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ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW

Constitutional Regulation of Political Parties in Ethiopia:
A Comparative Appraisal

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Law, College of Law and Governance Studies, Addis Ababa University**

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Declaration of Originality

I, **Habtamu Birhanu**, hereby declare that the thesis titled “**Constitutional Regulation of Political parties in Ethiopia: A Comparative Appraisal**” is my original work and has never been presented or published in any other institution. I also declare that any information used has been duly acknowledged. All errors remain my own.

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Acronyms

- AEUP-All Ethiopian Unity Party
- Art-Article
- BLG-Basic Law of Germany
- CSO-Civil Society's Organizations
- CUD-Coalitions for Unity and Democracy
- EPP-Ethiopian Political Parties
- FDRE- Federal Democratic Republic of Ethiopia
- FPTP-Frist Past The Post
- HPR- House of Peoples' Representatives
- IDP-Intra Party Democracy
- IPR-Inter Party Relation
- IRI-International Republican Institute
- NDI-National Democratic Institute
- NEBE-National Electoral Board of Ethiopia
- NNP-Nations Nationalities and Peoples
- ONC-Oromo National Congress
- PDRE-Peoples Democratic Republic of Ethiopia
- PP-Prosperity Party
- TPC-Transitional Period Charter
- TPLF-Tigray Liberation Front
- UDHR- Universal Declaration of Human Rights
- UEDF-United Ethiopian Democratic Front
- WPE-Workers' Party of Ethiopia

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Abstract

Being a logical place where an examination of the rights and duties of political parties begins, the national constitution should properly recognize political parties as manifestation of political participation and political pluralism. Constitutional regulation of political parties plays important roles in ensuring a level political playing field. The objective of this research is thus to examine the constitutional status of political parties in Ethiopia. To this end, an extensive analysis of the relevant literature, and the constitutions of Germany, Nigeria and Kenya have been made. The examination of the Constitution of the Federal Democratic Republic of Ethiopia reveals that the Constitution does not contain sufficient rules on political parties. This failure arguably gives the ruling party an opportunity to manipulate the political process while keeping opposition parties out of meaningful political participation. It moreover makes an attempt to control the behavior of opposition parties more difficult. The research reviews the consequences of non constitutionalization of political parties in Ethiopia. This is necessary in order to examine the possible problems arising out of the non-constitutionalization of parties. The central argument of the research is that most of the problems associated with political parties are primarily attributed to the non-constitutionlization of the regulation of political parties.

Chapter One

Introduction

1.1. Background of Study

Initially, there have been substantial debates on whether or not political parties should be regulated. This basically emanates from the fact that political parties were considered as private association and thus regulating their internal behaviors and activities was thought to be unnecessary. This is despite the fact they were fulfilling public purposes, among others, by organizing the legislature and linking citizens and the state.¹ Though they share the characteristics of private associations, nevertheless, political parties play major public roles by offering alternatives policies to citizens, nominating candidates, forming legislature and serving as intermediaries between voters and elected public officials. This makes them major actors in the field of national public policy thereby gives them special status in the political life of modern democracies. In order to carry out their democratic functions, thus, political parties need to have access to public resources. At the same time, the way they use public resources gave rise to give rises to a serious concerns. Accordingly, the introduction of state financial support as the provision of state subsidies, access to the public broadcasting media and increased popular discontent on the poor performance of political parties justified the regulation of political parties.² The aim of such regulation is to create more democratic forms of institutional governance or more representative by requiring gender or minority group quotas in candidate selection contests.³ The regulation of political parties play important role in ensuring the activities and behaviors political parties to comply with the goals and practices of modern democracies.⁴ Consequently, the regulation of political parties has recently received general acceptance among policy makers and scholars working in the area.

¹ Sarah John, Resisting legal recognition and regulation: Australian parties as rational actors? In Anika Gauja

² Ingrid van Biezen & Daniela Romee Piccio, Shaping Intra-Party Democracy: On the Legal Regulation of Internal Party Organizations in William P. Cross and Richard S. Katz (eds), *The Challenges Of Party Democracy* 27-48, 27 , Oxford University Press, 2013, p. 28

³ Anika Gauja, Dilemmas of party regulation: Hands-on courts versus hands-off legislators?, in Anika Gauja and Marian Sawer (eds), *Party Rules?: Dilemmas of political party regulation in Australia*, Australian National University Press, p. 176

⁴ Avnon D, Parties Laws in Democratic Systems of Government 1995 *JLS* 283-300, p. 296.

The other point that has recently received increasing importance is whether the activities and behavior of political parties should be regulated by the constitution or ordinary legislation. Though the answers to this question vary depending on the historical processes justifying the regulation of political parties, volumes of comparative studies conducted on the regulation of political parties reveal that there is a progressive move toward accepting the constitutional regulation of political parties. More specifically, after the World War II (WWII), political parties have progressively been regulated by the constitutions of European democracies and recognised in constitutional terms as necessary institutional components of the democratic system.⁵ Unlike the constitutions of European countries where constitutionalization political parties took place short after the WW II, the actual emergence of political parties in Africa began fairly around the 1960s' when almost all African countries wrested independence from their foreign colonial master though it was characterized by single party system. This is because of the fact that colonial rule was neither democratic nor constitutional.⁶ In 1990s' most African states amended their constitutions to embrace multi-party system that brought the era of one-party system to an end.⁷ Nowadays, though they copiously vary in their content, constitutionalizing political parties as the expression of multi party democracy, the rule of law and good governance is a global phenomenon.⁸

The legal implications of constitutional regulation of political parties are noticeable in comparing to the regulation of political parties by ordinary law. The regulation of political parties by ordinary law pave a way for a party in power to come up with a law that can systematically prevent fair competition and further ossify its dominant positions. This is

⁵ Gabriela Borz, Justifying the constitutional regulation of political parties: A framework for analysis, *International Political Science Review*, 2017, Vol. 38, No.1 p. 99

⁶ C Fombad, Conceptualising a framework for inclusive, fair and robust multiparty democracy in Africa: The constitutionalisation of the rights of political parties, 2015, *Politics in Africa, Asia, Latin America*, Vol.48, No.1, p.6

⁷ Sonia Esther Vohito, *Constitutionalisation of The Rights of Political Parties in Africa And Its Impact On Constitutionalism: A Comparative Study of the Central African Republic, Senegal And South Africa*, University of ,Pretoria PHD Thesis, August 2018, p. 13

⁸ Vohito-Anyanwu S, *Promoting Constitutional Democracy: Regulating Political Parties in the Central African Republic and Senegal*, PER / PELJ 2020(23) p.2. The constitutional regulation of political parties in this context refers to "the process of attributing constitutional status to political parties."G Borz, *Contemporary constitutionalism and the regulation of political parties: A case study of Luxembourg*, 2011, Working Paper Series on the Legal Regulation of Political Parties, p. 4

mostly true in parliamentary form of government where a party or coalition of parties with a highest number of seats dominates the parliament. In such case, political party or parties in power, using its dominant position, enjoy wide range of legislative power in the field of party's laws to systematically reduce competitive pressure from other parties. There is strong belief that constitutional regulation of political parties is an essential step to resist possible unjustified manipulations that come from party in power through parties laws. The constitutional regulation of political parties protect the role of political parties in democratic processes and protect democracy from the partisan attempts to manipulate the rules of political engagement.⁹

Other things remain as they are, constitutional mentioning of political parties give them constitutional rights to exist which enable them to stand on a firm footing in constitutional law.¹⁰ This indicates that they are necessary institutions in the political system.¹¹ This is because national constitution whose basic function is to establish, and regulate how a political system should operate is a logical place where any examination of the legal status and management of political parties begin.¹² Adding to setting the principles to be followed by ordinary laws, the constitutional regulation political parties provide stability to the legal status of political parties on the ground that Constitutions are less prone to gold-digging constitutional alteration than subsidiary legislation. The relevance of the constitutional regulation of political parties has thus normative implications associated with the status of political parties in a democratization process. Therefore, though the constitutional regulation of political parties is not the act of magic wand to solve all problems, it is however good starting in reducing the possible problems arising out of legal regulation of political parties. Indeed, mere constitutional stipulation of the behavior of political parties on its own plays little roles in the absence of legal and political commitment on the part of political parties to comply with constitutional rules. The constitutional regulation of political parties must be backed by legal and political commitment of all political parties in

⁹ Pildes Richard, Political Parties and Constitutionalism, New York University Public Law and Legal Theory Working Papers. Paper 179, 2010, p. 2

¹⁰ Joseph R. Starr, The Legal Status of American Political Parties, I, The American Political Science Review , Jun., 1940, Vol. 34, No. 3 p,443

¹¹ Supra note no 5, p.100

¹² Anika Gauja, Political Parties and Elections: Legislating for Representative Democracy. London: Ashgate, 2010 p. 24

good faith alongside independent and impartial judiciary capable of implementing and applying the constitutional rules without any favoritism.¹³

1.2.Statement of the Problem

Ethiopia had not witnessed the notion of party politics in its history until the Derg Regime that has established single Workers' Party of Ethiopia (WPE) as the only political party in the country.¹⁴ Multi-party system was thus formally launched for the first time by the 1991 Transitional Charter of the Transitional Government.¹⁵ The Charter provided for human and democratic rights and freedoms based on the Universal Declaration of Human Rights (UDHR) including the right to unrestricted political participation and the right to organize political parties.¹⁶ The idea of multiparty political democracy and political pluralism has continued to be the fundamental features of the Ethiopian state under the FDRE Constitution as well.¹⁷ The FDRE Constitution includes various democratic rights.¹⁸ The existence institutionalized political parties are intrinsic to the full realization of these rights. Looked into from practical point of view also shows that more than a dozen of political parties are legally functions as the reflection of political pluralism. Despite the existence various constitutional provisions that imply the existence political parties coupled with a number of political parties that were practically operating in Ethiopia, the FDRE Constitution, did not recognize political parties as institutions of constitutional governance. It neither protects nor regulates political parties as it does for other democratic institutions. It refrains from mentioning the roles and responsibilities of political parties. Political parties in Ethiopia are rather regulated by ordinary legislation.¹⁹ This is despite the fact that

¹³Supra note no. 6, p.26

¹⁴Nevertheless, there were number of organized opposition political groups that were made illegal, banned, criminalized and persecuted under both regimes; See Wodwossen Teshome B., Ethiopian Opposition Political Parties and Rebel Fronts: Past and Present, World Academy of Science, Engineering and Technology International Journal of Humanities and Social Sciences Vol:3, No:11, 2009, Pp. 2073-2075, See also Merera Gudina, Party Politics, Political Polarization and the Future of Ethiopian Democracy,International Conference on African Development Archives. Paper,2007,p.108

¹⁵Transitional Period Charter of Ethiopia ,50th years, No.1, Addis Ababa 22nd July, 1991

¹⁶ Art 1 (a)(1) the Charter

¹⁷Leake M. Tesfay, The Right to Political Party Membership in Ethiopia: On the Freedom to Join and Resign, MIZAN LAW REVIEW, Vol. 11, No.2 December 2017, p. 374

¹⁸ These rights include but not limited to the right to elect and to be elected art 38, the rights peace full demonstration, and Assembly, art 31, the right to association art 32 of the FDRE Constitution.

¹⁹ The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019. FED. NEGARIT GAZETA, 25th Year No. 97 ADDIS ABABA 16th October 2019

the FDRE Constitution is a primary legal document to look into for any guidance with respect to the political parties. Therefore, this study aims to make a comparative appraisal on the constitutional regulation of political parties in Ethiopia.

1.3. Research Questions

Based on the aforementioned statement of the problem, the followings are the main questions of the research:-

- What is the constitutional place of political parties in Ethiopia?
- What are the legal implications of the constitutional regulation of political parties?
- What are the key aspects of political parties that are subject to constitutional regulation?
- What lessons can Ethiopia draw from the approaches of other jurisdictions?

1.4. Objective of the Study

1.4.1. General objective

The general objective of the study is to make a comparative appraisal on the constitutional regulation of political in Ethiopia with particular emphasis on the FDRE Constitution.

1.4.2. Specific objectives

- To examine the constitutional status political parties in Ethiopia
- To examine the constitutional history of political parties in Ethiopia
- To examine the legal implications of the constitutional regulation of political parties
- To examine the lessons that Ethiopia can draw from the approaches other jurisdiction

1.5. Significance of the Study

Though there are a number of academic and none-academic works on the issues relating to political parties in Ethiopia, the constitutional regulation of the political parties is largely under-studied. There is no thorough academic works on the constitutional regulation of political parties especially from a comparative perspective. Therefore, this study, examines the constitutional history of political parties in Ethiopia on one hand and makes a comparative appraisal on the constitutional regulation of political parties on the other hand. It is hoped that it adds value on the existing literatures dealing with political parties in Ethiopia. The study will also have immense contribution to fill existing gap by identifying possible problems arising out of the lack of constitutional regulation of political parties in

Ethiopia. Furthermore, this study may serve as an important input for students, researchers, and others who are interested in the area.

