymaking, supervising, declaring results, and dispute resolution activities. In the US the Federal government involves in campaign financing during Federal elections and ensures that states administer elections consistently with Federal laws while states manage and implement all aspects of election administration.[50] In Brazil, the state EMBs are generally responsible for running all elections and the national EMB is involved in the tabulation and declaration of results for national offices.[51] In India, the national EMB exercises overall superintendent, control, and direction over state elections. The conduct of these elections is the direct responsibility of the state chief electoral officer, who is a senior civil servant appointed by the national EMB.[52] In Switzerland, a national EMB is responsible for policy coordination, while local authorities manage elections.[53] In the UK the election

[46] Muhammad Al-Musbeh, (n 44)
[47] Carl W. Dundas, *Election Administration: Designing Dimensions of Legal Reform* (Author House, 2015)
[48] ibid
[49] Young J. Luke, 'Strategic Assessment of the Models of Electoral Management and the Guiding Principles in the Organization of Election' 3 International Journal of Research in Education, Science and Technology, California 23
[50] R. Sam Garrett, 'Federal Role in U.S. Campaigns and Elections: An Overview' (2018) Congressional Research Service < https://sgp.fas.org/crs/misc/R45302.pdf>
[51]The Electoral Knowledge Network, 'Electoral Management' <https://aceproject.org/ace-en/topics/em/ema/ema08>
[52] The Electoral Knowledge Network, (n51)
[53] Office for Democratic Institutions and Human Rights, 'Swiss Confederation Federal Assembly Elections; ODIHR Needs Assessment Mission Report (2015)
https://aceproject.org/ero-en/regions/europe/CH/switzerland-needs-assessment-mission-report-2

commission at the Federal level oversees the election, regulates political finance, and manages referendums whereas the local officers run the election process.[54]

In a Federal system of governance, electoral designers are required to decide whether the electoral management body is centralized or decentralized. In most age-old democracies like the USA, UK, and Switzerland they adopted a decentralized electoral management system allowing regional states to administer local elections. Regarding the newly emerging democratic states centralized election management system is suggested to allow control over the possible hijacking of the electoral process by the local power-brokers[55].

On the other hand Indraneel Datta argued that in Federal polities, especially during post-conflict elections, having centralized election management will have difficulty of earning public trust and understanding the local political contexts. Thus institutionalizing election body at the local level increases public confidence in the electoral process which leads to higher voter turnout and effective electoral dispute resolution mechanisms[56].

Countries that adopted a governmental or mixed model of electoral management tend to have decentralized EMBs. It relies on pre-existing governmental structures to implement electoral activities. However, devolving electoral powers either to local authorities or to different local EMBs or branch levels of one EMB requires guaranteeing the best value of functional harmony between the national EMB and the provincial body.[57] Appropriate oversight is always required to maintain electoral consistency, service, quality, and ultimately the freedom and fairness of elections between different electoral constituencies[58].

2.4 Election Management Bodies in Ethiopia

2.4.1 Historical background

Democratic practices including elections are not entirely alien to Ethiopian society. Since ancient times there were egalitarian political systems that allowed public participation such as the *Gada system* of the Oromo people that had a peer group-based system with a developed legislative

[54] The Electoral Commission, www.electoralcommission.org.uk
[55] Shaheen Mozaffar and Andreas Schedler, 'The Comparative Study of Electoral Governance: Introduction' (2002) 23 International Political Science Review, 5, 14
[56] Indraneel Datta, (n 24)
[57] Muhammad Al-Musbeh (n 44)
[58] IDEA 2014, page 17 Helena Catt and others (n.23)

body. The first modern electoral activity in Ethiopia dates back to the reign of Emperor Haile Selassie II. In 1931 the first written Constitution of the country was promulgated resulting in the establishment of the parliament. However, both houses of the then Parliament, Senate, and Chamber of Deputies were not allowed for the commoners alleging that the people were not yet ready for active political participation[59]. The Senate was composed of *Masafint* and *Makwanent*, those who served the empire as princes, ministers, judges, or army leaders, elected by the king[60]. Members of the Chamber of Deputies were elected by the dignitaries (*Makwanent*) and local chiefs (*Shumoch*).[61]

In 1955 a new Constitution was promulgated, revising the 1931 Constitution. One of the notable changes introduced by the revised Constitution was the introduction of universal suffrage and the provisions for an elected Chamber of Deputies. An electoral law was issued under proclamation no. 152 of 1957. It set up the Central Election Board working under the Ministry of Interior and its administrative machine. The Board consisted of three members responsible for the supervision and organization of the first election held in September 1957.[62] However, some scholars argue that, low popular participation, absence of political parties, and the acquisition of property requirement to qualify as a candidate coupled with the attractive salary and social status enjoyed by deputies dragged the election down to the level of individual completion, created bias among the deputies and made the parliament a place for self-promotion rather than serving the popular demand.[63] Subsequent elections under the emperor were held in 1961, 1965, 1969, and 1973. There was no significant change except that the number of deputies grew from 210 to 250 and the number of voters and candidates also increased.

In 1974, following a series of political oppositions, the Imperial regime was overthrown and a military junta controlled the country. It suspended the 1955 Constitution and started to rule the country with a series of decrees. In February 1987 the Derg adopted a new Constitution through a referendum. It transferred the power to the People's Democratic Republic of Ethiopia in September 1987. As per the Constitution, the election was held to the supreme organ of state

[59] Bahru Zewde A history of modern Ethiopia 1855-1991, 2nd ed, page 141
[60] Ethiopian Constitution of 1931, 16th July, Art. 31.
[61] ibid article 32.
[62] Bereket Habte Selassie, 'Constitutional Development in Ethiopia' (1966) 10 Journal of African Law, p. 84
[63]Bahru Zewde, (n.59), page 256

power, the National Shengo. The election was described *as a race in family affairs*[64]. The workers' party of Ethiopia was the only legally allowed political party to participate and it won 795 out of the 835 parliamentary seats. In 1991 the Derg regime was overthrown by the Ethiopian People's Revolutionary Democratic Front.

2.4.2 National Election Board of Ethiopia

After the EPRDF controlled the government on May 28, 1991, a National Conference on Peace and Reconciliation was held in Addis Ababa in July. It resulted in the adoption of the Transitional Period Charter of Ethiopia and established a transitional government with an unelected Council of Representatives. The Charter served as supreme law of the land until the promulgation of the 1995 Constitution.[65] Under article 13 it authorized local and state council election to be held within three months of the establishment of the transitional government. The overall conduct of the June 21, 1992 election was criticized as being not free and fair mainly because it is filled with harassment and intimidation from the EPRDF against contending political parties, lack of material facilities and preparation, voters unawareness regarding the electoral procedure, and difficulty of identifying which candidate run for what.[66]

On August 21, 1995 the FDRE Constitution was adopted. Under Article 102 of the Constitution and Proclamation no. 64/1993 the National Election Board of Ethiopia was institutionalized. Since then the establishment proclamation has been amended several times. Following the political change that occurred in the country in mid-2018, the electoral Board was re-established by proclamation no. 1133/2019 and the Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019 was also enacted.

2.4.3 Structure and Functions of NEBE

NEBE is established as one of the democratic institutions independent of the executive organ of the government. It enjoys both institutional and financial autonomy. The Board has five management committee members who serve full time for six years.[67] They are appointed by the HoPR upon the recommendation of the Prime Minister[68], Nationality and not being a member of

[64] ibid 207.
[65] J. Abbink, 'Breaking And Making A State, The Dynamics of Ethnic Democracy in Ethiopia' (1995) 13 Journal of Contemporary African Studies <www.researchgate.net/publication/232953420>
[66] ibid page 158
[67] Proclamation No. 1133/2019, cited above at note 13
[68] FDRE Constitution Art. 102(2)

a political party are the requirements along with integrity, professional and leadership competency. This mode of appointment was criticized mainly because the parliament was filled by members of a single political coalition at the time of the adoption of the law. It was feared that the appointment will run the risk of diluting the neutrality and credibility of the Board.[69] However, under article 5 of proclamation 1133/2019, the Prime Minister is required to establish a committee that will engage in the recruitment of nominees to Board members. It further specifies the composition of the committee and how the nominees will be identified. Hence the nomination will follow a clear legal procedure minimizing the influence of the incumbent.

NEBE is led by a Chairperson of the Board. It has a secretariat headed by the chief executive and deputy chief. The Board is mandated to conduct in an impartial manner free and fair elections in Federal and State constituencies. It has also power and duties that include impartial management of any election and referendum as per the Constitution and electoral law, political parties registration and supervision, establishing branch offices at the regional and sub-regional level, cancelation of election results and ordering re-election where it has been convinced that violation of the law has occurred which would undermine the outcome of the election.[70]

The Board has a centralized structure with its head office situated in Addis Ababa. It has regional and sub-regional branch offices in all regional states.[71] The branch office head is nominated by the Chairperson and appointed by the Management Board, which is a meeting of the five elected members of NEBE. The nominees are recruited based on the directive enacted by the Board on recruitment and employment of NEBE's regional branch office heads. The regional branch office has several responsibilities including to: direct, coordinate, and control elections at the state level, follow up voter registration, the nomination of candidates and voting procedures to make sure that they are conducted per the law, establish Grievance Hearing Committee of the regional state office by the directives issued by the Board and investigate and decide on them.[72] In addition to regional branch offices, the management Board, taking into account the size of the

[69] Mesfin Bogale, 'A Comparative Analysis of the Coverage of NEBE in Addis Zemen and Reporter Newspapers' (MA thesis, AAU 2005)
[70] Proclamation No. 1133/2019, (cited above at note 13) Art 7
[71] Ibid Art 23
[72] Directive on Recruitment and Employment of the National Election Board of Ethiopia's Regional Branch Office Heads, 2019, Art. 3, no. 1

regional states, settlement of peoples, and the number of voters may establish permanent or temporary coordinating offices that are accountable to regional state branch offices.[73]

Since its inception, NEBE has organized six general elections held every five years, including the June 2021 election, two local elections, and six referendums. Many agree that previously the Board had an unbreakable tie with the ruling party which put its independence as well as the integrity of the elections at stake. The structural independence of the Board materialized during its first establishment, however, the executive organ of the government, both at the Federal and regional level, forced the Board to bend its decisions towards the ruling party.

