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**ADDIS ABABA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE STUDIES**

**SCHOOL OF LAW**

**FREEDOM OF POLITICAL ASSOCIATION IN ETHIOPIA**

**BY**

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**Addis Ababa, Ethiopia**

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# **FREEDOM OF POLITICAL ASSOCIATION IN ETHIOPIA**

**A Thesis Submitted to School of Law, Addis Ababa University, in  
Partial Fulfillment of the Requirement for the Degree of Master of  
Laws (LL.M in Human Rights Law)**

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**Addis Ababa, Ethiopia**

**May, 2020**

## **Declaration**

I, the undersigned, hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

Declared by: Bersabeh Solomon

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## Acronym

ACHPR-	African Charter on Human and Peoples Rights.
ACHR-	American Convention on Human Rights.
ACRWC-	African Charter on the Right and Welfare of the Child.
CEDAW-	Convention on the Elimination of all forms of Discrimination against Women.
CERD-	International Convention on the Elimination of All Forms of Racial Discrimination.
CMW-	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
CRC-	Convention on the Right of the Child.
CRPD-	Convention on the Right of Persons with Disabilities.
ECHR-	European Convention on Human Rights.
EPRDF-	Ethiopian People's Revolutionary Democratic Front.
EZEMA-	Ethiopian Citizens for Social Justice.
FDRE-	Federal Democratic Republic of Ethiopia.
GC-	General Comment.
ICCPR-	International Convention on Civil and Political Rights.
ICESCR-	International Convention on Economic Social and Cultural Rights.
NEBE-	National Electoral Board of Ethiopia.
OFC-	Oromo Federalist Congress.
PDRE-	People's Democratic Republic of Ethiopia.
UDHR-	Universal Declaration on Human Rights.
WPE-	Workers Party of Ethiopia.

## **Abstract**

*Freedom of association is guaranteed in the FDRE Constitution as well as international human right treaties ratified by Ethiopia. Ethiopia has recently adopted Ethiopian Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation Number 1162/2019 which helps ensure political association. The study is aimed at assessing the Electoral Proclamation in regard to ensuring political association of parties. The analysis revealed that the time set for registration is as per the standard but is not prompt in practice which is against the right to form a political party. The requirement set for minimum member in registration is not extensive considering the population of Ethiopia. For cancelation of political parties there are some reasons that have not been clearly listed which is restrictive as well. But funding is set as per the acceptable standard. Therefore, the conclusion reached is that the Electoral Proclamation has some restrictions on political association.*

# Chapter One

## 1. General Background

### 1.1. Background

Freedom of association as a human right has been given recognition in various international<sup>1</sup>, regional<sup>2</sup> and national<sup>3</sup> instruments. We find the right guaranteed alongside freedom of assembly. Freedom of association is defined as “the right to be with other people for a legal reason, cause or purpose, with no bias or interference. A government may be required to allow its citizens to join a particular organization. The by-laws of the organization may yet prohibit accepting some and excluding others.”<sup>4</sup>

Even though regulated through different and separated legislations, we have various types of associations.<sup>5</sup> The word “association” refers, inter alia, to civil society organizations, clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations, or even

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<sup>1</sup> Article 20, Universal Declaration of Human Rights (adopted 10 December 1948), GA res. 217A (III), UN Doc A/810 at 71 (1948) (hereinafter UDHR); Article 22(1), International Covenant on Civil and Political Rights (adopted 16 December 1966 entry into force 23 March 1976) GA res. 2200A (XXI) (hereinafter ICCPR); Article 8(1)(A), International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 entry into force 3 January 1976) GA res. 2200A (XXI) (hereinafter ICESCR).

<sup>2</sup> Article 10, African Charter on Human and Peoples Rights (adopted June 27, 1981 entered into force October 21, 1986) (hereinafter ACHPR); Article 11(1), European Convention on Human Rights (1950) 4.XI (hereinafter ECHR); Article 24(5) and (6), Arab Charter on Human Rights (adopted May 22, 2004 entered into force March 15, 2008) (hereinafter Arab Charter); Article 16(1), American Convention on Human Rights “Pact of San Jose, (22 November 1969 entry into force 18 July 1978) (hereinafter ACHR).

<sup>3</sup> Article 31 of the Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, Fed. Neg. Gaz. Year 1 No. 1 (hereinafter FDRE Constitution).