1.6.Limitations of the Study

The absence of sufficient sources and jurisprudential development on the constitutional regulation political parties in Ethiopia is the main limitation of the study. Moreover, in the interest of time and space, it is hardly possible to make a comprehensive comparative appraisal on the constitutional regulation of political parties. However, an attempt is made to identify whether or not political parties in Ethiopia are sufficiently regulated by the Constitution.

1.7.Scope of the Study

The scope of this study is limited to making a comparative appraisal on the constitutional regulation of political parties under the FDRE Constitution. Examining the constitutional regulation of political parties under the Constitution of regional states is thus beyond the scope of this thesis. More so, it does not examine the historical and philosophical reason for the constitutional regulation of political parties. It, rather, focuses on the legal implication of constitutionalizing political parties.

1.8.Reviewing the Literatures

The issue of constitutional governance of political parties in Ethiopia is understudied. Although the FDRE Constitution does not contain sufficient rules on political parties, except the works of Gebremeskel and et.al ²⁰, to the best of my knowledge, there is no thorough academic works on the constitutional regulation of political parties in Ethiopia. Any reference, if any, is only meant to substantiate issue at hand. This study is different from this work in many aspects. In the first place, it examines constitutional regulation of political parties in Ethiopia from comparative perspective as detail as possible. Except making passing remarks on the 1999 and 2010 Constitutions of Nigeria and Kenya respectively, their work has no detail discussion on the constitutional regulation of political parties in Nigeria and Kenya. It is not clear to what extent these Constitutions incorporate

²⁰ Gebremeskel Hailu T. and Teguadda A. S., The Quest for Constitutionalizing Political Parties in Ethiopia, Journal of Citizenship and Morality, January 2019, Vol.2, No.1

basic requirements of political parties than the FDRE Constitution. Contrarily, this study makes brief and detail discussion on the constitutional governance of political parties in Nigeria and Kenya. In doing so, it indicates to what extent FDRE Constitution lacks basic requirements of political parties. Secondly, this study reviews the possible consequences arising out of none-constitutionalization of political parties in Ethiopia both from the sides of ruling and opposing parties. On the other hand, the work of Gebremeskel and et.al devoted much of its discussion only on the ruling party. Moreover, unlike the above mentioned work, this study, in dealing with the possible problems arising out of the none constitutional regulation of political parties, mainly focuses on the newly revised Electoral, Political Parties Registration and Election's Code of Conduct Proclamation 1162/2019. Finally, the study is different from the above cited work on the ground that it examines constitutional history of political parties in of Ethiopia.

1.9.Methodology of the Study

In making a comparative appraisal on the constitutional regulation of political parties in Ethiopia, the study makes use of both doctrinal and non-doctrinal research method. Accordingly, it makes legal analysis on the constitutional regulation of political parties from comparative perspectives. The 1949 Basic Law of Germany, the 1999 and 2010 Constitutions of Nigeria and Kenya are selected for comparasion purpose. These constitutional regimes have been selected on the ground that they incorporate basic requirements of political parties.

The study also makes review on some possible consequences of none-constitutional regulation of political parties in Ethiopia both from the side of the ruling party and opposition parties. From the side of the ruling party, accordingly, it examines the problems associated with funding of political parties, abuse of state resources, political repression, the rise of single party domination. From the side of opposition parties, it also examines the problems associated with intra-party democracy, offering of alternative policy choice, and inter-party relation.

The study uses both primary and secondary data sources. With respect to primary data sources, the study examines the provisions of the constitutions and other ordinary

legislations as the case may be. As secondary data sources, the study make a review on scholarly materials and various reports.

10. Organization of the Study

The study is organized into four chapters. Chapter one introduces the paper. Accordingly, it presents general overview of the study including introduction, statement of the problem, objective of the study, research questions, research methodology, significance of the study, scope of the study as well as limitation and organization of the study. Chapter two of the study makes general overview on the constitutional regulation of political parties. To this end, this chapter discusses the perspectives on the regulation of political parties, the legal justifications for the constitutional the regulation of political parties. To establish theoretical framework, constitutional regulation of political parties in the Constitutions of Germany, Nigeria and Kenya has been examined. Chapter three of the study deals with the constitutional regulation of political parties in Ethiopia. To make the discussion as complete as possible, the chapter makes a brief review on the constitutional history of political parties in Ethiopia. The possible problems arising out of the none-constitutional regulation political parties will be seen under this chapter. Finally, the study comes to an end with conclusion and implications under chapter four.

CHAPTER TWO

Constitutional Regulation of Political Parties: Conceptual and Historical Overview

2.1. Definition of Political Parties

Political parties are among the most important institutions that define the character of the political system.²¹ There is a general consensus that political parties play significant role in making modern representative democracy workable. However, little agreements exist in an endeavor to come up with universally accepted definition of political parties. Accordingly, it is defined variously²², either narrowly or broadly.²³ Defining political parties in narrow or broader sense basically depends on the goal it is meant to achieve. In a narrow sense, a political party can be defined as the group of persons who run for office under a party label.²⁴ In the same fashion, but with slight modification, Sartori has also defined political parties as "any political group that presents at elections, and is capable of placing, through elections, candidates for public office."²⁵ Thus, the fact that candidates are running for election is the fundamental building blocks of political parties.²⁶

In a broader sense, political parties are defined as organized collectivities orientated towards the pursuit of some combination of the goal of electoral success and in the end of political effectiveness, i.e. the capacity of parties to have an impact upon government policy-making.²⁷ This broader definition of political parties includes the demands for a more robust party organisation.²⁸ According to this broader definition of political parties, the role of political parties goes beyond running for election. This may require further inquiry into more functions and roles of political parties.

²¹ Clive S. Thomas, *Studying the Political Party–Interest Group Relationship in Political Parties and Interest Groups Shaping Democratic Governance*, 2001 Lynne Rienner, 200, 1 p.1

²² SMoshe Maor, *Political Parties and Party Systems Comparative approaches and the British experience*, Routledge 1997, pp.3-14

²³ Søren Riishøj, *Development of Parties and Party Systems in Central Europe 1989-2007*, Department of Political Science and Public Management University of Southern Denmark, p .9

²⁴ Pradeep Chhibber and Ken Kollman, *The Formation of National Party Systems Federalism and Party Competition in Canada, Great Britain, India, And the United States*, Princeton University Press, 2004, p.63

²⁵ Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis*, 1976, p. 74

²⁶ Supra note no. 24, p. 62

²⁷ supra note no. 23, p .9

²⁸ Ibid.

The narrow definition offers valuable insight for operational and practical analysis of political parties. This is because of the fact that, on the one hand, it reveals that political parties are freely formed political association whose central purpose is to assume public office through a constituted election or other legitimate means. On the other hand, it distinguishes political parties from other interest groups²⁹ in the sense that it is only political parties that participate in elections with the view to assume political power.³⁰ Though the definition given to political parties show variations reflecting the purpose they are meant to serve, almost all the definition given to political parties in various literature in one way or another suggest that “political parties” are special social organization that are distinguished from other social organizations on the ground that they exist for the purpose of contesting elections for public office.³¹ Thus, participation in election with the view to control state power is a defining element to almost all political parties in modern representative democratic systems.

2.2.Functions of Political Parties

Political parties perform varieties of functions to various degree of effectiveness. Yet, still an attempt to offer definitive functions of political parties is rather preventive. The political landscapes in which they operate highly contribute to these variations. The functions of political parties under authoritarian regimes, for example, significantly differ from the functions of political parties under democratic or partially democratic political institutions.³² Despite this variation, scholars so far have tried to identify several functions of political parties.³³ These are the selection of official personnel for public office,

²⁹ Supra note no. 21

³⁰ Charles Manga Fombad, Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa, *American Journal of Comparative Law*, 2007, Vol.55, No.1, p.2. See also Russell J. Dalton, David M. Farrell, and Ian McAllister, *Political Parties and Democratic Linkage How Parties Organize Democracy*, Oxford University Press, 2011, p.7

³¹ Supra note no. 2, pp.1-2

³² S. B. M. Marume et al., Political Parties, *IOSR Journal of Mechanical and Civil Engineering* Jul.,Aug. 2016, Volume 13, Issue 4 ,Pp 140-152 www.iosrjournals.org DOI: 10.9790/1684-130407140152, p. 143

³³For various functions of political parties see Russell J. Dalton and Martin P. Wattenberg, *Unthinkable Democracy*, in *Parties without Partisans: Political Change in Advanced Industrial Democracies*, in Russell J. Dalton and Martin P. Wattenberg (eds),New York: Oxford University Press, 2000, pp. 5-10. See also Alan R. Ball, *British Political Parties: The emergence of a modern party system*, London: MACMILLAN EDUCATION LTD, 2nd ed., 1987, pp. 3-5 and Richard Gunther and Larry Diamond, *Types and Functions of*

formulation of public policies, conductors or critics of government, political education, and intermediation between individual and government.³⁴ These functions can also be described as ‘linkages’ which include campaign, participatory, ideological, and representative and policy elements.³⁵

Depending on the way parties serve as linkage between society and government, aggregating social cleavages, translating social cleavages into political cleavages or blocking the politicisation of social cleavages are identified as the three functions of political parties though their actual implementation depends on party system i.e. whether a country follows single party systems, two party systems or multi-party systems.³⁶ It is argued that while the one-party state tend to maximize the blocking of cleavages on one hand, the two party systems and multi-party systems seem to be best suitable in achieving aggregation and translation respectively on the other hand.³⁷ Almost all political parties in modern representative democracies perform these functions with significant variation in degree and level of effectiveness at one time or another.³⁸ Nevertheless, whether they in reality perform or are capable of performing these functions or not require empirical investigation.

2.3. Perspectives on the Regulation of Political Parties

The regulation of political parties has been subjected to diverse opinions. Historical conception of democracy in its early time has contributed much for this controversy. In its early time, democracy was viewed as small-scale democracy that mainly involves direct participation of all in the decision-making process. In such kind of small-scale democracy otherwise referred to direct democracy, all citizens are supposed to directly participate in decision making process in which the existences of political parties that serve as intermediary agent were thought to be irrelevant. Direct democracy by linking citizens to

Parties in Political Parties and Democracy, Larry Diamond and Richard Gunther (eds), The Johns Hopkins University Press,2001, pp.7-9

³⁴ Charles E. Merriam, *The American Party System*, New York: Macmillan, 1923, pp. 391-405, See Charles Lees, *Party Politics in Germany: A Comparative Politics Approach*, Palgrave Macmillan,2005, p.139

³⁵ Supra note no. 30, p. 7

³⁶ Supra note no. 23.11

³⁷ Ibid

³⁸ Philippe C. Schmitter, *Parties Are Not What They Once Were*, Larry Diamond and Richard Gunther(eds,) in *Political Parties and Democracy*, The Johns Hopkins University Press and the National Endowment for Democracy,200,pp.72-84

government undermines the fundamental rationale for political parties. It is, therefore, a particular threat to political parties.³⁹ It is thus not surprising that the phenomenon of political parties as conceived today was then perceived to be incompatible with the democratic traditions espoused in the liberal philosophies.⁴⁰ Influenced by this normative conception, most Western Constitutions have hardly mentioned political parties.⁴¹ They, not only failed to mention and anticipate the rise of modern political parties and their centrality to democracy, but were actually hostile to it.⁴² Empirical study conducted on the subject indicates that less than 10% of Constitutions in force in 1875 mentioned political parties.⁴³ It follows that if we accept the conventional assumption that democracy simply signifies popular sovereignty, it may be argued that the popular will can be executed by a direct participation of all citizens and not by political parties.