The main reason for adopting an independent model of electoral management body is because being autonomous builds the perception of impartiality which promotes electoral legitimacy.[74] The reestablishment of NEBE also emphasized on realizing the independence of the Board. As per the preamble of proclamation 1133/2019, NEBE has been reestablished to strengthen the Ethiopian democracy and to improve the credibility and implant capacity of the Board among competing political organizations and the voting public, by making the selection and appointment of the members of the Board participatory and transparent and ensuring the Board's independence in regards to its organizational structure, staff employment, deployment, and budget.

Apart from the law, the 6th general election served as a test for the possibility of the independence of the Board in the decision-making process. As a result, the re-enactment of the laws, restructuring the EMB, are believed to have improved public image, working closely with civil society organizations and deploying more observers during elections, and dissociating itself from government. However, some argue that the Board members are appointed by the ruling party without following the legal procedure provided under article 5 of the establishment proclamation which requires among other things the nomination of Board members to be made by an independently set up committee.[75] In addition, the independence and institutional strength

[73] NEBE Directive No. 1 (n 66) art. 2(2)
[74] Elisabeth Carter and David M. Farrell, 'Electoral Systems and Election Management' (2009) Research Gate DOI: 10.4135/9781446288740.n2 <www.researchgate.net/>
[75] Proclamation No. 1133/2019, (cited above at note 13) Art 5

reflected now is dependent on the persona of the chairperson as a former political prisoner, and that there is lack of cooperation with local administrators in its activities.[76]

In sum, Ethiopia has had an independent model EMB that has authority to manage all elections in the country, at the Federal as well as regional levels. The Constitution adopted an independent model of EMB which legally limits the measures taken by ordinary legislations or executive decisions that may affect the Board.[77]

[76] Naol Getachew, 'The hopes the National Electoral Board of Ethiopia conceived while reforming itself and how did the people respond?'*Addis Zeybe*, (July 8, 2021) <https://addiszeybe.com/featured/politics/institution-building-in-ethiopia-hopes-and-threat-of-nebe-s-restructuring>

[77]Rafael Lopez-Pintor, 'Electoral Management Bodies as Institutions of Governance' (n. 20)

CHAPTER THREE: ELECTION POSTPONEMENT AND THE CONSTITUTIONAL REMEDIES

Introduction

Since the downfall of the military rule in 1991, the Ethiopian People's Revolutionary Democratic Front (EPRDF) controlled state power for nearly three decades. The 27 years of tenure is largely believed to have been dominated by the ethic-based political parties that represented the Tigray, Amhara, Oromia and Southern regions. TPLF (representing the Tigray region) took the lion's share in central political and decision making power in the country. These created power strife amongst members of the EPRDF coalition over time. A massive wave of public protest from the two most populous regions, Oromia and Amhara regions, over grievances on the political process, economic under development, maladministration, identity issues, etc., shaken up the regime and ended up ousting it from the central power in mid-2018.

In the 1995 FDRE Constitution a multiparty political system with a mechanism for periodic elections are set up. During the tenancy of EPRDF, five general elections were conducted in every five years. However, the COVID-19 pandemic caused for the postponement of the sixth general election which, as per the constitutional timetable, was required to be conducted in 29, August 2020. While this decision has caused its own constitutional turmoil, the TPLF lead Tigray regional administration disagreed with the decision and conducted a state council election in September 2020. The regional administration accuses that both decisions on the deferral of the election and the following measures taken to extend the outgoing government's power are unconstitutional. Hence, it proceeded to conduct the election.

Following the chronological turn of events, this Chapter will present the decision on the postponement of the election and the measures taken by the Federal government to solve the expiry of constitutional term of office.

3.1 The Effects of COVID-19 Pandemic on Elections

The administration that took power after the political transition in April 2018 renewed its commitment to build a democratic system, uphold rule of law, to respect human rights and to organize free and fair elections. In preparation for elections, the previous electoral laws were

revised, the Electoral Board was re-established and new political parties were formed and older ones re-constituted themselves across the country.

While the Electoral Board had started preparation for the sixth general elections, it was soon faced with the outbreak of a deadly pandemic known as Coronavirus (COVID-19), which is contagious viral disease that was discovered in China in December 2019.[78] Considering its transmission and fatality rate, governments in different countries enacted laws and took measures to keep people at home and canceled those activities entailing public gathering, including elections. As the nature of the virus dictates most of the measures taken, it resulted in putting limitation on freedom of movement and assembly among others.

The first COVID-19 case in Ethiopia was confirmed on March 13, 2020. As the number of victims increased, both the Federal government and regional (Tigray) administration declared a State of Emergency decree to control the spread of COVID-19 and mitigate its impact.[79] The measures targeted at limiting human contact to avoid the spread of the virus. The series of regulations enacted subsequently also restricted freedom of movement and assembly, including international and interstate travels, sanctioned public gatherings of four and more people, either for religious, social, governmental, or political reasons at any place of worship, hotels, and governmental institutes or in any other meeting halls[80].

Such limitations inherently affected electoral activities because election by its nature entails large public gathering. According to James and Alihodzic, the COVID-19 lockdown and restrictions limited access to campaigns and public gatherings made elections less deliberative, weakened public turnout, and tested electoral management quality due to the availability of a limited number of human resources, logistical and financial difficulties.[81]

[78] World Health Organizations, 'Listings of WHO's response to COVID-19' (Last updated 29 January 2021) <https://www.who.int/news/item/29-06-2020-covidtimeline> accessed September 19, 2022.
[79] The State of Emergency Proclamation, cited above at note 5
[80] State of Emergency Proclamation No. 3/2020 Implementation Regulation, 2020, Art. 2(3) & 3, Reg. No.466, Neg.Gaz. Year 25, no 35
[81] Toby S. James and Sead Alihodzic, 'When Is It Democratic to Postpone an Election? Elections During Natural Disasters, COVID-19, and Emergency Situations' (2020) 21 Election Law Journal: Rules, Politics, and Policy https://doi.org/10.1089/elj.2020.0642 accessed September 19/2022

As the government continued to take further restrictive measures, on March 31 2020, NEBE announced the decision to cancel the August 29, 2020 election timetable due to Covid-19.[82] It stated that due to virus upsurge, some of the major activities planned to be executed during the month of March and April 2020, like voter registration, election officers' recruitment, training and deployment, and voter education, were affected.

According to the Board, it conducted a survey to help with the final decision-making and reached two possible scenarios.[83] The first scenario assumed that the ban would last only for Four weeks. In that case, it would delay voter registration at least by four weeks from the schedule, which affects public participation, electoral credibility, and full support from institutions providing operational assistance. The second scenario assumed the virus might not be controlled within a month, which results in undertaking the voter registration in the midst of the pandemic. This would endanger community safety and also any restrictions on public health issues will make it challenging to implement the electoral activities as planned. During consultation with senior officials of the Ministry of Health, NEBE affirmed that there would be no chance of improvement by the end of April. Henceforth, it concluded with the impossibility to continue with voter registration without putting people's lives at risk hence decided to cancel the election timetable.

In the statement announcing the cancelation, the Board stated that the measures adopted by the government and international community to prevent the spread of COVID-19 impacted the electoral activities significantly. The pandemic posed a major problem to maintain public participation during the electoral process while avoiding the spread of the virus at the same time. Thus holding the election amid the pandemic will compromise its credibility, public trust, and risks the acceptability of the outcome.

The decision to postpone the election faced both wider acclaim and criticism at the same time. Opposition political parties had different stance regarding postponement of the election. There were those who did not support the conduct of the election in August 2020 long before the

[82] የኢትዮጵያ ብሔራዊ ምርጫ ቦርድ, cited above at note 5
[83] Ibid

pandemic was an issue.[84] They urged for postponement of the election stating that national dialogue and reconciliation better serve the country's democratic transition than election. In February 2020, they requested the Board to postpone the general election through the Ethiopian Political Parties Coalition. Their request stated that the country is not in a suitable situation to conduct the election, the Board does not have enough preparation, and the rainy season coupled with poor infrastructural facilities is also inconvenient to conduct the election in August 2020.[85]

In addition, during NEBE's consultation with political parties concerning COVID-19 and its negative implications, they advised the Board to devise an alternative solution while still working on the tasks not disturbed by the pandemic.[86] Due to the political transition that led to widening the political space, more than 107 political parties emerged. As new entities they needed time to fulfil the requirements under the new Electoral, Political Parties, and Election Code of Conduct Proclamation No. 1162/2019 such as recruit members, find funds, and familiarize themselves to the unique political atmosphere, etc. Therefore postponement of the election was an opportunity for them to prepare. The pandemic was also a blessing in disguise for the Board since it was highly overwhelmed by the re-establishment and structuring tasks while at the same time preparing to hold the general election.