<sup>4</sup> “What Is FREEDOM OF ASSOCIATION? Definition of FREEDOM OF ASSOCIATION (Black’s Law Dictionary)” (The Law Dictionary, October 19, 2012) <<https://thelawdictionary.org/freedom-of-association/>> accessed October 29, 2019.

<sup>5</sup> Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, United Nations General Assembly, A/HRC/20/27 Twentieth Session, (21 May 2012) Para 52 p 13.

online associations as the Internet has been instrumental, for instance, in “facilitating active citizen participation in building democratic societies”<sup>6</sup>

The right is not absolute and could be limited; thus the limit should fulfill:

- ✓ Legality in that the limit should be provided by law.
- ✓ Legitimacy in that the limit should be for a certain aim.
- ✓ Proportionality in that the limit needs to be proportional to the objectives to be achieved.
- ✓ Necessity in that the limit needs to be necessary in the given circumstance.

Concerning the Ethiopian perspective, the right has been guaranteed under article 31 of the FDRE Constitution which provides that: “Every person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.” Thus what could be understood from this provision of the FDRE Constitution is that it is possible to form associations of any kind so long as it complies with the restrictions that have been set by the law.

Freedom of association is seen as a pertinent right in relation to the democratic process both during and between elections.<sup>7</sup> It allows individuals to be able to exercise a range of other rights and express themselves, be a part of associations or make choices on who they wish would represent their interest.<sup>8</sup> It is an essential right along with freedom of assembly and expression by enabling individuals and groups to be a part of a democratic process.<sup>9</sup> Freedom of association includes the right to form political parties. A political party is “a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections.”<sup>10</sup> Political parties are associations.<sup>11</sup>

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<sup>6</sup> A/HRC/17/27, para 2 cited in Id.

<sup>7</sup> Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, United Nations General Assembly A/68/299, Sixty-eighth Session, (7 August 2013), para 5 p 4.

<sup>8</sup> Resolution adopted by the Human Rights Council 15/21, the rights to freedom of peaceful assembly and of association, A/HRC/RES/15/21, (6 October 2010), p 1-2.

<sup>9</sup> “Human Rights Handbook for Parliamentarians N° 26” (Inter-Parliamentary Union and the United Nations (Office of the High Commissioner for Human Rights) 2016), p 166.

<sup>10</sup> Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights and the Venice Commission, *Guidelines on Political Party Regulation*, (Warsaw/Strasbourg, 2011), (hereinafter Political Party Regulation) para 9 p 8.

From the perspective of political parties, the FDRE Constitution provides the basis of the right as it guarantees freedom of association, and especially we have the Ethiopian Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation No 1162/2019 (Electoral Proclamation).<sup>12</sup> And even though there were previous proclamations that have dealt with election and political parties it has now been revised and replaced by the Electoral Proclamation.

## **1.2. Statement of the Problem**

Freedom of association is given recognition in various international and regional human rights treaties. Ethiopia which is a party to various human rights documents is obligated to protect and ensure the right. Freedom of political association has been guaranteed in the FDRE Constitution. The Electoral Proclamation regulates the exercise of the right to freedom of association concerning political parties.

The Electoral Proclamation is relatively new and enacted as part of the reform taking place in the country since the change of government leadership in Ethiopia which took place in April 2018 as a response to the nationwide popular protests. The Electoral Proclamation was the result of widening political space. However, several political parties still raised concerns about the criteria applicable to the formation of political parties particularly regarding the minimum number of signatures.<sup>13</sup> Thus, it is not clear whether these criteria restrict or violate the enjoyment of the right to freedom of association guaranteed in the international human rights treaties ratified by Ethiopia and the FDRE Constitution.

## **1.3. Research Question**

### **1.3.1. General Questions**

- What is the right to freedom of political association?

### **1.3.2. Specific Questions**

- What is the extent of and restriction on freedom of association?
- What legal frameworks are there to protect freedom of association in Ethiopia?

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<sup>11</sup> A/HRC/20/27(n 5), para 51-52 p 13.

<sup>12</sup> The Ethiopian Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation, 2019, Proclamation No. 1162, Neg. Gaz. Year 25 No. 97.

<sup>13</sup> "Ethiopia's Opposition Parties Criticize Election Law Changes" Reuters (August 24, 2019) <<https://www.reuters.com/article/us-ethiopia-politics/ethiopias-opposition-parties-criticize-election-law-changes-idUSKCN1VE0OV>> accessed May 13, 2020.

- What does the right to freedom of association entail in relation to political parties?
  - Is there a legislative guarantee of the right in Ethiopia?
  - What measures have been taken by the state?
  - What are the improvements and drawbacks of the Electoral Proclamation?
  - What are the conditions and criteria set in the Electoral Proclamation towards political parties?