The other possible explanation that contributes to this debate is that, political parties in much of their history have never fitted neatly into the private/public dichotomy. This has affected the Western political and legal thought for long.⁴⁴ Initially, political parties were seen as voluntary associations of individuals emanating from civil society and existing beyond the reach of the state.⁴⁵ It was taken for granted that political parties had their base in civil society and thus they were ‘private organizations’ or more accurately, organizations that did not form part of the state apparatus.⁴⁶ Accordingly, it is argued that public roles of political parties are merely incidental effects of their private operations and in any event, should not be subject of state regulation.⁴⁷ On the other side, it is observed that despite the fact that they retain some characteristics of private associations; today they are legally

³⁹Supra note no.30, p.230

⁴⁰Supra note no.6, 6-7

⁴¹ Ingrid Van Biezen, Constitutionalizing Party Democracy: The Constitutive Codification of Political Parties in Post-war Europe, *British Journal of Political Science*, January 2012 Vol. 42, No. 1, p 187

⁴²Richard Pildes, Political Parties and Constitutionalism, Tom Ginsburg and Rosalind Dixon (eds.) in *Comparative Constitutional Law*, Cheltenham,2011,p.256

⁴³ See Zachary Elkins / Tom Ginsburg, / James Melton, *The Endurance of National Constitutions*, Cambridge 2009, p. 19

⁴⁴ Supra note no. 1,p.37

⁴⁵Ibid, p.25

⁴⁶ Ibid

⁴⁷ Nathaniel Persily and Bruce E. Cain ,*The Legal Status of Political Parties: A Reassessment of Competing Paradigms*, *Columbia Law Review*, 2000, Vol.100 No.3, p.782

recognized, regulated, supported and entrenched as quasi-state agencies to varying degrees.⁴⁸

Though this private/public distinction seems overly technical, its regulatory implications are extremely significant.⁴⁹ It certainly affects the legal framework that governs its conduct. It answers the questions of whether or not regulation is desirable, to what extent the regulation is desirable, and which of these activities should be regulated.⁵⁰ As such, if political parties are categorized as public organizations, regulating their internal organization and external operation is normatively desirable. However, if they are private associations, state regulation is considered as unjustified interference with their autonomy and also undermines the political expression of citizens.⁵¹

The fear of state organization of political life and centralized state control over political participation is another factor that has complicated the regulation of political parties.⁵² It is true that ruling political parties enjoys a privileged position to foster regulatory environment and places other opposing parties at disadvantaged position. The potential for conflicts of interest to arise and for partisan or incumbent interests to be privileged in the exercise of lawmaking is a real danger.⁵³ Thus, there is strong fear that regulation of political parties often represents politically motivated modification of the legal landscape to the calculated advantage of certain party actors and to the disadvantage of others.⁵⁴

2.3.1.A Move Toward the Regulation of Political Parties

Political parties are the veins through which the blood of political activities flows. How the flows of this blood is regulated determine the health of a political body.⁵⁵ Though, as noted above, the regulation of political parties remains debatable for various competing reasons, a comparative study conducted on the subject revealed that there is an ever increasing demand to regulate political parties not only for theoretical reasons, but also for practical

⁴⁸ Supra note no. 1, p.37; See also Anika Gauja, Dilemmas of party regulation: Hands-on courts versus hands-off legislators? Anika Gauja and Marian Sawyer,(eds) in Party Rules: Dilemmas of political party regulation in Australia, ANU Press,2016

⁴⁹ Supra note no. 3, p.174

⁵⁰ Supra note no. 12, p.12

⁵¹ Ibid

⁵² Supra note no. 4,p.284

⁵³Supra note no.3, p.174

⁵⁴ Michael Kang, The Hydraulics and Politics of Party Regulation, Iowa Law Review,2005, Vol. 91p.160.

⁵⁵Supra note no 30,p.2

reasons.⁵⁶ Nowadays, their activities, behavior and organizational structures are steadily defined by public law as a result of which the state increased intervention in the external and internal manifestations of party politics. As such party structures have become ‘legitimate objects of state regulation to a degree far exceeding what would normally be acceptable for private associations in a liberal society.’⁵⁷ The objective of such regulation is just to establish rule of the game and to maintain a fair contest between participants.⁵⁸

Various interrelated justifications can be mentioned for these increasing practices for the regulation of political parties. The first justification is that the historical conception of political parties as private association has begun to steadily fade on the belief that no matter they share the characteristics of private associations, they perform number public functions that other private associations do not. These public functions accord them a privileged position in modern representative democracy. The way they perform these functions, at the same time, places them under public scrutiny whereby effective regulatory frameworks are required. The reason is that political parties are considered as public utilities to be regulated for the “achievement of public purposes” rather than as private associations based on voluntary principles.⁵⁹ The regulation of political parties is thus a direct consequence of a changing conception of the party from private association to the notion of party as a special type of public utility,⁶⁰ performing a number of public functions. This indicates that as political parties perform functions of a public nature, there is strong reason to regulate them.

Another explanation that reinforced the regulation of political parties is an attempt to promote democratic values such as political participation, an informed electorate, and most prominently, democratic responsiveness and popular input into party business.⁶¹ Through extensive regulation, the state purports to influence the character and operations of political

⁵⁶ Supra note no.3, p. 175

⁵⁷Supra note no. 2, p. 28

⁵⁸ Supra note no. 3, p.178

⁵⁹ Ingrid van Biezen, Political Parties As Public Utilities, Party Politics, 2004, Vol.10, No.6, pp. 701–722

⁶⁰ ibid

⁶¹ Supra note 54, p. 138. We may also add freedom of political association, freedom of political expression, fair and healthy competition between political parties, broad participation and the right of individuals to choose freely between parties in a pluralist party system. See Anika Gauja and Marian Sawyer, Party rules: The regulatory ‘gap’: Party Rules? Dilemmas of political party regulation in Australia, Anika Gauja and Marian Sawyer(eds.), ANU Press, 2016, pp.198-199

parties in a way that helps produce a healthy democratic process.⁶² The regulation of political parties mainly requires them to possess the democratic value both in their internal organization as well as in their external relation with outside environment.⁶³ This forces them to preserve the democratic nature of the state. This implies that the regulation of political parties is also justified with a view to protect the very survival of the democratic system.⁶⁴

The idea of political parties' regulation is moreover justified by the introduction of access to state resources and public subsidies. There is almost wide consensus that political parties play public roles. If they are to play their public roles, they need to have access to public fund and state subsidies. In many democracies, political parties now receive public subsidies.⁶⁵ The empirical study conducted by Beizen and colleagues indicates that political parties have direct access to public fund in three-quarters of the liberal democracies.⁶⁶ Access to public fund and subsidies to political parties an essential element by which parties are increasingly seen as an essential public good for democracy. This is less true for the exclusively private associations which are the instruments of civil society.⁶⁷ An attempt to enhance political pluralism, support favorable functions, liberate parties from private donors and ensure equal opportunity at elections are thus identified as main reasons to provide public funding of political parties.⁶⁸

Though public funding of political parties is believed to maintain a level of playing field, it is not without challenges. If it is left unregulated, it leads to corrupting behavior on the political and electoral process.⁶⁹ Any system of funding of political parties should be

⁶² Supra note no. 54, p.138

⁶³ Supra note no. 4, p. 292

⁶⁴ Supra note no. 41,p.204

⁶⁵ Marian Sawer and Anika Gauja, Party rules: Promises and pitfalls in Anika Gauja and Marian Sawer,(eds.), Party Rules: Dilemmas of political party regulation in Australia, ANU Press,2016, p. 6

⁶⁶ See Ingrid van Biezen and Petr Kopecky, The State and the Parties, Public Funding, Public Regulation and Rent-Seeking in Contemporary Democracies, Party Politics, 2007, Vol.1 3. N o . 2 , pp. 235–254

⁶⁷ Supra note no. 59, p, 701.

⁶⁸Péter Smuk, Constitutional Approach to Public Financing of Political Parties and Election Campaigns in Costs of Democracy in Péter Smuk(ed,.) Budapest, 2016, pp.183-

⁶⁹ Elin Falguera, Samuel Jones and Magnus Ohman(eds), Funding of Political Parties and Election Campaigns: A Handbook on Political Finance, International Institute for Democracy and Electoral Assistance 2014

accompanied by a framework regulating the same.⁷⁰ The goal of such regulations is to prevent certain types of behavior while making them more transparent in how money is spent or decrease their reliance on private sources of funding. It, moreover, ensure more level playing field for electoral competition.⁷¹ Accordingly, ‘resourcing parties, dampening demand for private money and political equality’ the factors that justify public fund of political parties and their regulation.⁷²

2.4. Constitutional Regulation of Political Parties

It is noted that political parties’ regulation is becoming normal practice in the contemporary representative democracy. The practice with respect to “pattern of regulation” is, however, still at variation in a sense that some Constitutions recognizes the role of parties in “party law”⁷³ while others formally acknowledge parties and their roles in their Constitutions.

It is established that older constitutions have refrained from mentioning political parties. Guaja offered four possible explanations for this omission. These are the infancy of political parties as organization when the constitutions were drafted whereby that their subsequent political influence and institutionalization was not anticipated, social attitudes towards political parties, the constitutional design of representative democracy, and the independence of parliament and Burkean notions of representation.⁷⁴ Though this is true for older constitutions, it does not work today as a constitutional reference to political parties is noticeable both in Europe and Africa as the expression of of pluralism, popular will, sovereignty, equality, participation and competition.⁷⁵ Save in terms of variation with

⁷⁰ Ibid

⁷¹ Supra note no. 65, p.7

⁷² Graeme Orr, Putting the cartel before the house? Public funding of parties in Queensland in Anika Gauja and Marian Sawer, (eds.), Party Rules: Dilemmas of political party regulation in Australia, 2016, ANU Press, p.128

⁷³ Supra note no. 4, p. 284. Party law in this context refers to subsidiary legislations specifically designed to regulate the life of party organizations. See Wolfgang Müller and Ulrich Sieberer, Party Law in Richard Katz and William Crotty (eds) Handbook of Party Politics, London: Sage, 2006, pp. 435-436.

⁷⁴ Supra note no. 12, pp.28 -37

⁷⁵ While constitutionalization of political parties noticeably had taken place post WWII in Europe, it, however, began in Africa short after independence though it was being characterized by single party domination. See generally, Biezen, Ingrid van and Gabriela Borz, The Place of Political Parties in National Constitutions: A European Overview’, Working Paper Series on the Legal Regulation of Political Parties, No. 1, 2009. See also Charles Manga Fombad, Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa, American Journal of Comparative Law, 2007, Vol.55, No.1

regard to the models of party constitutionalization,⁷⁶ now a day, constitutional reference to political parties as the institution of constitutional law is prominent features of the constitutions of Europe, Latin America, East Asia and sub-Saharan Africa.⁷⁷ This indicates that there is an increasing move toward constitutional regulation of political parties. As such, regardless of when constitutionalization of parties began, Constitutions are now considered source of party law.⁷⁸

2.4.1. Justifications for Constitutional Regulation of Political Parties

As compared to legal regulation, the constitutional regulation of political parties is justified for various reasons. Scholars have so far suggested various possible justifications.⁷⁹ It is established that the process of constitutionalization of political parties involves different actors pursuing different purposes including political parties themselves, the media, civil society's organizations (CSO), as well as state or international organisations. Justifications for parties constitutional regulation, therefore, varies depending on the actors involved this regulatory process. In reference to European experience, Borz summarized the process of constitutional regulation of political parties around six main justifications.⁸⁰ Although these justifications are made in reference to the European experience, it could still serve as a framework to analyze the implications that constitutionalization of political parties, as opposed to the legal regulation, in any political system carries with it.

Borz's first justification for constitutionalization of political parties emanates from the recognition of political parties as 'agents' or representatives of the citizens in the political system. Political parties' constitutionalization represents a legitimation of the role and activities of political parties. This is because of the fact that Constitution is highest legal document in legal pyramid gives legitimacy for subsequent norms including the roles and activities of political parties. Moreover, parties' constitutionalization places political parties

⁷⁶Janda, K., Adopting Party Law, Working paper series on Political Parties and Democracy in Theoretical and Practical Perspectives, Washington, DC: National Democratic Institute for International Affairs, 2005, pp. 8-18. He identifies five „alternative models“ of the constitutionalisation of political parties. These are proscription model, the permissive model, the promotion model, the protection model and the prescription model

⁷⁷ Supra note no. 42, p. 256

⁷⁸ Ibid p.6, See also supra note no. 2 p.29

⁷⁹ Supra note no. 30, p.39; See also Supra note no. 5, p.103 and supra note no. 41 , p. 5

⁸⁰ Supra note no. 5, pp.103-104

entrenched by the country's higher law, which is more stable so they are they are less prone to change. This gives opposition parties a sense of greater protection than they would have if they are regulated under subsidiary laws that can be amended by a majority in the legislature.

The second justification for constitutional regulation political parties come from political parties' need for resources and subsidies from the state. The idea is that political parties need constitutional recognition as the institution of constitutional governance to obtain various privileges including access to public funding which in ultimate guarantee organizational permanence political parties in power structure.