However, certain political parties also strongly opposed the postponement of the election such as TPLF while other, like Oromo Liberation Front and Oromo Federal ist Congress, stated that even though the Board promised to have a second round meeting and discussion with political parties it failed to honour this promise and made the decision without our consultation.[87] The Chairperson of the Board, in an interview with the Reporter magazine, stated that the incumbent political party also refused to accept the decision to postpone at first, and it required them further effort to convince them and come to terms.[88]

---

[84] Borkena, 'Ethiopian Political Party Council Calls for Deferred Election' (September 3, 2019) <https://borkena.com/2019/09/03/ethiopian-political-party-council-calls-for-deferred-election/> accessed September 19, 2022

[85] Borkena, 'Ethiopian Political Parties Council insists Election should be Postponed' (February 21, 2020) <https://borkena.com/2020/02/21/ethiopian-political-parties-council-insists-election-should-be-postponed/> accessed September 19, 2022

[86] የኢትዮጵያ ብሔራዊ ምርጫ ቦርድ, cited above at note 5

[87] Oromo Libration Front & Oromo Federalist Congress, (April 4, 2020**)** <https://www.thereporterethiopia.com/9505/> accessed September 19, 2022

[88] ብሩክ አብዱ, ‹‹ለአንድ ፓርቲ የማደላ ከሆነ ሄጄ እዚያው ፓርቲ እገባለሁ›› ወ/ሪት ብርቱካን ሚደቅሳ፣ የብሔራዊ ምርጫ ቦርድ ዋና ሰብሳቢ, ሪፖርተር (28 march 2021) <https://www.ethiopianreporter.com/73402/ > accessed September 19, 2022

3.2 Postponement of the Sixth General Election and the Following Measures

One of the main reasons for opposing postponement of the election was that the FDRE Constitution sets a term of office for elected Federal government office holders. The HoPR, HoF, and the Executive, including the PM, have a five years term of office.[89] Elections for new house members and government officials shall be conducted one month prior to the expiry of their respective terms.[90] Based on these provisions, the then government officials which were elected on May 24, 2015, are expected to finish their term of office on October 5, 2020 and election were supposed to be held at least before September 5, 2020.

However, as mentioned above, NEBE was unable to pursue the preparation for the elections due to COVID-19 pandemic. Absence of clear constitutional provision on possibilities of postponing elections or extending government power beyond the five years tenure forced the then government to find a legitimate way out. In doing that, four possible alternative solutions were suggested to the legislature and political parties. In the discussion on these legal options with political parties, the then Deputy Attorney General Dr. Gedion Timotios explained that the alternatives were chosen based on: their constitutional basis and applicability within the existing constitutional framework, the ability to ensure the continuance of the government without jeopardizing the fight against covid-19, possibility of conducting election after the problem with the pandemic is over, and acceptance from a legal, political and moral perspective, and nationwide applicability[91]. These alternatives are discussed below.

3.2.1 Dissolve the House of Peoples Representatives

Under Article 60(1) of the Constitution, the Prime Minister, with the consent of the HoPR, is allowed to dissolve the HoPR before its term of office is over and hold a new election. However, if the HoPR is dissolved, election for members of the new House shall be conducted within 6 months.[92] Moreover, after the dissolution, the governing party will continue as a caretaker government without the power to enact new proclamations, regulations, or decrees, nor to repeal or amend any existing law, Article 60(5).

---

[89] FDRE Constitution (cited above at note 7) Art. 54(1), 67(2), and 72(3).
[90] Id, Art. 58(3).
[91] ዶር. ጌዲዮን ጢሞጢዮስ ‘ኮቪድ19 ምርጫን ማራዘም እና የህግ አማራጮች” በሚል ርዕስ የተካሄደ ውይይት ክፍል 1’(ሚያዝያ 2012) https://www.youtube.com/watch?v=7apZkqquMh4&t=11s
[92] FDRE Constitution (cited above at note 7) Art. 60(3).

Dissolution of the HoPR is commonly practiced in parliamentary governance systems. It is often used to solve power strife between the legislature and the executive, to gain popular support after government change, to check popular opinion over critical matters, to strengthen the widespread support for the government in power, or for any other critical situation that requires conducting election earlier than it was planned[93].

Therefore, the dissolution of the HoPR is a quicker way out of troubling situations rather than a means to extend expiring governmental power. Besides, the limited power of the caretaker government during the interim period makes it hardly fit into the situation due to the pandemic and fragile political situation of the country, the need for strong and stable leadership was eminent. Moreover, the constitutional requirement to hold the election within six months of the dissolution of the HoPR poses difficulty considering the uncertainty to determine whether the status of the pandemic allows doing so. The absence of parliamentary oversight over the caretaker government during a critical political transition also poses difficulty.

However, Mehari argues that the argument against establishing a caretaker government due to lack of strength and stability is futile.[94] He stated that the existing government was already unstable and weaker basing on the direct military rule in most regions to indicate a severe degree of fragility. In fact, he suggested that the limited power of a caretaker government benefits to avoid decisions on significant issues with a negative implication on the incoming government, and if constituted through consultation and deliberation of critical stakeholders, it could lay the foundation for the democratic transition the country is aspiring for[95].

3.2.2 Declare State of Emergency

As per Article 93(1), the Federal government council of ministers has the power to declare a state of emergency when an external invasion, a law-breaking resulting constitutional crisis or an epidemic that endangers public health occurs which cannot be controlled by the regular law enforcement mechanisms. The state of emergency declaration can suspend any constitutional

[93] Elliot Bulmer, Dissolution of parliament, International IDEA Constitution-Building Primer 16, page 9-11
[94] Dr. Mehari Taddele Maru, 'Waiting for Godot: Pandemic and Elections in Ethiopia' *Addis Standard* (May 7, 2020) https://addisstandard.com/in-depth-analysis-waiting-for-godot-pandemic-and-elections-in-ethiopia/ accessed September 19, 2022
[95] Dr. Mehari Taddele Maru (n94)

rights, except the nomenclature of the state, the prohibition against inhuman treatment, the right to equality, and the right of nations, nationalities and peoples.[96]

In the case at hand, the problems necessitating emergency decree are the public health emergency caused by the pandemic and the expiry of governmental office tenure because a timely election will not be conducted during the virus upsurge. However, a state of emergency cannot be declared merely to extend governmental power. It was suggested that using the state of emergency decree enacted to control COVID-19 to extend the term of office. This can be done by suspending the articles that set the term of office for governmental power until the problem causing the emergency is over.

On the other hand, the COVID-19 emergency decree will only last until such time the pandemic is a danger to public health. After that, it will cease to have a legitimate effect. Hence, there will not be a legitimate government to organize the election between the time the emergency declaration ceases to exist and the election is scheduled and held.[97]

Moreover, the Council of Ministers is not allowed to put a limitation in the exercise of the right to self-determination under Article 39(1&2), and by extending the office tenure the decision will affects regional states self-rule which is the essence of the right to self-determination.

3.2.3 Constitutional Amendment

Article 104 and 105 provide for the constitutional amendment procedures. The initiation for amendment can be submitted for discussion if supported by a two-thirds majority vote of HoPR, HoF or when one-third of the State Councils of regional states, by a majority vote of each Council have supported it.[98] It will be approved by a two-thirds majority vote of HoPR and HoF joint session and by two-third of the councils of regional states approve the proposed amendment.[99]

Dr. Solomon argued that constitutional amendment could hardly materialize, fulfilling the rigorous requirement under the Constitution. Amendment on the rights provided under Chapter three of the Constitution requires a two-thirds majority vote approval by both Houses and

[96] FDRE Constitution (cited above at note 7) Art. 1, 18, 25 and 39(1&2).
[97] Bantayehu Demlie, Differed Election, State of Emergency and Covid-19 How Can Ethiopia Avoid An Impending Constitutional Crisis , Addis Standard, April 10, 2020
[98] FDRE Constitution (cited above at note 7) Art. 104
[99] Ibid Art. 105(2)

majority vote by all state councils.[100] Even though the proposed amendment on Article 54(1) requires a simple majority under Article 105(2), it directly impacts the right to vote and to be elected provided under Chapter Three, Article 38 of the Constitution. This implies that the decision on the amendment to extend the term of office of government also requires approval by all state councils, which raises the question of its attainability considering the existing political tension between the Federal and some regional administrations. It also creates doubt whether the decision to amend would apply to the regional states constitutions providing a five-year time limit[101].

Moreover, article 104 stipulates that there should be public participation and consultation on the initiated constitutional amendments, making it difficult to materialize without jeopardizing the COVID-19 restrictions.

3.2.4 Constitutional Interpretation

The last alternative was constitutional interpretation. Under Article 62(1) & 83(1), HoF has the power to interpret the Constitution. It established a Council of Constitutional Inquiry (CCI) with the mandate to investigate constitutional disputes and when it finds that there is a need for constitutional interpretation, submit recommendations to HoF for final decision.[102]

During the discussion on this alternative, its possibility to address the gaps on the right to vote and to be elected, the constitutional term of office and the state of emergency declaration in the Constitution and having a better acceptance with nationwide applicability were its major advantages presented.[103] On the other hand, unpredictability on the outcome of the interpretation process and limited participation in the procedure were raised as the major drawbacks of this alternative.