## 1.4. Objectives of the Study

### 1.4.1. General Objectives

The general objective of this study is to examine the implementation of the right to freedom of association with a focus on the right to freedom of political association.

### 1.4.2. Specific Objectives

The specific objectives of the study are

- To study the content of freedom of association.
- To analyze how this right is applied to political parties.
- To determine how this right is incorporated in the Ethiopian legal system and the Electoral Proclamation.
- To determine what possible restrictions if any have been made to the right in the Electoral Proclamation and its application.

## 1.5. Literature Review

According to Joo-Cheong Tham and Jeremy Moss<sup>14</sup> there is the liberalist view that there should not be any interference in the activities of associations and that they should be free to operate. Here political parties are involved in the political sphere of the society and thus need to clarify to the public the acts it involves in and the source of its funding for regulation.

According to Frank H. Easterbrook<sup>15</sup> as part of the liberty of free people, social, religious, economic, and political associations are essential elements of the society. Association is taken as liberty and if such is the case to limit liberty one needs to follow due process in the absence of

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<sup>14</sup> Joo-Cheong Tham and Jeremy Moss, “Freedom of Association, Political Parties and Party Funding” <[https://www.researchgate.net/publication/280009785\\_Freedom\\_of\\_association\\_political\\_parties\\_and\\_party\\_fundin\\_g](https://www.researchgate.net/publication/280009785_Freedom_of_association_political_parties_and_party_fundin_g)>.

<sup>15</sup> Frank Easterbrook, “Implicit and Explicit Rights of Association” [1987] 10 Harvard Journal of Law and Public Policy 91.

which the limits to freedom of association are not tolerable. Political activity that carries an unpopular idea is not protected while those with support are protected which comes down to the legislative process than the general rules.

Leake Mekonen Tesfay, analyzes freedom of association from the perspective of resignation from political parties which requires a written resignation letter as per the Federal Cassation Bench Decision.<sup>16</sup> The author analyzes the case from the perspective of the political parties registration proclamation no 573/2008 and the experience of foreign countries and he has concluded that the proclamation has no such criteria set down. As such, there is no possibility for the parties to set a criterion that does not exist in their bylaws. Thus, the author concludes that this is an unjust restriction against the right to political association.

The literature indicated above has dealt with the right in general and from the perspective of political parties. Overall, this thesis is, however, different in that no research has been written on the newly revised Electoral, Political Parties Registration and Election's Code of Conduct Proclamation 1162/2019 regarding freedom of association.

## **1.6. Research Methodology**

To conduct the study, the methodology employed is qualitative. And to achieve this both primary and secondary source of data has been used. As a primary source of data international and regional human rights instruments were analyzed. Domestic legislation, particularly the FDRE Constitution and the Ethiopian Electoral, Political Parties Registration and Elections Code of Conduct Proclamation 1162/2019 were also examined as primary sources. A comparative analysis of the legislation of foreign states has also been made.

General comments of the Human Rights committee, reports, and guidelines have also been considered along with Books and articles. Cases of international human rights tribunals have been used.

Interview was conducted with an expert from the National Electoral Board of Ethiopia (NEBE), which is the primary organ responsible for the registration and monitoring of political parties and

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<sup>16</sup> Leake Mekonen Tesfay, "The Right to Political Party Membership in Ethiopia: On the Freedom to Join and Resign" (2018) 11 Mizan Law Review 373.

conducting election. Interviews were conducted with members and representatives of political parties to find additional information from different perspectives.

### **1.7. Scope of the Study**

The research is concerned with studying the legislative framework that exists concerning freedom of association internationally and in Ethiopia. The main focus of the study is, however, the newly enacted Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation 1162/2019 regarding freedom of association.

### **1.8. Limitation of the Study**

- The inability to conduct all the interviews intended due to the pandemic.

### **1.9. Significance of the study**

The study will help clarify the issue of freedom of political association and the inconsistency that the Electoral Proclamation has with the internationally set standards and also serve as a basis for other research that will be conducted further in the area.