The third justification arises from the need to differentiate political parties from other political groups and associations in relation to their role in political system. The constitutionalization of political parties enables them to protect their role of presenting candidates for elections and represented in parliament.

The fourth justification for constitutional regulation of political party aims to restrict competition from potential undemocratic parties by preventing their access to the system. This suggests that political parties retain their rights to freedom of association and speech only so long as they serve democratic process.⁸¹

The fifth justification for the constitutional regulation of political parties comes from the necessity to regulate the activities of political parties with the view to protect the democratic system against corrupted behavior political parties and ensuring that their activities comply with the constitution. The constitutionalization of parties would force them to comply with constitutional principles such as accountability and transparency. This ultimately makes them more public and increase public trust on them. These can be done through special oversight and restriction.

Lastly, the sixth justification of the constitutionalization of political parties is based the administrative necessity for all actors involved in the process to comply with the Constitution. For instance, constitutional regulation of political parties offers basis for law on political parties to comply with the Constitution. Moreover, in the event of any

⁸¹ Supra note no. 41, pp.187-212

litigation that involves political parties, it is easier for the courts to use the constitution as a main point of reference. This in turn may reinforce the legitimacy of court judgment.⁸²

2.4.2. Constitutional Regulation of Political Parties in Germany, Nigeria and Kenya

2.4.2.1. Germany

The Basic Law of Germany (BLG) recognizes political parties by the rule of art 21 separately from ordinary associations in terms of protection and regulation. The rules on ordinary associations are contained under art 9 whereas the rules on political parties are contained under art 21 of the Constitution. The first sentence of art 21 dictates that the fact that political parties participate in forming of the political will of the people. This indicates both the function and a guarantee of the necessary freedom to fulfill these functions.⁸³ The provisions that follow, including both guarantees freedom and restrictions on aims and activities, are subsidiary to and justified by this central idea. The unifying element in Article 21 is the recognition that parliamentary democracy cannot function without active and free party system.⁸⁴

This article endows political parties with rights and privileg which give them a unique position as a functioning part of the machinery of government.⁸⁵ The fact it explicitly, formally and unequivocally recognizes the constitutional role and relevance of political parties in the functioning of democratic polities represents a novelty “in the history of the formal constitutional texts.”⁸⁶ This is the indicative of the fact that political parties have a genuine and legitimate function to perform in modern democratic government.⁸⁷ Moreover, this represents the unique features of the constitutional order established by the *BLG* 1949.⁸⁸ The BLG, by extending formal recognition to them as a vital element in the actual process of government, constitutionalizes political parties and their activities.

⁸² Supra note no. 5,p.103

⁸³ Carl J. Schneider, Political Parties and the German Basic Law of 1949, *The Western Political Quarterly*, Sep., 1957, Vol. 10, No. 3 ,p. 529

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Riccardo Pelizzo, *From Principle to Practice Constitutional Principles and the Transformation of Party Finance in Germany and Italy*, p.11

⁸⁷ Supra note no. 83, p.257

⁸⁸ Ibid

The BLG assigns a key role to parties in the formation of the political will of the peoples by which it associates one of the key principles of democratic institution of the political party and invests parties with the status of institution under constitutional law.⁸⁹ Accordingly, the BLG represents comprehensive set of constitutional rules political parties.⁹⁰

In Germany, constitutional relevance of political parties is not limited to the role that they perform in the elections whereby they are considered as instruments of temporary participation. Given the fact they play a role of formation of public will, they are instruments explicitly designed to shape, influence, and determine politics. This transforms them from the instrument of temporary institution whose role is limited to and derived from the electoral functions to instruments of permanent participation.⁹¹

In terms of regulation, the BLG puts both substantive and procedural limitations on the formation and operation of political parties. The substantive limitation is that political parties are, by reasons of their aims or behavior may not endanger the constitutional order or the existence of the Federal Republic of Germany. If “by reason of their aims or behavior of their adherents” they seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany, they may be declared unconstitutional.⁹² It exclusively empowers the Constitutional Court to rule on the unconstitutionality of parties.⁹³ Procedural limits are that their internal organisation must conform to democratic principles. Moreover, they must publicly account for their assets and of the sources and use of their funds as well as assets. These two procedural requirements can loosely be abbreviated as a requirement of internal democracy otherwise referred to intra-party democracy and a requirement of financial disclosure.⁹⁴

Moreover, it is provided that whosoever (including political parties) abuses the basic rights including the freedom of assembly (Article 8), the freedom of association and (Article 9), in order to combat the free democratic basic order shall forfeit these basic rights. This

⁸⁹ Supra note no. 41, p.196

⁹⁰ Ibid p.196

⁹¹ Supra note no. 87, p.11

⁹² Art 21(2), the BLG

⁹³ Ibid

⁹⁴ Kate O'Regan, Political Parties: The Missing Link in Our Constitution? ,Political Parties in South Africa: The Interface between Law and Politics, August 2010, Vol. 27,p.14

forfeiture and its extent shall be declared by the Federal Constitutional Court. Article 9 also ban on associations directed against the constitutional order. This prohibition establish what has come to be known as Germany's "guarded" democracy⁹⁵ which the most striking illustration of Germany's militant democracy.⁹⁶ This indicates that Germany's militant democracy obliges the state actively to oppose persons and groups who would use the rights and institutions of a free society to subvert or destroy democracy.⁹⁷

The privilege position given to political parties in Germany is reinforced by the fact that they are immune to executive ban and prohibit. As per art 9 of the Constitution, ordinary associations in Germany may be prohibited by, if their objects or activities "conflict with the criminal laws," or are "directed against the constitutional order or concept of international understanding", executive proceedings without prior judicial action. On the other hand, as per article 21 (2) of the Constitution exclusively invests the Constitutional Court to declare a party unconstitutional if by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free "democratic basic order". The most important difference between art 9 and 21(2) is that while art 9 protects "constitutional order", article 21, however, protects "democratic principles."⁹⁸ Accordingly, political parties are not prevented from the particular form in which the German state is organized.⁹⁹ Parties thus have greater freedom in defining their in program.¹⁰⁰ Therefore, art 21 (2), which is applicable only to political parties is much broader in scope, giving parties considerable more leeway.¹⁰¹

2.4.2.2.Nigeria

The 1999 Constitution of Nigeria was adopted on 29 May, 1999 and is the supreme law of the state.¹⁰² It is the primary laws governing political parties in Nigeria.¹⁰³ It grants the right

⁹⁵ Donald P. Kommers, *The Basic Law: A Fifty Year Assessment*, SMU L. Rev. 2000, Vol.53 p.480

⁹⁶ Donald P. Kommers , *German Constitutionalism: A Prolegomenon*, German Law Journal,2019, Vol.20, p.544

⁹⁷ Ibid

⁹⁸ The term "constitutional order" refers to specific institutional arrangements established by the Constitution. See supra note no. 84, p.529

⁹⁹ Ibid

¹⁰⁰ Ibid p.529-30

¹⁰¹ Ibid

¹⁰² The constitutional history of Nigeria can be classified pre-independence, independence and post-independence. The pre-independence constitutions that were introduced by colonial government were the

to freely form and join political parties.¹⁰⁴ It not only guarantees the right to form and join political party, but also regulates political parties to be democratic in their internal organization and promote fundamental values and principles of the Constitution. In this regard, it requires the membership of political parties to be open to every citizen of Nigeria irrespective of the place of origin, birth, sex, religion or ethnicity.¹⁰⁵ It moreover bans political parties with the name, symbol or logo that contains any ethnic or religious connotation or gives the appearance that the activities of the party are confined to a part only of the geographical area of Nigeria.¹⁰⁶ This is because of the fact that, the history of Nigerian political parties reveals that ethnic regional and religious issues are part of the numerous challenges that political parties must deal with.¹⁰⁷

Political parties in Nigeria are also required to provide for the periodical election of the principal officers and members of the executive committee or other governing body of the political party on a democratic basis.¹⁰⁸ The election is said to be periodical only if it is made at regular intervals not exceeding four years. Moreover, they are required to ensure that the composition of members of the executive committee or other governing body of the political party reflect the federal character of Nigeria.¹⁰⁹

The Constitution requires the programme as well as the aims and objects of a political party to conform to the fundamental objectives and directive principles of the Constitution¹¹⁰ that serves as guideline to legislative, executive and judiciary in discharging their constitutional duties and responsibility. They govern all the three branches of government entrusted with

Clifford Constitution of 1922, the Richards Constitution which came into force in 1946 (was suspended in 1950), the 1951 and 1954 respectively. In 1960 Nigeria adopted the Independence Constitution. This was followed by some other post- independence constitutions of the 1963 republican constitution, the 1979 constitution and the 1999 constitution respectively. See George Anokwuru and Edmund Obomanu, Exploring the Missing Gaps in the 1999 Constitution of Nigeria: A Review, International Journal of Political Science (IJPS), 2017, Volume 3, Issue 1, pp. 35-44

¹⁰³ There are other subordinate laws that regulate the detail aspects of political parties in Nigeria. For example, the 2011 Electoral Law is among the subordinate law regulating political parties in Nigeria.

¹⁰⁴ Section 40 of the Constitution of Nigeria

¹⁰⁵ Ibid sec 222(b)

¹⁰⁶ Ibid sec 222(e)

¹⁰⁷ E. S. Nwauche, Political Parties, the 1999 Nigerian Constitution and the 2011 General Elections, Law and Politics in Africa, Asia and Latin America , 2013, Vol. 46, No. 4, p.414

¹⁰⁸ Sec. 223 (1) (a) of the Constitution of Nigeria

¹⁰⁹ Ibid sec 223

¹¹⁰ Ibid sec 244

exercise of political power.¹¹¹ The fact it require political parties, in their programs and aims, to comply with the objectives and directive principles, indicates that they are considered as public institution. However, whether or not this constitutional requirement results legal responsibility whenever they fail to comply is questionable. These objectives and directive principles are, as per section 6(6) (c), none-justiciable for judicial scrutiny. The judicial power unless the Constitution provides otherwise does extend to any issue or question of whether any act or omission by any authority or person or as to whether any law or judicial decision is in conformity with the fundamental objectives and directive principles. This appears to exclude the jurisdiction of the courts on questions relating to contravention of the provisions relating to fundamental objectives and directive principles.¹¹² However, the monitoring mandate of independent national electoral commission over political parties as set out in the third schedule of the Constitution gives the commission an opportunity to ensure whether or not political parties conform to the fundamental objectives and directive principles.¹¹³ Be as it may, the constitutional provisions dealing with political parties clearly show the Constitution’s aim of strengthening the cohesion of the Federation.¹¹⁴

The Constitution entrusts the Federal Government to provide public funding to political parties on an “equitable and fair basis”.¹¹⁵ Though what constitutes equitable and fair basis is not clearly provided for under the Constitution, this indicates the fact that political parties in Nigeria have constitutional rights of public funding of political parties. This is one of the factors that justify the constitutional regulation of political parties, as noted above.

Political parties are subject to the control and monitoring of the electoral commission with regard to income and expenses.¹¹⁶ They are required to submit to the electoral commission

¹¹¹ supra note no. 106,p.417

¹¹²OluAwolowo, Fundamental Objectives and Directive Principles of State Policy as Panacea for National Transformation and Sustainable Development in Nigeria, Journal of Law, Policy and Globalization www.iiste.org, 2017, Vol.65,p.24

¹¹³ Supra note no. 107, p.417

¹¹⁴ Umar Abubakar Dubagari, The Rule of Law and Electoral Process in Nigeria: A Critical Reflection, G.J.I.S.S., November-December, 2017, Vol.6, No.6,p.5

¹¹⁵ Sec 228(c) of the Constitution of Nigeria

¹¹⁶ Ibid sec 2225-226. See also Konrad-Adenauer-Stiftung, Legal Framework For Political Parties In Selected Countries Of Sub-Saharan Africa, Arne Wulff(ed.), 2017, p.19

a detailed annual statement and analysis of its sources of funds and other assets together with a similar statement of its expenditure in such form as the commission may require.