After the discussion on the four alternatives presented by the government, the HoPR, in its 3rd extraordinary meeting on May 5, opted for the constitutional interpretation option deciding by

[100] Ibid Art. 105(1).
[101] Dr. Solomon A. Dersso, Constitutional based national dialogue the best way to avert a constitutional crisis triggered by differed election, Addis Standard, April 30, 2020. https://addisstandard.com/op-ed-constitutional-based-national-dialogue-the-best-way-to-avert-a-constitutional-crisis-triggered-by-differed-election/
[102] FDRE Constitution (cited above at note 7) Art 82(1) & 84(1)
[103] Ibid Art. 38,58 & 93

majority vote.[104] It requested the CCI to give the constitutional interpretation of Article 54 (1), Article 58 (3) & Article 93, stating that the Constitution has a gap to solve the issue. The question was if an emergency situation forcing to declare a state of emergency happened during the pre-election and election period and made the conduct of election impossible, what would happen to the term of the outgoing government officials? And within what timespan should the election be held after the situation necessitating the emergency declaration ceased to exist?

3.3 The Constitutional Interpretation Process

The Constitutional interpretation was the most contentious alternative of all. Beginning from the very mandate of HoF to interpret the Constitution, there are wide number of suggestions that it should be changed into a judicial review model with an independent constitutional court. This issue by itself is a constitutional debate worthy of much detailed analysis beyond the scope of this research.

On the case at hand, several commentaries were written, Amicus curies were also submitted for the CCI addressing procedural and substantive issues of the matter. Regarding the procedural issues, the line of arguments revolved around lack of a clear legal advisory mandate on the part of CCI/HoF and on the absence of a constitutional dispute worthy of interpretation.

To begin with the mandate of CCI, the Council of constitutional Inquiry Proclamation 798/2013 provides the principles for constitutional interpretation stating that the council shall consider the matter when it receive a written submission on the unconstitutionality of any law or customary practice or decision of government organ or decision of government official.[105] It also has the power to investigate constitutional disputes.[106]

As per article 3(2) of the proclamation an issues submitted to the council are classified as justiciable and unjusticiable. A justiciable matter shall be submitted to the council, if it has been brought to and heard by, the court having jurisdiction and for the justiciable administrative matter, when a final decision has been rendered by the competent executive organ with due

[104] 'House Approves Resolution Seeking Constitutional Interpretation' *Fana Broadcasting Corporate,* (May 5, 2020) https://www.fanabc.com/english/parliament-to-hold-3rd-special-meeting-tomorrow/ accessed September 19, 2022

[105] Council of Constitutional Inquiry Proclamation, 2013, Art. 3(1), Proc. No.798, Neg. Gaz. Year 19, no. 65.

[106] FDRE Constitution (cited above at note 7), Art. 84(1)

hierarchy to consider it. Any unjusticiable matter may be submitted to the council by one-third or more members of the Federal or State councils or by Federal or State executive organs.[107]

Accordingly, for the Council to interpret the Constitution there needs to be an issue involving an act contrary to the Constitution or a particular constitutionally disputable claim. In this regard, the constitutionality of NEBE's decision to postpone the election may have merited the CCI's interpretation. However, this decision has already been approved by the HoPR and did not made part of its submissions for interpretation.

The arguments raised by different writers also stated that HoPR's request does not involve ascertaining the constitutionality of any law, practice, or decision which assures the absence of an issue for interpretation. The lack of constitutional dispute shows that the parliament was requesting the advisory opinion of the Council on the extension of governmental power yet the Council does not have the legal mandate to give such an opinion. There are also precedents in proving the Council rejected requests for advisory opinion stating that it has no such power, the case involving the Oromia special interest clause and a particular family law case[108].

During the discussion of this alternatives by the government it was stated that for the case at hand the type of constitutional interpretation required is an abstract review as per article 3(2(c)) of proclamation 798/2013. However, abstract constitutional review is undertaken before the promulgation of laws to prevent any unconstitutional situation. On the case at hand, the decision to postpone the election has already materialized and the constitutional interpretation is requested to find a constitutional way out on the effects of this decision for which abstract or preventative review is not the proper way.

The need for interpretation of the constitutional provisions was also challenged, stating that the interpretation is a way of clarifying the vagueness of the law to avoid ambiguities. The terms and phrases or provisions of any law, including the Constitution resulting in unclear, contradictory meaning and vagueness with each other or with other laws, may give rise to interpretation. However, all the constitutional Articles for which interpretation is requested, Article 54 (1), Article 58 (3) & Article 93, are clear and unambiguous hence further interpretation is futile. One

[107] Council of Constitutional Inquiry Proclamation, Art. 3(2)
[108] Dr. Mehari Taddele Maru, (n.94) & Dr. Henok Gabisa, Dr. Kebene Wodajo & Israel Gobena, The Constitution Should Be Interpreted, If At All, To Re-Constitute, Co-Govern And Co-Conduct A Post Covid-19 National Election: IOLA, Addis Standard, May 18, 2020

of the amicus curie submitted for the Council argued that, the emergency decree was enacted in a rush without considering the factual impacts of the virus on the election and also HoF's decision on the matter makes it a judge on its own case.[109]

There were also various opinions raised in support of the constitutional interpretation option during the amicus curie presentations. One of the presenters stated that the Constitution set official term of office and election timetable for the incumbent government assuming a normal situation which does not trigger for emergency measures that might prevent from conducting the election.[110] But since the pandemic has created a different scenario and the Constitution does not provide a way to implement these provisions during emergency situation it needs to be interpreted. The other argument is that the drafters of the Constitution during the preparation phase of the document discussed the possibility of postponement of the election during emergency situations but failed to indicate the fate of the government during such situations.[111] Additionally, another presenter insisted the Council to avoid taking judicial notice on the decision to postpone the election and conduct its verification on the factual situations regarding the actual impact of the pandemic on the election as part of the interpretation process.[112]

The Decision on the Constitutional Interpretation Alternative

In its recommendation to the HoF, the Council stated that it has the power to investigate constitutional issues as it is mandated based on the Amharic version of the Constitution Article 84(1), which has a discrepancy with the English version. The Amharic version, having a final legal authority, talks of "constitutional issues" rather than "constitutional disputes".[113] From the

[109] Mulu Beyene, and others, 'Amicus Curiae on Election, COVID-19, and Constitutional Interpretation in Ethiopia' (May 15, 2020) <https://www.researchgate.net/publication/341643557_Amicus_Curiae_on_Election_COVID-19_and_Constitutional_Interpretation_in_Ethiopia_May_15_2020> (accessed 10 October, 2022)
[110] ዶር ጌታቸው አሰፋ, 'በሕገ መንግስት ትርጉም ጥያቄ ላይ የባለሞያዎች ሃሳብ ክፍል 1'(ግንቦት 9፣ 2012) 0:20:00-0:22:45 ‹https://youtu.be/LxqK2qmFWqI>
[111] ዶር አደም ካሴ 'በሕገ መንግስት ትርጉም ጥያቄ ላይ የባለሞያዎች ሃሳብ ክፍል 1'(ግንቦት 9፣ 2012) 1:24:00-1:22:45 ‹https://youtu.be/LxqK2qmFWqI>
[112] ዶር ታደሰ ሌንጮ 'በሕገ መንግስት ትርጉም ጥያቄ ላይ የባለሞያዎች ሃሳብ ክፍል 2'(ግንቦት 9፣ 2012) 0:08:00-0:10:15 https://youtu.be/Gd7v74Ewyps
[113] FDRE Constitution (cited above at note 7) Art.106

Amharic version it can be understood that the mandate of CCI to interpret the Constitution is not limited to investigate concrete constitutional claims only.[114]

In addition to that, the request by the HoPR involved a constitutional gap as to how to decide on the extension of governmental power when a public emergency forced the postponement of the election, which requires a constitutional solution through interpretation. Due to these reasons the council concluded that the HoPR requested it to submit recommendation based on its constitutional interpretation power not its advisory opinion on the issue.[115]

In its final recommendation to the HoF, the Council stated that the emergency decree suspended democratic rights directly related to the election and rendered the conduct of the election impossible, therefore until the time the emergency decree is uplifted, the election should be postponed, and the incumbent should continue in power.[116]

The HoF, in its 5th ordinary meeting on June 10, 2020, decided to accept the recommendation and stated on the decision that for the period of the state of emergency proclamation 3/2012 and up to the time when the election will be held for the new House, the HoPR, HoF, State Councils, and the Federal and State Executive bodies term of office shall continue. It also decided that the election shall be held within nine to twelve months after international and regional health organizations and the Ministry of Health and Institute of Public Health confirmed that COVID-19 is no longer a threat to public health, and HoPR has approved this confirmation.

The parliament has already decided not to conduct the election and requesting the constitutional basis to justify extending its own term of office and expecting a different result is absurd. Because being represented by four members in the Council and having the final decision-making power on the outcome of the interpretation already determines that the HoF would hardly make a decision that will otherwise affect its own interest. This can be one of the instances where the problems with the structure of constitutional interpretation in the FDRE Constitution have been witnessed.