### **1.10. Thesis Organization**

The thesis is organized into five chapters. The first chapter deals with a general background of the research and has discussed matters related to the research question, background of the study, the objective of the study, research question, statement of the problem, research methodology as well as the limitation of the study and its significance. The second chapter is devoted to discussions regarding freedom of association concerning its recognition in international and regional human rights instruments and the scope, dimension, and limitations to the right. The third chapter of the paper discusses freedom of political association as seen from the international perspective it discusses the right to elect and to be elected *vis-a-vis* freedom of political association and the elements that should be fulfilled. The fourth chapter of the paper is about freedom of political association in Ethiopia it has first discussed the domestic recognition of freedom of association followed by a discussion on freedom of political association in Ethiopia and an analysis of the Electoral Proclamation in respect to political association. Finally, the fifth chapter will make a conclusion about the findings of the thesis from the problems identified and give recommendations for the problems found.

## Chapter Two

### 2. Freedom of Association

#### 2.1. Introduction

Freedom of association is a fundamental human right that creates an enabling condition and environment for the exercise of other human rights and is necessary for democracy.<sup>17</sup> The right is guaranteed in various human rights treaties found at the international and regional levels. The treaties have indicated that all forms of associations are crucial for democracy.<sup>18</sup> The constitution of states should guarantee the right in the same way that it has been recognized in international and regional human rights treaties.<sup>19</sup>

We find the right guaranteed in treaties both as a socio-economic right as it relates to employment and trade unions and on the other hand we find it guaranteed as a political right as it could relate to political association which is the concern of this paper.

Associations could be political parties, non-governmental associations, religious associations, trade unions, and others.<sup>20</sup> As a recent phenomenon, we have online groups that are also taken as associations.<sup>21</sup> Those groups which are formed for a common purpose and goal are associations. These institutions are necessary for democracy.

Associations that are created could be for various interests. Political associations are necessary for a democratic process to create a politically pluralistic society.<sup>22</sup> Freedom of association is

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<sup>17</sup> OSCE's Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Association, (Warsaw Poland, 2015) Miodowa 10 00-557, (hereinafter Guidelines) para 8 p 15.

<sup>18</sup> Ibid para 1 p 14.

<sup>19</sup> Guidelines on Freedom of Association and Assembly in Africa 60<sup>th</sup> Ordinary Session (8 to 22 May 2017) (hereinafter African Guidelines) Para 6.

<sup>20</sup> Guidelines (n 17), para 1 p 14.

<sup>21</sup> "Article 20: Freedom of Assembly and Association" (United Nations Human Rights Office of the High Commissioner), p 1.

<sup>22</sup> Political Party Regulation (n 10), para 10.

interrelated with other human rights and freedoms as well. The right is interrelated to freedom of assembly, thought, conscience, and religion.<sup>23</sup>

Freedom of association enables individuals to stand up to the forces around them and pursue common objectives needed to join others on the same journey as them.<sup>24</sup> Whether their interests conflict or interact unity avoids ineffectiveness and strengthen those who are weak.<sup>25</sup> Thus what could be said about the right is that it can enable individuals to be stronger together and have their views heard. It shows the strength that a group has as compared to the individual.

This chapter is devoted to considering freedom of association from the international and regional guarantee of the right. This is followed by a discussion on the scope and dimension of the right with a look at the imitations to the right.

## **2.2. Human Rights Treaties on Freedom of Association**

Under this section instruments that have recognized the right along with the protection that exists and the extent of the right at the international and the regional level will be discussed.

### **2.2.1. International Treaties**

This subsection discusses the general and specific international human rights treaties that have provided freedom of association. The major UN documents will be reviewed.

The first international declaration that is to be considered is the UDHR. Article 20 reads:

- 1. Everyone has the right to freedom of peaceful assembly and association.*
- 2. No one may be compelled to belong to an association.*

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<sup>23</sup> See Venice Commission, “Opinion on the compatibility with human rights standards of the legislation on non-governmental organizations of the Republic of Azerbaijan” (14-15 October 2011) CDL-AD(2011)035, para. 84 cited in Guidelines (n 17), para 17 p 17.

<sup>24</sup> Thomas I Emerson, “Freedom of Association and Freedom of Expression” (1964) 74 The Yale Law Journal 1, p 1.

<sup>25</sup> Reference Re Public Service Employee Relations Act (Alberta), Supreme Court of Canada, [1987]

1 SCR 313, at 365–6, per Dickson CJ cited in Nihal Jayawickrama, The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence (Cambridge University Press 2002), p 739.

In addition to the UDHR, we also have other human rights treaties that have recognized the right.<sup>26</sup>

What could be observed from the listed human rights treaties is that the right is guaranteed to all without distinction. Thus in guaranteeing the right, we should not make any distinction as it has been provided under article 2 of the UDHR as well as other treaties.