2.4.2.3. Kenya

In Kenya, the 2010 Constitution is the primary legal document that regulates political parties.¹¹⁷ Kenya is multi-party democratic state that replaces single party rule that dates back to independence.¹¹⁸ This Constitution also establishes the fact that Kenya exercises a democratic republic form of government with a multi-party system¹¹⁹ founded on the national values and principle of governance.¹²⁰ In this regard, it represents a radical departure from the earlier Constitutions.¹²¹ This is the most important achievement of the new constitutional system in Kenya. The proper implementation of this Constitution is said to determine the future of Kenya.¹²²

With respect to political parties, the 2010 Constitution Kenya devotes part three of chapter seven to the matter dealing with political parties by which it set forth some basic aspect of political parties. Like the 1999 Constitution of Nigeria, it requires every political party to have a national character and democratically elected governing body. It also obliges them to promote and uphold national unity, abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party. It also requires them to respect the right of all persons to participate in the

¹¹⁷ As per section 2 the constitution is supreme law of the land. There are however other laws that affects the operation of political parties in one way or another. These include the Elections Act, 2011; the Election Offences Act, 2016, the Election Campaign Financing Act, 2013, the National Cohesion and Integration Act, 2008 and the Independent Electoral and Boundaries Commission Act, 2011.

¹¹⁸ Martin van Vliet, et.al Constitutional Reform Processes and Political Parties: Principles for Practice, Netherlands Institute for Multiparty Democracy, The African Studies Centre, P.28

¹¹⁹ See art 4(2) of the 2010 Constitution of Kenya

¹²⁰ These values and principles of governance include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized, good governance, integrity, transparency and accountability, and sustainable development. Ibid art 10(2) of the Constitution. See also Birhanu, H. And Kebu, Z., Inter-Federal-Regional Conflict Resolution Mechanisms in Ethiopian Federacy: A Comparative Appraisal on the Legal and Institutional Frameworks. Beijing Law Review, 2019, Vol.10, <https://doi.org/10.4236/blr.2019.105074>, p. 1382

¹²¹ Yash pal Ghai, Constitutions and constitutionalism: the fate of the 2010 Constitution in Kenya: the struggle for a new constitutional order Godwin R. Murunga, Duncan Okello and Anders Sjögren(eds.),p119

¹²² Kempe Ronald Hope, Bringing in the Future in Kenya: Beyond the 2010 Constitution, Insight on Africa , 2015, Vol.7, No.2, pp.91–107, African Studies Association of India, [www.http://ioa.sagepub.com](http://ioa.sagepub.com), See also Cornelia Glinz ,Kenya's New Constitution: a Transforming Document or Less than Meets the Eye?, Law and Politics in Africa, Asia and Latin America , 2011, Vol. 44, No. 1, pp.60-80

political process. Political parties in Kenya are also required to respect and promote human rights and fundamental freedoms, and gender equality and equity, promote the objects and principles of the Constitution and the rule of law.¹²³ This indicates the indispensability of political parties as the institution of governance like other organs of state.

It moreover prohibits certain behavior of political parties. This is with the view to avoid undemocratic behavior political parties. These include the banning of political parties founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis, engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person, establish or maintain a paramilitary force, militia or similar organization, and engage in bribery or other forms of corruption. It is also provided that other than the manner provided by the Constitution or Act of Parliament, political parties are prevented from accepting or using public resources to promote its interests or its candidates in elections. The above discussion reveals that the Constitution is intended to ensure democratic nature political parties on the one hand and safeguarding the democratic nature of the state from undemocratic behavior political parties on the other hand.

The Constitution empowers the Parliament to enact legislation to regulate key aspects of political parties.¹²⁴ It limits this legislative power in two ways. In the first place, it requires all organs state including legislature to be guided by the national values and principles of governance in enacting laws on political parties.¹²⁵ Secondly, the Constitution defines the contents of legislation on political parties. These two requirements limit the margin of legislative power. Generally, the 2010 Constitution of Kenya has brought a new paradigm with respect to the management and administration of political parties. Though it leaves the detail to be regulated by parliamentary legislation, the Constitution lays the foundational framework of political parties.

¹²³ Section 91 of Kenya Constitution

¹²⁴ Ibid

¹²⁵ Ibid

2.5. Concluding Remarks

Though there existed substantial debates regarding the regulation of political parties for various competing reasons, it is now settled matter that regulation of political parties has got wide acceptance not only for the protection of the overall political system from undemocratic behavior of political parties but also for the protection of parties themselves. Not only the regulation of political parties shown variations, but whether to regulate the activities and behavior of political parties by national Constitution or ordinary legislations has also shown variations. Constitutional regulation of political parties is different from the legal regulation of political parties on the ground that national Constitution is highest law of the land on the one hand and relatively stringent to amend than ordinary legislations on the other hand. Being supreme law of the land, it gives legitimacy for all norms including the activities and roles of political parties. It, moreover, serves as a point of reference for all actors involved in the regulatory process. On the other hand, as it is relatively rigid to amend as than to ordinary legislations, it gives greater sense protection for opposition parties than they would have if they are regulated by ordinary legislations. Influenced by these normative consequences, constitutional regulation of political parties has become defining element of modern representative democracies. No matter when constitutional governance of political parties begun, national Constitution is now serving as source of party law. As noted above, the 1949 BLG, the 1999 and the 2010 Constitutions of Nigeria and Kenya are among notable constitutional regimes that incorporate basic requirements of political parties to varying degree comprehensiveness. They incorporate various basic requirements of political parties separately from ordinary associations. This implies the extent to which political parties are important constitutional institutions than ordinary associations to shape and influence political landscape. While this is the summary of the chapter, the next chapter examines constitutional regulation of political parties in Ethiopia.

CHAPTER THREE

Constitutional Regulation of Political Parties in Ethiopia

3.1.Introduction

Any discussion on the constitutional regulation of political parties in Ethiopia should begin with the constitutional history of Political parties of the country. The discussion on the constitutional history of political parties, on the one hand, facilitates an attempt to have wider understanding on the constitutional history of political parties in Ethiopia. On the other hand, it makes an attempt to determine whether there is a change or continuity with respect to the constitutional regulation of political parties under various constitutional regimes of Ethiopia as simple as possible. Therefore, it is necessary to begin the examination on the constitutional regulation of political parties in Ethiopia with brief discussion on the constitutional history of political parties under the previous constitutional regimes of Ethiopia.

3.2.Constitutional History of Political Parties in Ethiopia

3.2.1.The 1931 and 1955 Constitutions of the Emperor

Both the 1931 and 1955 Constitutions of the Emperor refrained from mentioning political parties. They do not have significant relevance for the protection and regulation of political parties as the trinity of the monarchy along with church and state was not only how power was seized but also sustained and whereby the formation of political parties were neither imagined nor allowed.¹²⁶ Though they significantly vary in terms of content and structure, in their essence, both of them pursued, among others, the strategy of consolidating the absolute power of the Emperor¹²⁷ that has already been established by Ethiopian Orthodox Church and the age-old tradition. They denied the free flow of political dissent and were not tolerated even a single governing party as these would represent a source of power independent of the throne.¹²⁸

¹²⁶Gudina, Merera, Party Politics, Political Polarization and the Future of Ethiopian Democracy, International Conference on African Development Archives. Paper 108, 2007, p.5

¹²⁷Aberra Degefa, Birth-Defects of a Constitution and Its Impacts on Outcome: Reflection On Ethiopian Constitutionmaking Experience, Oromia Law Journal, 2019, Vol.8, No.1, P.9

¹²⁸ Christopher Clapham, Ethiopian Development: The Politics of Emulation, Commonwealth & Comparative Politics, 2006, Vol.44, No.1, p.113

There was also a strong fear that allowing political parties to form in their accord thought to imperil the unity of the country.¹²⁹ If they were allowed to do so, the argument went, they would do so along regional or tribal lines that was known for most African countries. In all African countries, most parties tended to be based on tribal affiliations rather than on over-arching interests such as economic matters or political philosophies.¹³⁰ This in effect was thought to be detrimental to the then conception of national unity.

The absence of the historical factors that gave rise to the emergence of African political parties is another explanation for the absence political parties from Constitutions of the Emperor. Most African political parties were born out of the colonial situation.¹³¹ Unlike African countries, Ethiopia has not been colonized except for a brief period from 1936-41 as a result which people did not have any significant experience in forming political coalitions to agitate against colonialism, unlike most of Africa.¹³² It is moreover asserted that the then political parties that existed elsewhere in independent Africa were not as effective or beneficial as to urge their duplication in Ethiopia.¹³³

3.2.2.The 1987 Constitution of the Derg Regime

The 1987 Constitution otherwise known as the Constitution of the Peoples Democratic Republic of Ethiopia (PDRE) was first Constitution that declared the country a “Republic.”¹³⁴ It also sanctioned a constitutionally elected civilian government.¹³⁵ Unlike the previous constitutional regimes, it contains wide range of civil and political rights including the right to freedom of association.¹³⁶ However, the right to form political

¹²⁹Minasse Haile, Comparing Human Rights in Two Ethiopian Constitutions: The Emperor's and The “Republic's”*Cucullus Non Facit Monachum*

¹³⁰ Christopher Clapham, Haile-Selassie's Government, Fredrick A. Praeger (ed.), 1969, Vol.153, cited in *ibid*

¹³¹ Robert L. Hess and Gerhard Loewenberg, The Ethiopian No-Party State: A Note on the Functions of Political Parties in Developing States, *The American Political Science Review* , Dec., 1964, Vol. 58, No. 4, pp. 947-948

¹³²Haggai Erlich, Ethiopia and the Challenge of Independence, Lynne Rienner Publishers, 1986, Vol. 16 cited in *supra* note no. 129

¹³³ *supra* note no 129

¹³⁴ *Supra* note no. 12, p.10. See also Kassahun Berhanu, Party Politics and Political Culture in Ethiopia in MA Mohamed Salih (ed), African Political Parties Evolution, Institutionalization and Governance, 2003, Pluto Press 2003, p. 117

¹³⁵ Kassahun Berhanu, Party Politics and Political Culture in Ethiopia in MA Mohamed Salih (ed), African Political Parties Evolution, Institutionalization and Governance Pluto Press, 2003, p. 117.

¹³⁶ Art 47 of the 1987 PDRE the Constitution

association remained an illusion as it recognized single party system i.e. WPE.¹³⁷ It, rather, made the country a single party state. As such, political associations and political parties other than the WPE were made impracticable.¹³⁸ This is due to the dictatorial tendency of the regime. Various political parties were banned and their member and leaders were prosecuted and executed under the campaign of “Red Terror.”¹³⁹ The hope that the revolutionary process would facilitate conditions for the proliferation of legally sanctioned organized political life under the auspices of political parties was, thus, dashed.¹⁴⁰

3.2.3.The Transitional Charter

The concept of party system in general and multiparty in particular has formally been introduced in Ethiopia by the Transitional Period Charter (TPC) which was serving as an interim supreme law of the land.¹⁴¹ It provided for the respect for human and democratic rights and freedoms based on the UDHR.¹⁴² It recognized freedom of conscience, expression, and association. More particularly, it guaranteed the right to unrestricted political participation and the formation of political parties.¹⁴³ The Charter gave official recognition to the formation and operation of political parties. It established a favourable legal ground for the proliferation of political parties with varying orientations and aspirations.¹⁴⁴ As compared to previous constitutional regimes, it went certain steps while it formally recognizes the formation and operation of political parties as the expression of multi-party system. Accordingly, it created institutional space for a number of political parties to proliferate in Ethiopia. Interestingly, other than formal recognition for the formation of political parties, the Charter has no provision that regulates other behavior of political parties including criteria for the formation of political parties, rights and duties of political parties. This is despite the fact that the Charter was the only supreme law of the land of the time.

¹³⁷ Ibid art 6

¹³⁸ Supra note no. 17, p.374

¹³⁹ Marshet Tadesse Tessema, Prosecution of Politicide in Ethiopia: the Red Terror Trials, (ASSER PRESS,2018)

¹⁴⁰ Supra note no. 135, p.117.

¹⁴¹ Supra note no 15

¹⁴² Ibid art 1

¹⁴³ Ibid

¹⁴⁴ Supra note no. 135, p. 119

3.3. The Place of Political parties in the FDRE Constitution

The FDRE Constitution establishes parliamentary form of government in which a party or coalition of part having greatest seat in the parliament forms the government and leads it.¹⁴⁵ This provision defines the roles of political parties in terms of forming the government. The Constitution, moreover, mention the name “political parties and political organization” here and there.¹⁴⁶ The notion of multi-party politics having been rooted under the TPC continued to be the fundamental feature of the FDRE Constitution.¹⁴⁷ It also incorporates key democratic principles such as the right to freedom expression, the right peaceful demonstration and assembly as well as the right to freedom of association and the right to vote and to be elected.¹⁴⁸ Political parties are institutional device for exercise of these rights. Individuals may form or join political parties to exercise these rights. The sovereign power given to the Nation, Nationality and Peoples (NNP) in one way or another shows the existence of political parties¹⁴⁹ as it gives the chance to freely organize themselves in political party of their choice. All these provisions of the Constitution show the instrumentality of political parties for the expression of political pluralism and participation. However, they do not consist of sufficient rules on political parties. The FDRE Constitution pays little attention to the political parties. It does not recognize the rights and responsibilities as well as the roles of political parties.