---

[114] Council of Constitutional Inquiry, Recommendation on the Request of the FDRE House of Peoples' Representatives for Constitutional Interpretation Submitted to the Council of Constitutional Inquiry Regarding the Impact of the COVID-19 Pandemic on the 6th General National Election, File No: 5216/2012, May 29, 2020
[115] Id
[116] Id

3.4 Constitutional Term of Office and Election Postponement under the FDRE Constitution

In democratic political system government powers are subject to term of limitation and periodic elections. In many part of the world states provide limitations in various legislations including Constitutions. In the FDRE Constitution the term of office is limited to five years.[117] Up on termination of office tenure there should be a general election organized to elect members of the parliament and state councils. However, following the COVID-19 emergency conducting election as per the pre-set time frame became impossible. During such circumstance several countries in the world resorted to different measures. In countries like Canada, Germany, Italy, Poland, Lithuania, Slovenia, Spain, and Hungary a state of emergency decree can lead to extend the term of the parliament and postpone the conduct of election.[118] Correspondingly, in Albania and Georgia the Constitution provides that there is no election during the a state of emergency or period of martial law while in Czech republic and Slovenia the parliament has a power to change the election date.[119] In Turkey, the Constitution provides postponement of elections when there is a declared state of war.[120] Similarly, in the Republic of Korea the President may postpone Presidential or National Assembly election and the head of a regional election commission may postpone a local election in the case of a natural disaster, earthquake, or any other unavoidable circumstances.[121]

Nevertheless, in Ethiopia, there is no legal provision authorizing extension of government power or postponement of the election in any situation. Many argued that absence of an exceptional provision which allows an escape route during emergency situations is a constitutional gap. The arguments in favor of having such exception can be further advanced from a concern that emergency situations may make it difficult to organize and conduct free and fair election as per the constitutional and international standards. According to the European Commission for Democracy through Law:

---

[117] FDRE Constitution (cited above at note 7) Art. 54(1), 58(3), & 67(2).
[118] European Commission for Democracy through Law, 'Compilation of Venice Commission Opinions and Reports on States of Emergency', April 2020, https://www.venice.coe.int/webforms/ documents/?pdf=CDL-PI(2020)003-e, accessed 13 October 2022
[119] ibid
[120] Constitution of the Republic of Turkey 1982, Article 78, https://www.refworld.org/docid/3ae6b5be0.html, accessed 13 October 2022
[121] Republic of Korea, Public Official Election Act 1994, Article 196 https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38405&lang=ENG, accessed 13 October, 2022

> The holding of democratic elections and hence the very existence of democracy are impossible without respect for human rights, particularly the freedom of expression and of the press and the freedom of assembly and association for political purposes, including the creation of political parties. Respect for these freedoms is vital particularly during election campaigns.[122]

In this regard, James and Alihodzic argue that postponement of elections should be weighed by its possible implications on "democratic concepts of electoral integrity rather than international law and practice."[123] They stated that citizens' role in the election is not only to cast a ballot but also to engage actively in major political issues, policy dialogue, argumentation, reflection, and formulate their own ideas during campaigns, rallies, and deliberative forums. There must be equality of contestation and a level playing field for all candidates and political parties with a professional and quality electoral management service and institutional certainty on the conduct of the election. Considering these situations one may argue that the inclusion of constitutional provision that will exceptionally allow for postponement of the election is a pragmatic approach to the problem.

On the contrary, periodic elections are cornerstones for sustainable democratic governance. The inclusion of exceptional grounds on conducting election can be easily manipulated to use it as an excuse to avoid conducting elections and remain in power for life. The Africa Centre for Strategic Studies has identified that a continued evasion of term limit is a setback in good governance, contributes to corruption, civil conflict and mass influx in Africa.[124] In addition, those leaders in countries with term limits have been in office, on average, for 3 years while those that have modified or eliminated term limits have been in power for a median of 12 years.[125] In Ethiopia, the executive authority of the Prime Minister does not have restricted number of tenures which resulted in 16 years of uninterrupted ruling by a single individual despite the regular elections continued to be held every five year. Therefore, introducing

[122] European Commission for Democracy through Law, 'Turkey Opinion On The Amendments To The Constitution Adopted By The Grand National Assembly On 21 January 2017 And To Be Submitted To A National Referendum On 16 April 2017', the Venice Commission, 110th Plenary Session, (March 2017), default.aspx (coe.int), accessed 25 October, 2022
[123] Toby S. James and Sead Alihodzic, (n.81)
[124] Joseph Siegle and Candace Cook, 'Circumvention of Term Limits Weakens Governance in Africa'(Africa Centre for Strategic Studies, May 17, 2021) https://africacenter.org/spotlight/circumvention-of-term-limits-weakens-governance-in-africa/ accessed September 29,2022.
[125] ibid

exceptions that will allow for postponement of elections and/or extending government term of office can poses a danger for the emerging democratic culture.

Generally, in making a decision to conduct or postpone election during emergency situations due considerations shall be given to the constitutional significance of the election, the existence of alternative mechanisms of campaigning and remote voting methods, the possible implications of postponing or continuing with the election has on its legitimacy in terms of loss of voice, claims of political opportunism, effect on turnout and political debate, and whether postponing election is constitutional or not.[126]

In Ethiopia, the 6th general election was expected to be the first democratic exercise after the country had undergone a political transition in April 2018. It was highly anticipated to be free, fair, participatory, and play a significant role in the country's transition into a democratic system. Due to such expectations the postponement of the election caused political turmoil in the country.

Beginning from the decision to postpone the election the decision was made while the spread of the virus was still very slow, and absence of clear indication to show the impact was thoroughly studied, or whether there were any scientific predictions implemented to determine the possible effects of conducting the election had on the spread of the virus shows that the decision was made on a rush without due regard to the political situation. Even though it does not prevent the postponement of the election, it contributes to schedule the following timetable and may have prevented the indefinite postponement of the election.

In addition to that, the subsequent measures taken by the government to solve the constitutional conundrum created by the postponement of the election further complicated the issue. The decision to extend government power through constitutional interpretation including regional states councils term of office without due consultation with the respective government officials or indicating the constitutional basis for such a decision remains debatable.

Following this measures the then Tigray regional administration continued to express its opposition to the extent of conducting its own state council election which was supposed to be conducted as part of the general election simultaneously throughout the country. This act of the

[126] IDEA, Election and Covid-19, International IDEA Technical Paper 1/2020, March 2020, P 2-4.

region led the tension between the Federal government and TPLF to reach its crescendo. In the following Chapter, the constitutionality of the state council election organized and conducted by Tigray regional administration will be discussed.

CHAPTER FOUR: THE CONSTITUTIONALITY OF CONDUCTING STATE COUNCIL ELECTION AT REGIONAL LEVEL

Introduction

The postponement of the sixth general election, which was originally scheduled on August 29, 2020, led to surprising turn of events in Ethiopia's politics. The constitutional interpretation process that involved academicians, constitutional experts and practicing lawyers was the first of its kind and can be judged as a good start. On the other hand, the State Council election that was conducted in the Tigray National Regional State raised a number of constitutional legal questions. The following chapter will assess the constitutionality of this regional election based on the FDRE Constitution. The main points of discussion are limited to the constitutional arguments that were advanced in support of holding the State Council election.

4.1 Arguments Presented in Support of Holding State Council Election

As explained in chapter three above, on March 31 2020, NEBE announced the postponement of the August 2020 general election timetable. This led to a constitutional interpretation process that resulted in the prolongation of the electoral timetable and hence the term of the parliaments by the House of Federation. Following this decision, the then Tigray regional administration announced that it will not accept the postponement and decided to conduct the State Council election before the end of the five year term. To this end, the Tigray State Council requested NEBE to organize the election for which the Board responded negatively. Subsequently the regional administration decided to organize the election by itself. This decision was followed by enacting electoral law to establish election management body which regulate electoral activities and conducted the election.

Throughout this process the then State council was arguing that its acts and measures are in line with the Federal and Tigray region Constitutions. From the various press statements and official letters of the State council, the major arguments advanced in support of holding the election were;

- One it's in the exercise of the right to self-determination of NNPs to establish government institutions including the regional election commission.[127]

[127] FDRE Constitution (cited above at note 7) Art.39(1&3) and 52.

- Second, all government organs at Federal and state level have a duty to respect and enforce the constitutional provisions containing fundamental rights and freedoms including the right to vote and to be elected.[128]
- Finally, it is constitutionally prohibited to assume state power in any manner other than that provided by the Constitution[129], hence the regional administration acted as per its obligations to protect and enforce the Constitution.

The sections that follow examine the validity of these arguments based on the FDRE Constitution and electoral laws in Ethiopia.

4.1.1 Division of Power under the FDRE Constitution

In Ethiopia political power is divided among Federal government and state members.[130] Both levels of government have legislative, executive and judicial powers. Under Articles 51 & 52, both the Federal and state powers and functions are listed respectively.[131] Among the powers of the Federal government, it is mandated to enact all necessary laws to give practical effect to political rights provided in the Constitution.[132] One of these political rights is the right to vote and to be elected at a periodic election to any office at any level of government.[133] This right is exercised by every Ethiopian citizen as per the law on a free and democratically conducted election. The Constitution has established a National Election Board to undertake the responsibly of conducting such elections and gave the parliament a power to appoint Board members, oversee its function and enact further laws that will facilitate its mandate.[134] Accordingly, the HoPRs has enacted proclamation 1133/2019[135] detailing on the establishment of the Board, its mandate and overall functions.

In doing so, the Constitution adopted an independent and centralized election management model which makes the Board the only responsible body to conduct elections at Federal and state level.[136] It is mandated to execute impartially any election (general election, local election, by-

[128] FDRE Constitution (cited above at note 7) Art.8, 13 & 38
[129] Id, Art. 9(3), 56 & 73.
[130] Id, Art. 50(1).
[131] Id, Art. 50(2).
[132] Id, Art. 51(15), and 55(2(d))
[133] Id, Art. 38
[134] Id, Art. 102
[135] This proclamation repealed previously enacted electoral law; Amended Electoral Law of Ethiopia Proclamation No. 532/1999, Federal Negarit Gazeta No. 55 25th June, 2007
[136] Proclamation No. 1133/2019, (cited above at note 13, Art. 3

election, and re-election) and referendums conducted in accordance with the Constitution and electoral law.[137] Both the Federal government and regional administrations are duty bound to cooperate whenever the Board presents a lawful request.[138] In addition, in the previous electoral laws, regions were allowed to regulate local election through delegation of power.[139] The newly amended proclamation 1162/2019 on the Regulation of Election, Political Parties' Registration and Election Code of Conduct also maintained regional states' power to enact laws to decide on the number of State council members[140] and local level representatives.[141] However, these laws are also required to be in accordance with the Constitution and proclamation 1162/2019.[142] Furthermore, the HoPR is mandated to enact legislation that set standards applicable to local elections[143] and the Board also has the power to issue directive to regulate local election.[144] Consequently, these amendments further centralized election activities and increased the role of NEBE in any election while requiring regional States to amend laws to make them in line with the new enactments.