ICCPR and ICESCR clearly show that one may form and join trade unions to protect his interests.<sup>27</sup> One clear point that could be observed from the second sub-article of the UDHR, on the other hand, is that no one may be compelled to belong to an association which shows that to be a member of an association there needs to be willingness on the part of the individual.

Thus it could be said that it is a right of mutual interest which could be seen from two perspectives in that the individual should obtain the willingness of those he wishes to associate with and also to be admitted into an existing association one needs to obtain the approval of the other members.<sup>28</sup> The reason is that allowing direct membership may jeopardize the independence of the associations.<sup>29</sup> This is however subject to the prohibition of discrimination in the prevention of who may be admitted to membership.<sup>30</sup>

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<sup>26</sup> Article 22(1) and 25 ICCPR, Article 8(1)(a) ICESCR, Article 15(1), Convention on the Rights of the Child (20 November 1989) GA res. 44/25 (hereinafter CRC), Article 26, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990) GA res. 45/158, Article 5(d)(ix) and 5(e)(2), International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965) GA res. 2106 (XX) (hereinafter CERD), Article 15, Convention Relating to the Status of Refugees (14 December 1950) GA res. 429 (V), Article 15, Convention Relating to the Status of Stateless Persons (1954), Article 7, Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979) GA res. 34/180 (hereinafter CEDAW), Article 29 Convention on the Right of Persons with Disabilities (13 December 2006) (hereinafter CRPD).

<sup>27</sup> A/HRC/20/27 (n 5), para 53 p 14.

<sup>28</sup> Nihal Jayawickrama, *The Judicial Application Of Human Rights Law: National, Regional and International Jurisprudence* (Cambridge University Press 2002), p 742.

<sup>29</sup> A/HRC/20/27 (n 5), para 55 P 14.

<sup>30</sup> African Guidelines (n 19), Para 8 p 10.

### 2.2.2. Regional Treaties

As a complement to the international human rights system, we have various regional human rights systems that have been set up. We have the Inter-American, Asian, European, Arab, and African Human Rights Systems.

The ACHPR under its Article 10 has given recognition to Freedom of Association. It reads:

1. *Every individual shall have the right to free association provided that he abides by the law.*
2. *Subject to the obligations of solidarity provided for in Article 29 no one may be compelled to join an association.*

In the African Human Rights System we also have the African Charter on the Rights and Welfare of the Child (hereinafter ACRWC)<sup>31</sup> which guarantees the right in Article 8 along with freedom of assembly.

ACHPR has a similar element with UDHR as it has also incorporated that an individual may not be compelled to join an association, but ACHPR has added a different element since it has provided that the negative aspect of the right is subject to solidarity.<sup>32</sup> ACHPR has also provided that an individual in exercising this right is to abide by the law.<sup>33</sup>

Likewise, we have the ECHR article 11(1), Article 16(1) of the ACHR, and Article 28 of the Arab Charter. The various regional human rights treaties we have seen more or less provide the same wording to guarantee the right as we find it indicated in the international treaties.

The ACHR is distinct from the other regional documents in that it has provided a broad range of possibilities that an association could be formed through by providing an illustrative list.<sup>34</sup> This

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<sup>31</sup> African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

<sup>32</sup> Jayawickrama (n 28), p 740.

<sup>33</sup> Id.

<sup>34</sup> International service for Human Rights (ISHR), Right to Freedom of Association, Human Rights Defenders Briefing Papers Series, April 2009, p 8 cited in Ephrem Tadesse Birhanu, "Contemporary Challenges And Prospects Of Human Rights Civil Society Organizations In Ethiopia: Freedom Of Association Too Qualified?" (MSc, 2009), p 53.

illustrative list would create a possibility to form various associations and accommodate the change that occurs through time.

### **2.3. Scope and Dimension of Freedom of Association**

Freedom of association requires non-interference of the government but at the same time requires that the state ensure its enjoyment by regulating the relationship between individuals.<sup>35</sup> This indicates that the relationship with the right is not only with the state but also among individuals.

By coming together individuals don't exhaust their rights they also continue to operate the association they established.<sup>36</sup> While the right is protecting collective pursuit of the common interests of the association at the end of the day it is the individual aspiration that it is furthering.<sup>37</sup> Thus; even if we are dealing with an organization it is the voice of those who have formed the association that is voiced as a whole.