Art 31 and 38(2&3) of the Constitution are the only provisions of the Constitution that are relevant to regulate both the internal and external behavior political parties in Ethiopia. These provisions, nevertheless, are not meant to govern political parties rather they are meant to regulate all forms of associations. This imply that it considers political parties as ordinary associations than as unique associations which assume a public role.¹⁵⁰ However, both the existing literatures and the practice of the BLG, and Constitutions of Nigeria and Kenya indicate that political parties are not mere private association arising out of civil

¹⁴⁵ Art56 and 73(2) of the FDRE Constitution

¹⁴⁶ Art 9(2), 51(15), and 60

¹⁴⁷ Supra note no. 17, pp.374-375

¹⁴⁸ Art 31 and 38 of the FDRE Constitution

¹⁴⁹ Ibid, art 8

¹⁵⁰ Teguadda Alebachew Sete, Intra Party Democracy in Ethiopia: Towards a Regulatory Regime, *Haramaya Law REVIEW*, 2018, Vol.7, p.34

societies rather association having significant public in modern representative democracy both in terms of consolidating and threatening democratization process. Art 102 is another provision of the Constitution that is relevant to the management of the operation and function of political parties in Ethiopia. It establishes independent National Electoral Board of Ethiopia (NEBE) with the power to conduct, in impartial manner, free and fair election infederal and State constituencies. However, this provision has no sufficient rules on how to ensure the independence and impartiality of the Board in the way it discharges its constitutional duty in impartial manner and free of any of influence whereby electoral field would be free and fair.

Art 51(15) is also another relevant constitutional provision on political parties in Ethiopia. This provision grants exclusive power to the federal parliament to enact law on political parties and elections.¹⁵¹ The problem of this provision is that, unlike the Constitutions of Nigeria and Kenya, neither requires the HPR be guided by the constitutional principles in enacting law on political parties nor it define the content of law of political parties. it is not clear with respect to what matters are to be incorporated or not in the law on political parties. This in effects gives an opportunity a party dominating the parliament to come up with the content of law that favors their partisan interest. This is particularly true in the countries like Ethiopia where parliament is dominated by single party due to the first-past-the-post electoral system (FPTP). The Constitutions of Nigeria and Kenya, for example, provide for wide array of factors that guides the enactment parliamentary legislation on political parties. They also require legislative organs to be guided by principles of constitutional governance in enacting law regulating political parties. This in consequence, narrows the margin of legislative power of parliament in enacting law on political parties. This would also make any attempt to challenge the constitutionality of this law and to rules on the same much easier. This would not only reduce post-election disputes, but also increases the likelihood of fair electoral process and outcome.¹⁵²

All in all, as compared to the BLG, Constitutions of Nigeria and Kenya, the FDRE Constitution does not contain sufficient rules on the rights, responsibilities and roles of

¹⁵¹ art 51(15) of the FDRE Constitution

¹⁵² Supra note no. 30, pp.43-44

political parties. It left parties and their extraordinary roles in political processes unaddressed. This gives the impression that that the framers of the Constitution did not intend to consider the creation and participation of political parties as also being in the interest of the formation of the political will of the society. Accordingly, the constitution lacks a provision guiding the specific internal and external activities of political parties.¹⁵³

3.4.Review on the Implications of Parties None-Constitutionalization in Ethiopia

The importance of the constitutional regulation of political parties would be gleaned in its fullest level not only from its possible justification but also from any problems arising out of none-constitutionalization of the same. Therefore, not to replicate any justifications for the constitutional regulation of political parties, this subsection only considers the problems that arising out of the none-constitutionalization of party's behavior. It is important to note that it does not mean that the following problems necessarily arise out of the absence of constitutional rules on political parties. In otherword, the absence of constitutional rules on political parties alone do not avoid all the problems. However, the existence of constitutional rules on political parties along with the commitments of all actors involved the regulatory process would undoubtedly has significant contribution in ensuring the level of political playing field.

No matter one can mention a number of problems of none-constitutionalization of political parties, any challenges arising out of weak regulatory framework of the parties can broadly be seen from two perspective i.e. from the perspective of the ruling political party on the one hand and opposing political parties¹⁵⁴ on the other hand. From the former's perspective, non-constitutionalization of political parties lends a ruling party a wide opportunity to manipulate the whole political process in various ways. This ultimately leads to the emergence dominant party, transformation of electoral process from competition to

¹⁵³ Teguada Alebachew, Regulation of Intra-Party Democracy in Ethiopia: A Review of the Constitution and Party Laws in Sonja John, Dagnachew Assefa and Busha Taa(eds), Cultures of Democracy in Ethiopia: From Theory to Lived Experiences, Friedrich-Ebert-Stiftung Ethiopia, 2017 p. 39

¹⁵⁴ Opposing parties in this context refers to only legally registered political parties to compete for national election

mere participation, and other abuses.¹⁵⁵ Seen from the latter, it gives rise to various corrupt behavior of political parties.

3.4.1.From the Perspective of the Ruling Party

3.4.1.1.Funding of political parties

Money is essential to the operation of any democracy.¹⁵⁶ It is important resource for political parties to operate in very meaningful ways mainly by organising their campaigns, disseminating their alternative visions and policies and expanding the number of their voters.¹⁵⁷ However, disproportionate access to finance of political parties potentially distorts democratic process whereby effective regulatory framework is required.¹⁵⁸

In Ethiopia, it is noted above that the FDRE Constitution barely addresses the basic requirement of political parties including funding of political parties. There is no constitutional rule on political finance of political parties. Previously, funding of political parties are regulated under electoral laws and political parties' related laws.¹⁵⁹ Just as it was before, currently, funding of political parties in Ethiopia is regulated under a new Proclamation that consolidates all legislations that previously regulated some aspects of political party finances.¹⁶⁰ The proclamation introduces public funding and private funding of political parties as the source of parties finance in Ethiopia.¹⁶¹ With respect to public funding of political parties, it is provided that the distribution of government grant for political parties should be made on equitable basis and without discrimination.¹⁶² The amount of money to be allotted for political parties on these principles is to be determined by directive to be issued by the National Electoral Board of Ethiopia (NEBE). However, no directive to regulate funding as required by law is issued. In doing so, the Board is required

¹⁵⁵Supra note no 13, pp. 12-18

¹⁵⁶ Anthony Butler, Paying for Politics Party funding and political change in South Africa and the global South, Jacana Media and Konrad Adenauer Foundation, 2010, p.1

¹⁵⁷ Ibid p. 1

¹⁵⁸ Ingrid van Biezen, Financing political parties and election campaigns guidelines, Integrated project, Making democratic institutions work, Council of Europe Publishing, 2003

¹⁵⁹ Zelalem Degife, Party-Political Financing, Democracy, and Constitutionalism in Ethiopia (1991-2018) in Charles M. Formad and Nico Styler (eds.) Democracy, Election and Constitutionalism in Africa, Oxford University Press, 2021, pp. 324-361. See also Gebremeskel Hailu, THE FUNDING OF POLITICAL PARTIES IN ETHIOPIA: A REVIEW OF PROBLEMS, Oromia Law Journal, 2019, Vol.8, No.1, pp.23-50

¹⁶⁰ supra note no.19, art 100-113

¹⁶¹ Ibid Art 100 and 108

¹⁶² Ibid Art 102(2)

to take some criteria into account. These criteria are the number of votes a political party wins at Federal and State Council elections, the income it receives from members and supporters, the number of female and person with disability candidates party nominates, number of female and persons with disability members and leaders.¹⁶³

The number of votes a political party wins at Federal and State Council elections is one of the criteria to obtain funding of political parties. This eligibility criterion presupposes participation in previous elections. This criteria, however, is excluded from the eligibility criteria for public funding of political parties for the 2021 general election on the ground that the existing parliament was unfairly formed.¹⁶⁴ Though this is good move to give all political parties a chance to participate in the election irrespective of their participation in previous election, this kind of discriminatory criteria would not have to be adopted from the outset. Because, it excludes both newly formed political parties and political parties that have substantial votes but don't have seat in parliament due to FPTP electoral system where the candidate with most votes wins the seat irrespective of how many candidates and how small the winning margin.¹⁶⁵ When such formulas are introduced, they are only meant to reinforce the already existing dominance.¹⁶⁶

Another eligibility criterion requires political parties to recruit, nominate, and appoint more women and persons with disabilities as a member, candidates and leadership position.¹⁶⁷ In the Ethiopian context where various socio-economic and cultural as well as institutional barriers inhibit political participation of women¹⁶⁸ and people with disabilities,¹⁶⁹

¹⁶³ Ibid art 100(2)

¹⁶⁴ Ibid 161(1)

¹⁶⁵ Art 54(2) of the FDRE Constitution. Newton K., Deth J. Foundations of Comparative Politics: Democracies the Modern World, Second ed ,2010,UK: Cambridge University Press,. P.248. For more discussion on the effects of the FPTP electoral system on the parliamentary representation of opposing parties in Ethiopia, see Gebremeskel Hailu Tesfay, Reforming the Ethiopian Electoral System: Looking for the Best Alternative, Oromia Law Journal,2017, Vol 6, No. 1

¹⁶⁶ Kenneth F. Greene, Party finance and single-party dominance in Mexico and beyond in Paying for Politics Party funding and political change in South Africa and the global South, Anthony Butler(ed), Ultra Litho, 2010, p.27

¹⁶⁷ Supra note no. 19, art 100(2 b and c)

¹⁶⁸ Richards, R., Barriers to women and girls' meaningful participation in electoral processes in Ethiopia policy responses, K4D Helpdesk Report. Brighton, UK: Institute of Development Studies, 2020. See Kassa S, Challenges and Opportunities of Women Political Participation in Ethiopia, 2015, J Glob Econ 3: 162. doi:[10.4172/2375-4389.1000162](https://doi.org/10.4172/2375-4389.1000162)

¹⁶⁹ Sirak Akalu Iyassu and Fiona McKinnon, Disability Rights are Human Rights: Pushing Ethiopia Towards a Rights-based Movement, NW. J. HUM. RTS, 2021, Vol.51

facilitating the political participation of these groups is difficult for opposition political parties since empowering them is resource demanding and it is difficult for most opposition parties specially newly established political parties to afford. The recruitment, nomination, and appointment of women and persons with disability are supposed to be easily implemented by ruling party owing to its dominant position. Therefore, taking such kind of discriminatory eligibility criteria, into account is unreasonable.

The existing funding scheme makes the Prosperity Party (PP) the largest recipient of public funding and gives a financial advantage over other political parties. This in effect perpetuates the uneven playing field for political competition. In short, the public funding scheme simply reinforces existing inequality and fails to level the playing field for engaging in fair political competition.¹⁷⁰ This is despite the fact that the proclamation requires the government grant for political parties to be made equitably and without discrimination. Such kind of eligibility criteria for public fund of political parties clearly sustains the dominant position the ruling party. As such, the existing eligibility criteria are such that not all political parties are treated equally. Lack of provision of the Constitution dealing with the public funding of political parties gives the ruling party to manipulate the matter through ordinary legislations in the way it helps to reinforce its dominant position.¹⁷¹

The proclamation also establishes details rules on the private funding political parties. Accordingly, political parties can draw fund from membership dues, subsidies and grants from the government, and donations from supportive domestic sources.¹⁷² These are the main traditional sources of internal party financing.¹⁷³ As just as it was the case before, the proclamation prohibits political parties from resorting to bulky sources.¹⁷⁴ The prohibited sources include accepting gift or donation from foreign national institutions or corporations and foreign governments or foreign political party as well as welfare organizations or non-governmental organizations. It also prohibits donation from religious organizations, prisoners servicing sentence and an organized group or person planning to assume state

¹⁷⁰ Supra note no. 159, p. 337

¹⁷¹ Supra note no.6, p.12

¹⁷² art 108(1ab) of the proclamation

¹⁷³ Supra note no. 158, p.17

¹⁷⁴ Art 109(1) states that where a political party in any way receives a gift or donation prohibited under Sub-Article (1) of this Article, the party shall return the donation or grant to the Board together with related information within 21 days from the date it received the donation or grant.

power outside the provisions under the Constitution. Moreover, donation or gift from organization designated as a terrorist, unknown sources, government developmental organizations and anybody or person hoping to execute future objective or envisages to execute future object is outlawed.¹⁷⁵ However, just as previous proclamation, the new proclamation does not put ceiling limit on election expenditure by the political parties though there are disclosure requirements for any fund received from the lawful sources. However, the proclamation seems to put maximum limit on the amount of donations given to political parties as determined by the study NEBE conducts.¹⁷⁶ The absence of clear rules on a spending limit results in unlimited political expenditure and increasing disparity in resources between the ruling party and opposing parties. Therefore, it is argued that there is no substantial change with regard to the practice of private funding of political parties.¹⁷⁷

3.4.1.2. Abuse of State Resources by the Ruling Party

In reference to African countries, it is observed that abuse of state resources by incumbent is a key problem in political finance.¹⁷⁸ This is particularly true in an emerging African democracy because of blurred distinction between the state and the ruling party.¹⁷⁹ The problem is moreover noticeable in case when there are no regulatory frameworks that separate the party and the state. The absence of regulatory frameworks that separate party and state elevates a chance for ruling parties' to take the advantage of its incumbency to use state resources to win the election.¹⁸⁰ In any democracies ruling parties use their incumbency to increase their chances of (re)election by abusing state resources. Incumbent parties are in a better position than opponent parties to access state resources no matter the electoral law prohibits abuse of state resources for political purpose.