Initially, these constitutional legal foundations of NEBE's powers were also recognized by the then Tigray Regional State Council which can be inferred from its official request sent to the Board to announce its decision to hold the election and request it to accept this decision and make the necessary preparation and inform its decision to the state Council.[145] There is also a legal procedure which allows the Board to conduct general election at a different time, when it finds it necessary and gets approval by the HoPRs.[146]

However, the Board rejected this request stating that according to its establishment legislation, proclamation 1162/2019 and the Constitution it has the sole authority to decide and announce electoral calendars and other election administration issues and it will not hold any election at

[137] Proclamation No. 1133/2019, (cited above at note 13), Article 7(1)
[138] Ibid, Art. 27(1)
[139] Amended Electoral Law of Ethiopia, 2007, Art.29, Proc. No. 532, Neg.Gaz. Year 13, no 55, as amended, National Electoral Board of Ethiopia Establishment Proclamation, 2019, Proc. No. 1133, Year 25, no 71
[140] Proclamation 1162/2019, (cited above at note 14), Art. 7(4)
[141] Ibid, Article 8(2)
[142] Ibid, Article 4(2) & 8(4)
[143] Ibid, Article 8(3
[144] Ibid, Article 8(5)
[145] The National Electoral Board of Ethiopia, 'Statement in Response to the Tigray Regional State Council's Request for NEBE to Conduct Regional Council Elections' https://drive.google.com/file/d/1zvUjOAkplVpbbsU6dtUtRSxLl0lmmGA6/view?fbclid=IwAR2T8auPia0audhbe9zT4lKyQ1JAkJpH8G6u_jORh5cIf1_KgvuvTPa4tCA
[146] Proclamation 1162/2019, (cited above at note 14), Art 7(2)

any part of the country until the status of COVID-19 pandemic is re-evaluated.[147] Following this, the regional administration claimed that the Board relinquished its power and there is no legal basis for it to prohibit the region from organizing the state Council election by itself. In this regard, there is no clear legal ground to determine whether the Board's refusal to act as per the request amounts to surrendering its power or not. However, its final decisions relating to electoral process can be appealed to the Federal Supreme Court.[148] This may allow contesting the Board's refusal to hold the state Council election at the court. In its decision, the court may revoke the Board's decisions, but it still does not have the power to decide that the Board abandoned its power.

In the constitutional power allocation, the Federal government's powers are provided in what appears to be exhaustive list, whereas regions are entitled with all the residual powers that are not expressly given to the Federal government alone or concurrently shared with the regional States.[149] This shows that the drafters of the Constitution intentionally acted when they allocated the institutional and legal frameworks of election to the Federal government. This division of power is also tied by an obligation of both the Federal and State governments to respect their respective powers defined by the Constitution.[150]

4.1.2 The Duty to Enforce Human Rights under the Constitution

The other line of constitutional argument presented in support of conducting the regional election without NEBE is that it is the constitutional duty of both Regional and Federal governments to enforce the human and democratic rights in the Constitution including Article 38, which provides for the right to vote and to be elected.

The obligation to protect, respect and fulfil human rights is the obligation of all branches of government at all levels.[151] This obligation is clearly stated under Article 13 of the FDRE Constitution. However, each level of government has different areas of jurisdiction and authority which also dictates the obligation it assumes in the enforcement of human rights. The

[147] The NEBE's Statement In Response to the Tigray Regional State Council's Request, (n. 138)
[148] Proclamation No. 1133/2019, (cited above at note 13), Article 17(1)
[149] FDRE Constitution (cited above at note 7) Art.52(1)
[150] FDRE Constitution (cited above at note 7) Art.50(8)
[151] Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para 4.

Constitution also allocated the responsibility towards human rights as per the constitutional division of power.

The right to take part in the conduct of public affairs is one of the internationally upheld individual human rights.[152] It requires states to create the mechanism in which citizens will have the proper political participation in public governance. In Ethiopia the right is recognized as one of the democratic rights of citizens under chapter three of the Constitution.[153] It can be exercised directly by getting elected for a public office and hold power as member of the legislative or executive organ or by participating directly on a public decision-making event such as referenda. Individuals may also exercise this right indirectly by electing their representatives who will serve in lieu of them. The exercise of this right is subject to legal and institutional frameworks which set the allocation of power and different procedural requirements that need to be fulfilled.[154]

In the FDRE Constitution the right to vote and to be elected has both substantive and procedural nature. It is the substantive right of every eligible citizen to exercise the right at all levels throughout the country.[155] The institutional and procedural framework that will determine how elections and referenda are conducted is also clearly allocated for NEBE and the Federal government.[156] In this regard, regional states are required to set up the lowest level of administration to allow citizens to participate in public administration.[157] They may involve in facilitating local elections, but this would only be upon delegation of power by NEBE. Hence, the role of regional administrations in the exercise of the right to vote and to be elected does not give rise to conducting elections.

In addition to the right to vote and to be elected, the right to nationality provided under Article 33 is also a democratic right. It is the right of every Ethiopian yet it is only the power of the Federal government to regulate the implementation of this right, such as by establishing institutions on Immigration and Nationality Affairs, issuing passports etc.[158] Even if the rights

[152] ICCPR, (n. 116), Art. 25 and UDHR, (n.114), Art. 21
[153] FDRE Constitution (cited above at note 7) Art.38
[154] General comment no. 25 (n.115) para. 5
[155] FDRE Constitution (cited above at note 7) Art.38(1)
[156] Ibid Art. 51(15), 55(2(d)) & 102
[157] Ibid Article 50(4)
[158] FDRE Constitution (cited above at note 7) Art. 51(17)

are incorporated under chapter three of the Constitution the obligation arising from facilitating the necessary infrastructure for the exercise of these rights is separately assigned only to the Federal government. Therefore, the obligations of both Regional and Federal government organs to respect and enforce the recognized human rights under chapter three of the Constitution are subject to the division of power under the Constitution.

4.2 Self-determination

As the argument based on self-determination has been advanced by the Tigray regional administration as the main basis of its decision to organize regional election, this thesis will look at self-determination at both conceptual and legal levels and then evaluate the argument.

4.2.1 Meaning and Development of the Right to Self-Determination

At the beginning of the 20th century, the right to self-determination began to develop as the rights of nations' self-governance meaning that each country has a right to constitute an independent state leading to the creation of new states in Europe and the rest of the world.[159] However, after the establishment of the United Nations, the right to self-determination was redefined as the right that belongs to "peoples" rather than nations.[160] The United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples states that;

'All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.[161]

Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also incorporated the right to self-determination by directly quoting the wordings of the above declaration. The African Charter on Human and Peoples' Rights, Article 20, also provides that all peoples shall have the right to existence, unquestionable and inalienable right to self-determination.[162] Accordingly, self-determination has evolved from being a political principle in to fundamental human rights which serves as a

[159] Daniel Thürer, Thomas Burri, 'Self-Determination', *Oxford Public International Law* (2021) 2
[160] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art. 1(2)
[161] General Assembly resolution 1514 (XV) of 14 December 1960, United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples
[162] Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 20

precondition for the realization of individual human rights[163] and its denial amounts to human rights violation[164].

The right to self-determination has internal and external characteristic. The recognition of the right in reference to decolonization and independence from alien occupation is generally referred to as the exercise of external self-determination. A certain community due to different political, historical, socio-economic or some other reason may decide to separate from its pre-existing political existence and become independent having separate identity and claim for the exercise of the right to self-determination. In this sense, it is the right to exist as an independent entity in the international community[165].

On the other hand, the right to self-determination can also be claimed within an independent State. This aspect of self-determination, also known as internal self-determination, is defined as "the right of all peoples to pursue freely their economic, social and cultural development without outside interference"[166]. It is the right to have a representative government based on equality and non-discrimination.[167] The realization of external self-determination may create independent and sovereign states but does not guarantee the absence of oppression and subjugation within one country. Especially in societies with a large diversity and underlying historical, economic, and cultural problems one group may subjugate the other. In this instance the realization of internal self-determination enables those who are under-represented or whose rights are being violated to have the chance to make their voices heard in the decision-making process. It is believed to enhances democratic practices, address historical grievances and avoids conflicts ultimately closes the claim for separationist ideas[168].

---

[163] UN Human Rights Committee (HRC), CCPR General Comment No. 12: Article 1 (Right to Self- determination), The Right to Self-determination of Peoples, 13 March 1984, para 1.
[164] UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, para 2.
[165] *Ibid, page 2*
[166] United Nations Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXI on the right to self-determination, Forty-eighth session, 1996, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7493&Lang=en
[167] UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV)
[168] Amanda Cats-Baril, 'Self-determination' (2018) International Institute for Democracy and Electoral Assistance, page 3

However, there are counter claims to this idea on the basis of absence of a truly representative government in any political system. Even in a democratic government with the rule of the majority, political representation can still be hijacked and the will of minorities may fail to be represented[169].

4.2.2 Self-determination under the FDRE Constitution

The right to self-determination is recognized under Article 39 of the FDRE Constitution. Federal and regional government structures have been established in the Constitution enabling nation and nationalities to have self-rule. It recognized both external and internal right to self-determination. Upon fulfillment of the requirements under Article 39(4) external self-determination of the people can be realized through secession. The internal aspect of right to self-determination is recognized through a full measure of self-government and the right to establish government institute in their territory.[170]

The Constitution states that the sovereign power of the country is vested in nations, nationalities and peoples of Ethiopia.[171] They exercise this power by participating in the conduct of public affairs directly and through their democratically elected representatives at the Federal and regional government structures.[172]

The argument in support of the regional election being organized by a regional administration states that the full right to self-determination is one of the non-derogable rights under the Constitution and it gives rise to the right to establish government organs at regional and sub-regional level. The argument goes, NNPs or regional states have the power to decide on electoral matters including by establishing electoral management body. This argument needs to be seen in light of the scope of self-determination in the Constitution and its relationship with conducting elections.

The constitutional recognition to the right of self-determination followed the approach of international and regional human rights documents. It accepted the right as a group human right that belongs to NNPs, not to the government or the State. In the international law jurisprudence, this right is now emerged as a peremptory norm in which derogation against it is prohibited. In a

[169]Halim Moris, Self-determination: an affirmative right or mere rhetoric?, 201-220, 214.
[170] FDRE Constitution (cited above at note 7) Art.39(3).
[171] ibid Article 8
[172] Ibid art. 8 (3) & 38 (1(a))

similar way, the FDRE Constitution prohibited derogations on the exercise of this right.[173] Even during a public emergency situation triggering the declaration of state of emergency that may result in temporarily suspending the exercise of human rights in the Constitution including the right to life, the right to self-determination provided under Article 39(1&2) cannot be suspended.

Nevertheless, the exercise of the right to self-determination may be subject to limitations by the territorial integrity of a state.[174] In addition, the exercises of internal self-determination of people are subject to the laws and regulations of the country. In a regional administration, self-rule allows states to establish institutions of government in the territory that NNPs inhabits. To this end, States have legislative, executive and judicial powers and their respective organs.[175] However, the national election Board is not part of the three organs of the government. It has its own separate existence independent of both the Federal and regional government organs having clear obligations and areas of jurisdictions. Unlike any other government body, it operates as a single organ which functions throughout the country. It may open branches in different parts of the country upon approval by the HoPR.[176] Accordingly, having the right to establish organs of government does not extend to establishing regional level election commission. The establishment of such organ in Tigray lacked constitutional basis as well as violated the Constitution at the same time.

The other point of view is whether the exercise of the right to self-determination gives rise to holding elections. The nature of internal self-determination requires a system that allows people to have equal participation in the democratic process and make their voices heard. The Declaration on Principles of International Law presents internal self-determination with the right to have a representative government where people have equal right without discrimination. International and regional human rights instruments also stipulate that by virtue of their right to self-determination people freely determine their political status and create a representative political system based on equality. In such system individuals have the right to participate directly or through their chosen representatives.

---

[173] FDRE Constitution (cited above at note 7) Art.93(4(c))
[174] Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (The Declaration on Principles of International Law), GA Res. 2625 (XXV). 24 October 1970. A/RES/25/2625 Annex at principle 5, para. 7
[175] FDRE Constitution (cited above at note 7) Art.39(3)
[176] Proclamation No. 1133/2019, (cited above at note 13), Article 3(3)

Under the FDRE Constitution NNP exercise of the internal right to self-determination is recognized. The exercise of this right encompasses the right to vote and to be elected at genuine periodic elections. To realize this right there are constitutionally established legal and institutional frameworks in the country for which NEBE and the Federal government are responsible. However, the question remains, in the case at hand the regional administration denounced postponement of the election and weather the recognition for internal self-determination allows regions to conduct election in their own.

As it has been discussed in the above chapter, in different Federal structures there are different ways of power allocation and decision making process concerning electoral management system. In this regard, the FDRE Constitution clearly indicated that issues concerning election are administered and decided by NEBE following a centralized approach. This limited the regional autonomy to act independently concerning electoral matters. In addition, the Constitution does not to provide any legal and procedural ways for regions to conduct elections by themselves. Accordingly, the conduct of state council election in Tigray region falls short of constitutionality. It undermines the division of power under the Constitution and hampered in the mandates of NEBE. In addition, with the absence of any other procedure, in the exercise of the internal aspects of the right to self-determination, regions are mandated to remain within the bounds of the existing electoral management laws and procedures.

CHAPTER FIVE: CONCLUSION AND IMPLICATION

The COVID-19 outbreak and the following measures became a reason for postponing the 6th general election in Ethiopia. The unprecedented nature of this incident and the absence of pre-set legal way out, which determines the fate of the country's governance when elections are not conducted, created a constitutional crisis in the country. While most political stockholders agreed on the measures taken to mitigate the spread of the virus, including the declaration of state of emergency decree, some disagreed on the impacts of these measures on the election. The then Tigray region administration, dissatisfied with the deferral of the election, conducted the state council election at regional level without NEBE's authorization.

In the FDRE Constitution allocation of power, the Federal government is mandated to enact laws that give effect to the right to political participation and oversee their implementation. It also adopted a centralized election management model by establishing NEBE as an independent national electoral board with the power to manage elections and referendums across the country. Therefore, the Constitution essentially gave the power towards elections exclusively to the Federal government and excluded regions from conducting elections unless by way of delegated authority. Accordingly, enacting a law and establishing an election commission at the regional level contravenes clear constitutional stipulations, and the supremacy of the Constitution hence has no effect.

On another note, the Constitution provides that every government organ should enforce human rights, including the right to vote and to be elected. It also states that human and democratic rights under the Constitution shall be interpreted as per the international human rights standards. Accordingly, the international human rights jurisprudence prescribes that the general obligation of a country towards realization of human rights mainly rests on the central government. However, due to their direct contact with the people, the role of regional administrations for the realization of human rights is crucial and they have a complementary responsibility along with the main duty bearer, the Federal government. In decentralizing the obligation towards promoting and protecting human rights, the Federal government can take necessary measures to establish legal and institutional frameworks, working procedures, and controls on the implementation of its obligations. However, regional administrations are obliged to act within their competencies as per the national human rights obligations. In this case, the Federal

government is primarily responsible for enforcing human rights, including the right to vote and be elected. It allocates the power to enact laws and establish institutional mechanisms. At the same time, regional administrations are responsible for setting up the lowest government structure within their jurisdiction to allow citizens to participate directly in the decision-making process. Therefore, regional administrations' obligation to protect and promote human rights follows the specific mandates of regions relating to the rights.

Under the FDRE Constitution, the recognition for internal aspects of the right to self-determination guarantees equal participation of NNPs in the democratic governance of the country through constitutionally established self-rule mechanisms. Participation in periodic elections is also provided as one of the ways for the exercise of self-determination. However, this political exercise also has a clear constitutional mechanism to follow and any departure from this procedure does not have a constitutional base.

Despite the higher place for regional autonomy in the Constitution, the centralized approach on election management can be taken as a purposive decision by the drafters of the Constitution. On the other hand, since the adoption of the Constitution, all regions were under the administration of the same political party with major decisions passed at the top executive committee level. Hence the chances of disagreeing on the side of regions concerning decisions passed by the Federal government were improbable. However, suppose the newly flourishing opposition political parties get the opportunity to come to power. In that case, the party controlling the Federal government may not have the same influence in the regions it has had so far. Regions may grow more autonomous than ever before, exposing the wider definition for the right to self-rule for abuse and difficulty of reaching a consensus on critical national issues.

Therefore, the level of interpretation for the right to self-determination should be in a way it balances the NNPs' right to self-rule and respect for the existing constitutional mechanism. Any measure taken undermining the supremacy of the Constitution will have no effect, but it may result in potential tension between the Federal and the respective region. But also, if the existing constitutional mechanisms also violate regional autonomy and self-rule, it will necessitate creating a way to address such claims.

Generally, the decision on the postponement of the election is criticized for lack of due consideration of the political and legal situation in the country and conducted with limited participation of the concerned political stakeholders. Absence of a clear legal framework on the steps that should be taken to decide on the postponement of elections, which may include, among other things requiring an assessment of the impact on the overall political and democratic situation of the country, and evaluation of the available constitutional framework that may allow for such decisions. It may enable the decisions of NEBE to be more transparent to the general public.

Additionally, the constitutional interpretation approach adopted to solve the problem created by deferred election and expiring government tenure further ignited the existing constitutional interpretation approach gaps. Despite having a major interest on the outcomes of the case, HoF's ultimate decision-making power, , clashes with the basic legal principle. Moreover, incorporating regional states in the decision to extend government power widening the reach of the decision beyond its mandate, shows the limitations in the development of constitutionalism in the country. It also strengthens the quest for an independent constitutional review mechanism to scrutinize government organs' decisions as per the Constitution and act as an impartial umpire for conflicting parties.

Finally, the legal battle that accompanied the controversies over the elections upsurges the need to incorporate clear constitutional grounds for postponing elections in any future constitutional reform opportunity. However, the possibility of abuse that may follow with having a blank check for easy deferral of the election also dictates the need for further constitutional study and evaluation of the existing political and factual grounds.