¹⁷⁵ Ibid art 109

¹⁷⁶ Ibid art109(1b)

¹⁷⁷ Supra note no. 159, pp.342-345

¹⁷⁸ Magnus Ohman, Introduction to Political Finance, Funding of Political Parties and Election Campaigns: A Handbook on Political Finance, Elin Falguera, Samuel Jones and Magnus Ohman(eds), International Institute for Democracy and Electoral Assistance, 2014,p.40

¹⁷⁹ Wondwosen Teshome B, Political Finance in Africa: Ethiopia as a Case Study, World Academy of Science, Engineering and Technology International Journal of Social, Behavioral, Educational, Economic, Business and Industrial Engineering, 2009, Vol:3, No.7

¹⁸⁰ CDD-Ghana (Ghana Center for Democratic Development) (March 2005): Financing political Parties in Ghana: Policy Guidelines, p. 1

This creates unbalanced playing field that damages democracy significantly.¹⁸¹ It is suggested that the abuse of state resources by incumbent can be prevented by either explicitly prohibiting the use of state resources for electioneering activities or making generally state resources accessible to all political parties during the campaign period in case when the former mechanism fails.¹⁸²

The use of public resources to promote political interests or candidates in elections are clearly prohibited under the Constitution of Kenya except as is provided by the Constitution or by an Act of Parliament.¹⁸³ In Ethiopia, however, the use of public resource for political interest is prohibited under the electoral proclamation and not under the Constitution. Unlike the Constitution of Kenya, the FDRE Constitution does not contain a provision that prohibits the use of public resources to promote political interest. The electoral proclamation prohibits the use of federal, regional, municipal or other public resources for campaign purposes within the context of “abuse of power”.¹⁸⁴

The trend of abuse of state resource is found to be continued still under the ruling of PP.¹⁸⁵ It is indicated that as usual as before, the incumbent PP abuses state resources in many ways.¹⁸⁶ More particularly, it is indicated that the ruling party has been significantly using public resources during the campaign for the general election from kebele to federal level.¹⁸⁷

The other problem with regard to abuse of state resource is the inauguration of public infrastructure and investment projects during the campaign “silence period.” Some government officials running as candidates inaugurated or visited projects during the campaign silence period throughout the country. Many of these events occurred frequently in the final stage of the campaign. The legal framework does not explicitly prohibit the

¹⁸¹ Bruno Speck Alessandra Fontana, *Milking the system :Fighting the abuse of public resources for re-election*, U4 Issue February 2011 No 7, p. V

¹⁸² *Ibid* pp.10-11

¹⁸³Section 91(e) of the Constitution says except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.

¹⁸⁴ *Supra* note no. 19, art 135

¹⁸⁵Henrik Bratt, *Uneven Playing Field: Understanding Abiy Ahmed Manipulation of Democracy in Ethiopia*, Uppsala University, 2019/2020

¹⁸⁶ *Supra* note no. 159,p.347

¹⁸⁷ International Republican Institute (IRI) and National Democratic Institute (NDI), *Ethiopia June 21, 2021 National Elections Report*, June 2021, p. 15

inauguration or announcement of major public infrastructure and investment projects during the campaign. The line between promoting government activities and campaigning is not easily discerned.¹⁸⁸ This creates a significant gap between the resources and capacities of the ruling and opposition parties. The absence of regulatory framework that separate state and party in general and demarcating the line between promoting government activities and campaigning specially during the last weekend of the campaign period are mentioned as important problem of abuse of public resources by ruling party. This provides the incumbent party with an unfair advantage in the campaign and blurs the already non-existing distinction between the state and the ruling party.

3.4.1.3. Political Repression by Government

Political repression includes arbitrary arrest and detention, harassment and torture of the leader, members and supporter of opposing parties as well as perceived dissenters. For example, the Constitution of Nigeria and Kenya prohibit various forms of violence and intimidation.¹⁸⁹ The FDRE Constitution does not prohibit the ruling political party from using intimidation and harassment against opposing parties and their member. The electoral proclamation, however, clearly prohibits using position of power, special opportunity or influencing ability to further its political interest.¹⁹⁰ Accordingly, using governmental power, police, local armed militia as well as military to promote political interest are prohibited.

Despite this prohibition, it is identified that, though there is relative improvement in terms of competition, the ruling party has been using significant intimidation, violence and harassment. International Republican Institute (IRI) and National Democratic Institute (IRI-NDI), in their joint report, based on the report they collected from the reports and complaints of political parties, press conferences, and reports from Civil Societies Organizations (CSO) observed that the 2021 general election was held amidst harassment, intimidation, coercion, administrative delays, undue arrest and detention, unwarranted home searches, physical assault, assassination attempts, and murder targeting of opposition

¹⁸⁸ Ibid

¹⁸⁹ Section 227 constitution of Nigeria and 91(b) of the Constitution of Kenya respectively

¹⁹⁰ Supra note no 19, art 135 (1a). A position of power, special opportunity or influencing ability are defined to include parental, familial, governmental, police, local armed militia as well as military, traditional or customary authority

party candidates, agents, members, supporters and family members, voters, and election officials.¹⁹¹ The report concludes that the violence during the electoral process “raises concerns about the integrity of the process.”¹⁹² This kind of political repression by the incumbent is mainly because of the failure of the system to provide a level playing field for all political contestants.¹⁹³

3.4.1.4. The Rise of Single party Domination

It is needless to mention that single party dominance refers to when one political party powerfully control the overall electoral process and its defeat in election is unlikely foreseen.¹⁹⁴ In genuine pluralism, parties should compete with unpredictable outcome. Nevertheless, in party dominance, the possibility of power alteration is less predictable and is unforeseen. Dominance party system is distinguished from other party system by the fact that the overall political process is monopolized by a single party. Because of defective regulatory framework, it has often been easy for ruling parties to exploit its incumbency to elevate its chance of winning the election.¹⁹⁵

The FDRE Constitution establishes multiparty systems where several political parties with varying orientations and programs are allowed to operate. Previously, since EPDRF dominated the whole political space for the last more than two decades, the idea of multiparty system remained mere constitutional promise. Various pieces of evidence show that following its assumption of power in 1991, EPDRF is a single ruling political party, with no opportunity for opposition to win the office. It has successfully monopolized the political space and kept the opposition parties out the meaning-full political participation. This is supported by successive election result that the EPDRF won in all previous elections. The EPDRF has disproportionately controlled federal parliament.¹⁹⁶ The

¹⁹¹ Supra note no. 187, p. 16

¹⁹² Ibid

¹⁹³ Gudeta Kebede Asfaw and Alemu Kassa Reta, Ethiopian opposition political parties in the post-1991 political structure , International Journal of Current Research, January 2014, Vol. 6, Issue, 01, p.4790

¹⁹⁴ Raymond Suttner, Party Dominance ‘Theory’: Of What Value?, Politikon, December 2006, Vol.33, No.3 pp.277–297

¹⁹⁵ Supra note no. 13,p.14

¹⁹⁶ Zemelak Ayitenew Ayele, Constitutionalism and Electoral Authoritarianism in Ethiopia: From EPRDF to EPP in Charles M. Formad and Nico Styler (eds), Democracy, Election and Constitutionalism in Africa, Oxford University Press, 2021, pp. 324-361. Also see Adem A. Rule by law in Ethiopia: Rendering

parliamentary form of government along with the FPTP electoral system the Constitution establishes is among the contributing factors to reinforce single party dominance in Ethiopia.¹⁹⁷ Though there is contending views regarding the emergence of EPDRF as dominant party, the dominant position of the EPDRF is uncontested.¹⁹⁸

At this juncture is important to examine whether or not single party dominance has gone since the 2018 reform. A number of reforms have taken place to widen political space and to ensure that the Sixth national election would be free and fair in which all parties are given chance to compete. More specifically, the reforms of the NEBE and electoral law had given a real hope that the single party domination EPDRF that is lasted for more than two decades would be replaced by multi-party system. However, it is frequently reported that the single party dominance is rather re-emerging. It is, thus, argued that like that of the EPDRF, the level of democratic competition and accommodation is not inclusive.¹⁹⁹ Stated otherwise, opposition parties are progressively excluded from many of the deals and lost some of its earlier importance as an arena of accommodation.²⁰⁰ Like that of the EPDRF, the overwhelming result with which PP has won in the 2021 general election supports this claim. Out of the confirmed 436 seats contested 410 seats at the federal parliament.²⁰¹ This indicates that the parliament of Ethiopian is controlled by the PP as disproportionately as it was before. As such, one can conclude that the incumbent is nothing but the remnant authoritarianism.²⁰² This type of the phenomenon of single party domination is argued to be the outcome of defective regulatory framework.²⁰³

Constitutional Limits on Government Power Nonsensical. CGHR Working Paper 1. Cambridge: University of Cambridge Centre of Governance and Human Rights; 2012, p. 12

¹⁹⁷ Bayeh E. Single-party Dominance In Ethiopia: FPTP Electoral System And Parliamentary Government System As Contributing Factor, RUDN Journal of Political Science, 2018, Vol. 20 , No. 4, pp. 506-515

¹⁹⁸ Kassahun Berhanu, Parliament and Dominant Party System in Ethiopia in M.A. Mohamed Salih (ed), African Parliaments Between Governance and Government, Palgrave Macmillan, 2005, p. 176

¹⁹⁹ Ayenew Birhanu Worku, The Roles of Political Parties and Their Challenges in Political Transition: The Case of Ethiopia, Pan-African Journal of Governance and Development, February 2021, Vol. 2, No. 1, p.11

²⁰⁰ Ibid

²⁰¹ NEBE report

²⁰² Supra note no. 199, p11

²⁰³ Supra note no.13, pp.14-15

3.4.2. From the Perspective of Opposition Parties

It is argued that authoritarian incumbents emerge not only due to their strength but the “ineptitude” of their opponents.²⁰⁴ This holds true in Ethiopian political context where the dominance of the incumbent is partly due to the weakness opposing parties. A number of factors may contribute to the weakness opposition parties which are endogenous and exogenous to them.²⁰⁵ External factors, as we have seen above, directly or indirectly come from the ruling party, whereas internal factors in one way or another rise from the weakness of opposing parties themselves. The ability of opposing parties to meaningfully challenge the manipulation of the incumbent parties largely depends on the degree to which they are institutionalized. The level democracy exists within party on the one hand and among parties on the other hand as well as alternative policy choice they offer to the voters determines the extent to which they are institutionalized. In other words, the more they are institutionalized, the more they can benefit the system and can be benefited from the system.²⁰⁶ Seen from this perspective, Ethiopia opposition political parties are frequently accused of as if they are not well institutionalized.