BIBLIOGRAPHY

Books

Dahl, R., 'Democracy and Its Critics' (1989) New Haven: Yale University Press

The Electoral Knowledge Network, Electoral Integrity, (2012) 3rd ed

Dr. Rattan Singh, Legal Research Methodology (1st ed., LexisNexis 2013)

Dr. S.R.Myneni, Legal Research Methodology, (5th ed., Allahabad law agency, Haryanna India 2005)

Bahru Zewde A history of modern Ethiopia 1855-1991, 2nd ed,

Articles

Amanda Cats-Baril, 'Self-determination' (2018) International Institute for Democracy and Electoral Assistance

Halim Moris, Self-determination: an affirmative right or mere rhetoric?, 201-220,

Marishet Mohammed Hamza, 'Tigray-Federal Tit-For-Tat Threatens Trouble' (Ethiopian Insight, 10 August, 2020)

በማርሸት ሙሀመድ ሀምዛ, 'አስተያየት: የፌዴሬሽን ም/ቤት ውሳኔ፣ የትግራይ ክልላዊ ምርጫ እና ቀጣይ እውነታዎች' (አዲስ ስታንዳርድ ሴፕቴምበር 9፣ 2020)

Markos Debebe, 'Ethiopian Regions cannot Hold Elections without Federal Approval' (Ethiopian Insight, 5 May 2020)

Dr. Mehari Taddele Maru, 'Waiting for Godot: Pandemic and Elections in Ethiopia' Addis Standard (May 7, 2020)

Alex de Waal, 'Talking and fighting about self-determination in Ethiopia' (2021)

Indraneel Datta, 'Are Centralized Election Management Bodies Suitable for Federal Structure?'(2008) 5 Unity in Diversity Learning from Each Other,

Muhammad Al-Musbeh, 'Managing Elections: Definition and Classification of Elections Management Bodies' (2011) DOI:10.2139/ssrn.2271279 SSRN

Carl W. Dundas, Election Administration: Designing Dimensions of Legal Reform (Author House, 2015)

Young J. Luke, 'Strategic Assessment of the Models of Electoral Management and the Guiding Principles in the Organization of Election' 3 International Journal of Research in Education, Science and Technology, California

R. Sam Garrett, 'Federal Role in U.S. Campaigns and Elections: An Overview' (2018) Congressional Research Service

Office for Democratic Institutions and Human Rights, 'Swiss Confederation Federal Assembly Elections; ODIHR Needs Assessment Mission Report (2015)

Bereket Habte Selassie, 'Constitutional Development in Ethiopia' (1966) 10 Journal of African Law,

J. Abbink, 'Breaking And Making A State, The Dynamics of Ethnic Democracy in Ethiopia' (1995) 13 Journal of Contemporary African Studies

Elisabeth Carter and David M. Farrell, 'Electoral Systems and Election Management' (2009) Research Gate DOI: 10.4135/9781446288740.n2

Mulu Beyene, Mehrteabe GebreMeskel, Abraha Mesele, Gebrehiwot Hadush, Gebremeskel Hailu, and Gebre Abezgi Woldeselassie, 'Amicus Curiae on Election, COVID-19, and Constitutional Interpretation in Ethiopia' Research Gate, May15, 2020

Naol Getachew, 'The hopes the National Electoral Board of Ethiopia conceived while reforming itself and how did the people respond?'Addis Zeybe, (July 8, 2021)

Shaheen Mozaffar and Andreas Schedler, 'The Comparative Study of Electoral Governance: Introduction' (2002) 23 International Political Science Review,

Etenesh Abera, 'News Alert: HoF approves CCI's recommendation to extend both Houses, state councils term limit; constitutional expert raises concern' Addis Standard (JUNE 10, 2020)

Bantayehu Demlie, Differed Election, State of Emergency and COVID-19 How Can Ethiopia Avoid An Impending Constitutional Crisis , Addis Standard, April 10, 2020

Dr. Solomon A. Dersso, Constitutional based national dialogue the best way to avert a constitutional crisis triggered by differed election, Addis Standard, April 30, 2020.

Dr. Henok Gabisa, Dr. Kebene Wodajo & Israel Gobena, The Constitution Should Be Interpreted, If At All, To Re-Constitute, Co-Govern And Co-Conduct A Post COVID-19 National Election: IOLA, Addis Standard, May 18, 2020

Laws

National

Proclamation No.1/1995, proclamation of the Constitution of Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st year No.1, Addis Ababa 21st August 1995 Constitution

Ethiopian Constitution of 1931, 16th July

A Proclamation to Re-enact for the Strengthening and Specifying the Powers and Duties of Council of Constitutional Inquiry of FDRE No. 798/2013, Federal Negarit Gazeta, 19th year No. 65, Addis Ababa 30thAugust, 2013

The State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact, 2020, Proc. No. 3

State of Emergency Proclamation No. 3/2020 Implementation Regulation, 2020, Art. 2(3) & 3, Reg. No.466, Neg.Gaz. Year 25, no 35

National Electoral Board of Ethiopia Establishment Proclamation, 2019, Art 4, Proc. No. 1133, Neg. Gaz. Year 25th, no. 71.

Directive on Recruitment and Employment of the National Election Board of Ethiopia's Regional Branch Office Heads, 2019, Art. 3, no. 1

The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation, 2019, Proc. No. 1162, Neg. Gaz. Year 25th, no. 97.

Amended Electoral Law of Ethiopia Proclamation No. 532/1999, Federal Negarit Gazeta No. 55 25th June, 2007

Tigray Regional State Election Proclamation, 2020, Proc. no. 351, Neg. Gaz. Year 27th, no. 15

Regional Human Rights Instrument

African (Banjul) Charter on Human and Peoples' Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, (1982)

International Human Rights Instruments

United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art. 1(2)

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

International Covenant on Civil and Political Rights, adopted 16 December 1966,entered in to force 23 March 1976, General Assembly resolution 2200A (XXI(ICCPR)

International Covenant on Economic Social and Cultural Rights, adopted 16 December 1966, entered into force 3 January 1976,General Assembly resolution 2200A (XXI)(ICESCR)

General Assembly resolution 1514 (XV) of 14 December 1960, United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples

UN General Assembly, Vienna Declaration and Program of Action, 12 July 1993, A/CONF.157/23,

UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV)

Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (The Declaration on Principles of International Law), GA Res. 2625 (XXV). 24 October 1970. A/RES/25/2625 Annex at principle 5

Conference Papers and Other Documents

የኢትዮጵያ ብሔራዊ ምርጫ ቦርድ፣ የኮሮና ቫይረስ ወረርሽኝ የምርጫ 2012 ኦፕሬሽን እቅድ እና የጊዜ ሰሌዳ ላይ የፈጠረውን ችግር ገምግሞ ያሳለፈው ውሳኔ መግለጫ (መጋቢት 22 ቀን 2012 ዓ.ም)

National Electoral Board of Ethiopia, Statement in Response to the Tigray Regional State Council's Request for NEBE to Conduct Regional Council Elections,

Rafael Lopez-Pintor, 'Electoral Management Bodies as Institutions of Governance' (2000) UNDP Bureau for Development Policy

Elliot Bulmer, Dissolution of parliament, International IDEA Constitution-Building Primer 16.

Global Commission on Elections, Democracy and Security, 'Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide' (September 2012)

Helena Catt and others, Electoral Management Design (ISBN: 978-91-87729-66-9) (IDEA, 2nd edn, 2014)

United Nations Development Program, 'Principles for Independent and Sustainable Electoral Management; International Standards for Electoral Management Bodies' (Forum Report, Cairo, Egypt, 9-11 April 2012) (UNDP forum report)

International Institute for Democracy and Electoral Assistance, IDEA, 'International Obligation for Election: Guidelines for Legal Framework' (ISBN: 978-91-87729-56-0) (2014),

World Health Organizations, 'Listings of WHO's response to COVID-19' (Last updated 29 January 2021)

House Approves Resolution Seeking Constitutional Interpretation' Fana Broadcasting Corporate, (May 5, 2020)

IDEA, Election and Covid-19, International IDEA Technical Paper 1/2020, March 2020

Cases

Council of Constitutional Inquiry, Recommendation on the Request of the FDRE House of Peoples' Representatives for Constitutional Interpretation Submitted to the Council of Constitutional Inquiry Regarding the Impact of the COVID-19 Pandemic on the 6th General National Election, File No: 5216/2012, May 29, 2020

General Comment

UN Human Rights Committee (HRC), CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, CCPR/C/21/Rev.1/Add.7,

UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11

Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004),

UN Human Rights Committee (HRC), CCPR General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples, 13 March 1984,

United Nations Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXI on the right to self-determination, Forty-eighth session, 1996,

Theses/Dissertations

Mesfin Bogale, 'A Comparative Analysis of the Coverage of NEBE in Addis Zemen and Reporter Newspapers' (MA thesis, AAU 2005)

Internet Sources

The Electoral Commission, www.electoralcommission.org.uk

Borkena, 'Ethiopian Political Party Council Calls for Deferred Election' (September 3, 2019) https://borkena.com/2019/09/03/ethiopian-political-party-council-calls-for-deferred-election/

Borkena, 'Ethiopian Political Parties Council insists Election should be Postponed' (February 21, 2020) https://borkena.com/2020/02/21/ethiopian-political-parties-council-insists-election-should-be-postponed/

Oromo Libration Front & Oromo Federal ist Congress, '……' ()

ብሩክ አብዱ, ‹‹ለአንድ ፓርቲ የማደላ ከሆነ ሄጄ እዚያው ፓርቲ እገባለሁ›› ወ/ሪት ብርቱካን ሚደቅሳ፣ የብሔራዊ ምርጫ ቦርድ ዋና ሰብሳቢ, ሪፖርተር (28 march 2021) https://www.ethiopianreporter.com/73402/

https://www.youtube.com/watch?v=7apZkqquMh4&t=11s

Encyclopedia

Daniel Thürer, Thomas Burri, ‘Self-Determination’, Oxford Public International Law (2021)

Gibbins R, 'Election | History, Polls, Results, Date, & Facts' (Encyclopedia Britannica, 2022)