3.4.2.1. Intra-party democracy

Intra-party democracy (IDP) is understood as how political parties subscribe and adhere to democratic principles in their internal organization and operation.²⁰⁷ It refers to the extent to which a party adheres to and abides by the basic and universal democratic tenets. Ethiopian Political parties (EPP) frequently blamed for the absence of IDP in their internal operation. As just as in emerging African democracies, Ethiopian political parties have a considerable democratic deficit in their internal operation. The absence of internal democracy is mainly associated with the dominance of party leaders, disengagement of

²⁰⁴ Andreas Schedler, Elections Without Democracy: The Menu of Manipulation, *Journal of Democracy*, April 2002, Volume 13, Number 2, p.42

²⁰⁵ Supra note no. 199, 15

²⁰⁶ Supra note no.193, p 4797. See Simeneh Bires Belete. The Politics of Opposition in Post - 2005 Ethiopia: Challenges and Prospects in the Case of National Political Parties. *International and Public Affairs*. 2021, Vol.5, No.1, , pp.31-32

²⁰⁷ Susan Scarrow, Implementing Intra-Party Democracy in Political Parties and Democracy in Theoretical Perspectives, National Democratic Institute for International Affairs (NDI) 2005, p.3, Also see Chris C. Ojukwu and Tope Olaifa, Challenges of Internal Democracy in Nigeria’s Political Parties: The Bane of Intra-Party Conflicts in the People’s Democratic Party of Nigeria, *GLOBAL JOURNAL OF HUMAN SOCIAL SCIENCE*, 2011, Vol.11, No.3, pp.27-28

party members in party decision making and governance, little institutionalization of party functions and weak party organization.²⁰⁸

The absence of intra-party democracy is one of a major problem that leads to fragmentation. Not only fragmentation, it greatly damaged their image and survival.²⁰⁹ The more they lack democracy in their internal operation, the more they would be fragmented. To the extent they are fragmented, they are susceptible to be manipulated by the incumbent. The ruling party deliberately employs a “divide-and rule” tactic to fragment and weaken the opposition parties.²¹⁰ It is identified that opposing parties were unable unite themselves and they had given the incumbent an opportunity to perpetuate its successful domination.²¹¹ EPP are highly fragmented and unable stand in a position where they could challenge the incumbent. Taking the case of some opposing political parties such as Oromo National Congress (ONC), All Ethiopian Unity Party (AEUP), and major opposition coalition i.e. Coalitions for Unity and Democracy (CUD) and United Ethiopian Democratic Front (UEDF), Asefa argued that “the fragmentation of Ethiopian opposition parties is probably unseen anywhere in the world.”²¹² The fact that they are established around dominant personalities contributes significant for the absence of internal democracy of political parties in Ethiopia. As such they waste most of their time fighting each other and are too busy in intra-party power struggle. Moreover, their decision making is highly centralized and they are prone split to should another dissenters challenge the founder or the leader of the party.²¹³ Though all parties claim to adhere to democratic principles as the

²⁰⁸Simeneh Bires Belete, The Politics of Opposition in Post - 2005 Ethiopia: Challenges and Prospects in the Case of National Political Parties. *International and Public Affairs*, 2021,Vol.5,No.1, doi: 10.11648/j.ipa.20210501.16. See also Gebremeskel Hailu T. and Teguadda A. S., The Quest for Constitutionalizing Political Parties in Ethiopia, *Journal of Citizenship and Morality* Vol.2, No.1, January, 2019, p. 49-51. See generally, Teguadda Alebachew Sete, Intra Party Democracy in Ethiopia: Towards a Regulatory Regime, *Haramaya Law REVIEW*, 2018, Vol. 7. See also supra note no.192

²⁰⁹Wondwosen Teshome, Opposition Parties and the Politics of Opposition in Africa: A Critical Analysis, *World Academy of Science, Engineering and Technology*, 2009, Vol.31, p.811

²¹⁰Marc Morjé Howard and Philip G. Roessler, Liberalizing Electoral Outcomes in Competitive Authoritarian Regimes, *American Journal of Political Science* , April 2006, Vol. 50, No. 2, p.371

²¹¹Supra note no.193

²¹² Assefa, F. (2013, August 5), The Endless Cycle of Infighting and Disintegration of Ethiopia’s Opposition Parties. Available on <http://www.tigraonline.com/articles/ethio-opposition-quarrel.html> (Last seen on 9/2/2021)

²¹³ Supra note no.209. p. 811

cornerstone of internal party life, in reality, however, instances of the prevalence of undemocratic practices and violations of internal rules abound.²¹⁴

3.4.2.2.Failure to Produce Alternative Policy Choice

African parties are generally accused of being weak in terms of developing a comprehensive political vision.²¹⁵ The same holds true in the Ethiopian context where opposing parties are frequently criticized for their failure to offer distinct alternative policy option. They are said to be weak in terms of developing a comprehensive policy vision. This is partly associated with the fact that many of them are established on the basis ethnic background. Although they always complained government intimidation and harassment, they themselves are weak and lack clear program.²¹⁶ Hence, opposition political parties are said to be too weak to forward alternative policies and program.²¹⁷ This is a chronic problem of opposition political parties in Ethiopia.

The Constitutions of Nigeria and Kenya requires the programme as well as the aims and objects of a political party to conform to the fundamental objectives and directive principles contained in respective Constitution.²¹⁸ Accordingly, political parties in Nigeria are required to reflect federal character whereas political parties of Kenya are expected to reflect national character. In doing, both Constitutions put initial framework to guide them in the way they would contribute for nation unity and integration.

One cannot find the same rules under the FDRE Constitution. The FDRE Constitution has no regulatory framework on the policy and program of political parties. Even the electoral proclamation is silent with respect to the content of the policy and program of political parties. They are free to come up with policy and program of their choice. One may argue that this emanates from the fact that the FDRE Constitution considers political parties as private association. Though this give them wide latitude to come up with a policy and

²¹⁴Berhanu, K. Ethiopia: Beleaguered Opposition under a Dominant Party System. Addis Ababa, Addis Ababa University, Unpublished,2009, p.7

²¹⁵ Harald Mathisen and Lars Svasand, Funding political parties in emerging African democracies: Whatrole for Norway? Bergen: Chr. Michelsen Institute-Development Studies and Human Rights, 2002, p. 3

²¹⁶ Tronvoll, Kjetil and Vaughan, Sarah, the culture of power in contemporary Ethiopia political power, Sida studies, No.10, p.129

²¹⁷Hailu S, Challenges and Prospects of Democratization Process in Ethiopia. Int. J. Polit. Sci. Develop, 2018, Vol.6, No.1, p. 35

²¹⁸ Sec 244 of the Constitution of Nigeria

program of their choice, it is not advisable to leave them unregulated in a country like Ethiopia where ethnic, language and cultural diversity that serve as building block political parties are abundant. In a country like Ethiopia, where there are ethnically concentrated political parties, leaving the policy and program of political parties unregulated gives them institutional space to craft policy platforms which only appeals to such ethnic groups. Though there is no clear constitutional provision that sanction ethnic based political parties, the fact Ethiopian federal structure is organized on the basis ethno-linguistic criteria gives them a chance to organize themselves along their ethnic background. Moreover, unlike the Constitutions of Nigeria and Kenya, FDRE Constitution does not prohibit the formation of Ethnic based political parties. Both the Constitutions of Nigeria and Kenya prohibit Ethnic based political parties.

In reference to the experience of Nigerian opposition parties, Isakpa argued that opposing parties are, in a credible, robust, articulate, clear and coherent manner, required to offer alternative policy options on how to deal with the challenges that confront the country.²¹⁹ This would hold true in Ethiopian context where opposition parties are criticized for their failure to offer alternative policy option. Therefore, they owe a duty to articulate how and outline how they would do things differently.²²⁰

3.4.2.3. Inter party Relation

Inter-party relation (IPR) simply refers to the way political parties interact with each other. It exclusively deals with relation how political parties work together around issues of common interest. Though number of factors determine to effectiveness of IPR, the existence of effective IPR is crucial in the existence and sustenance of the democratic process.²²¹

Like in many African political parties, EPP are repeatedly blamed for their lack of IPR. They are always busy in criticizing and opposing each other as well as every activities of the incumbent. It is public knowledge that EPP sees each other as enemies and not allies. They suffer from not only absence of IDP in their internal function, but also absence of

²¹⁹ Phillip Isakpa, Opposition must offer credible, alternative policy options, Available on <https://www.naija247news.com>. Last visited on 9/3/2021

²²⁰ Ibid

²²¹ Sonni Gwanle Tyoden, Inter and Intra-Party Relations: Towards a More Stable Party System In Nigeria, The Constitution, 2002, Vol.3, No.1, pp.1-6

IPR. Indeed, it is not logical to expect the one who is not internally democratic to be democratic with other. As a consequence, they are failed to be a viable, cohesive alternative to the ruling party.²²² Similar to that of IDP, the absence IPR not only fragmented opposition parties, but also greatly damaged their image, and frustrated the hopes of millions of people who overwhelmingly voted them.²²³ Accordingly, like many African opposition parties, EEP are unsuccessful in ousting the incumbents in elections.²²⁴ The inability of the opposition political parties to reach formidable alliances and coalitions has only translated to more political capital for the dominant ruling party. In short, there is a trend towards increasing fragmentation.²²⁵ Such kind of fragmentation only reinforces the power of the dominant party.²²⁶

²²² Leonardo R. Arriola and Terrence Lyons, Ethiopia's 100% Election, *Journal of Democracy* January 2016, Volume 27, Number 1 p.78

²²³ *Supra* note no,2007, P.34

²²⁴ Matthias Basedau, Report on the Conference: Survival and Growth of Political Parties in Africa - Challenges and Solutions Towards the Consolidation of African Political Parties in Power and Opposition, Accra; La Palm Royal Beach Hotel, AccrFebruary 27- March 1, 2005, p. 13

²²⁵ *Supra* note no. 199, p.17

²²⁶ *Supra* note no.201, pp.11

CHAPTER FOUR

Conclusion and Implications

4.1. Conclusion

The main thesis of the study was to make a comparative appraisal on the constitutional regulation of political parties in Ethiopia. In doing so, it has provided a context of the existing trends on the regulation of political parties in general and constitutional regulation of political parties in particular. As noted, initially, there existed divergent opinions and practices with regard to the regulation of political parties in general and constitutional regulation of the political parties in particular. Nevertheless, the review of existing literature and comparative appraisal on the Constitutions of Germany, Nigeria, and Kenya reveal that there is an increasing trend of accepting constitutional regulation of political parties from both theoretical and practical perspectives. It is indicated that constitutional regulation of political parties has become the defining elements of emerging constitutional democracies around the globe especially following WW II. Constitutional regulation differs from the legal regulation of political parties on the ground that the former refers to the incorporation of basic requirements of political parties in the national constitution while leaving the detailed requirements to be regulated by ordinary legislation. The latter, however, refers to the regulation of political parties by ordinary legislation. The justifications for the constitutional regulation of political parties as compared to the legal regulation of political parties, among others, include a legitimization of the role and activities of political parties, preventing misuse of power, placing political parties in a more stable position, restricting anti-democratic parties and administrative legal necessity where a constitution serves as a point of reference in case when there is litigation with respect to the behavior of political parties.

Following a general overview on the constitutional regulation of political parties, the study has examined the constitutional regulation of political parties in Ethiopia. To make the discussion as complete as possible, the study devoted some space to the status of political parties under the previous constitutional regimes. It is found that, except for a few provisions under the TC, all the previous Constitutions hardly address political parties. It is only the TC that has formally recognized the right to engage in unrestricted political activities and

the formation of political parties. However, the Charter does not address other basic requirements of political parties.

Coming to the FDRE Constitution, unlike the 1931, 1955 and 1987, it is pretty much similar to that of the TC for it introduces multi-party system whereby various political parties are formally allowed to operate. It moreover incorporates some fundamental political rights that can be defined in terms of political parties. However, it does not contain sufficient rules on the behavior of political parties. There is no provision that separately addresses the behavior of political parties. The existence of political parties under the FDRE Constitution is rather inferred from the general provisions dealing with various democratic rights. This is in contrast to the BLG, and Constitutions of Nigeria and Kenya. These Constitutions devote separate provisions that exclusively deal with the behavior of political parties. In doing so, they show the extent to which political parties are different from ordinary associations in influencing and shaping the political system.

Finally, the paper has made review on some problems arising out of the weak regulatory framework both from the perspectives of the ruling party and opposing parties. From the perspective of the ruling party, problems associated with funding of political parties, abuse of state resources, political repression by the ruling party and rise of dominant parties are identified as the problem resulting from weak regulatory framework. The rise of authoritarian regime partly results from the lack of institutionalization of opposing parties in terms of intra- and inter-party democracy as well as failure to offer distinct alternative policy option. The study found out that Ethiopian opposing parties are accused of lack of intra-party democracy, failure to offer alternative policy option and inter party relation. This empirical review reinforces importance of constitutional regulation of political parties not only from theoretical perspective only but also from practical point of view.

4.2. Implications

It is noted that the study has found that political parties are association that deserve unique treatment which is not available for other ordinary associations but missed from the FDRE Constitution. The study implies that there is a need to have clear constitutional rules on the behavior of political parties. The revision or amendment of the Ethiopian Constitution

should consider including explicit provisions dealing with the right, and duties as well as the roles of political parties.

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