Concerning the aspect of the right we see that it has two aspects to it; the positive and negative aspects. The positive aspect relates to the right of an individual to join and form an association.<sup>38</sup>

On the other hand, the negative aspect relates to the right of an individual not to join or to withdraw from an association.<sup>39</sup> The negative dimension of the right is towards states interference with an individual's private existence and activities.<sup>40</sup> Thus states should not interfere with individuals' choice to join or not. This is related to personal autonomy which provides that the individual should not be compelled to be a part of an association contrary to his will.<sup>41</sup>

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<sup>35</sup> Jayawickrama (n 28), p 741.

<sup>36</sup> Ibid p 742.

<sup>37</sup> Jayawickrama (n 28), p 742.

<sup>38</sup> Ibid p 752.

<sup>39</sup> Id.

<sup>40</sup> Ana Paula Barbosa-Fohrmann, "Association, Freedom of, International Protection," Max Planck Encyclopedia of Public International Law (Heidelberg and Oxford University Press 2010) <[www.mpepil.com](http://www.mpepil.com)> accessed January 13, 2020, para 3 p1.

<sup>41</sup> Id.

Thus freedom of the individual to refrain from being a part of an association is a counterpart of the right and democracy.<sup>42</sup> We see this dimension of the right indicated in the UDHR and ACHPR. This is what guarantees that associations are formed by the free will of the members.

The right to form an association may not be conditioned on the fact of recognition of the association by the administration.<sup>43</sup> Associations need not necessarily be registered to be protected by the state.<sup>44</sup> And even if unregistered individuals who are part of associations need to be able to exercise their rights and not be criminally punished for doing so.<sup>45</sup> The operation and existence of associations should not be based on registration and defacto associations should not be subject to punishment in the law or practice.<sup>46</sup>

There are some basic principles concerning freedom of association and what it constitutes as it has been accepted generally:<sup>47</sup>

- ✓ Right to associate and form associations
- ✓ Right to join or not join associations
- ✓ Right to carry out their statutory activities
- ✓ Right to raise funds
- ✓ Right of associations to affiliate with national and international organizations
- ✓ Right not to be penalized for belonging to an association
- ✓ Right to non-discrimination between national and non-nationals

Some of the elements listed have been discussed earlier so we will consider those elements that have not been discussed earlier.

Associations should be free to access resources and funding which is an integral part of the right.<sup>48</sup> Thus associations should be able to seek, secure, and use resources as it is essential to the

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<sup>42</sup> Jayawickrama (n 30), p 743-44.

<sup>43</sup> Ibid p 748.

<sup>44</sup> A/HRC/20/27 (n 5), Para 56 p 14.

<sup>45</sup> Id.

<sup>46</sup> African Guidelines (n 19), para 8.

<sup>47</sup> "Freedom Of Association In The Arabian Gulf: The Case Of Bahrain, Kuwait And Yemen" (2009), P 7.

<sup>48</sup> A/HRC/20/27 (n 5), p 17 para 67.

effective functioning of the associations.<sup>49</sup> The funds could be collected through fundraising or other activities and be collected in various forms like goods, services, or other forms.<sup>50</sup> The funds help the associations to achieve their intended goals and operate smoothly. Thus the denial of collection of funds could result in the denial of the formation of the association.

Associations whether registered or unregistered should be free to access funding from various sources be it domestic, international, or foreign.<sup>51</sup> There is a corresponding duty on associations to be transparent and accountable as to what they have done with the funds collected as per their funding agreements.<sup>52</sup> This is a way to keep track of the operations of the associations and the use of the money for the goals that it was intended for.

Concerning being penalized for exercising the right to freedom of association the recommendation given by the special rapporteur has provided that states should ensure that criminalization for exercising the right be avoided.<sup>53</sup>

Rather than a process of the prior approval registration process, the prior notification process should be set in place.<sup>54</sup> More so in the process of registration, there should be a quick response whether its acceptance or rejection; if rejected there needs to be a written communication and such a decision should be open to challenge before an independent tribunal.<sup>55</sup>

In the report by the special rapporteur, it has been provided that the associations should be able to carry out their statutory activities to be said that they are exercising the right.<sup>56</sup> Associations are formed to achieve a certain purpose and with a common goal; the inability to see their goal through will be considered as the inability to exercise the right.

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<sup>49</sup> Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, Human Rights Council, United Nations General Assembly, A/HRC/23/39, Twenty Third Session, 24 April 2013, para 8 p 4.

<sup>50</sup> African Guidelines (n 19), Para 37.

<sup>51</sup> A/HRC/20/27 (n 5), para 68 p 17.

<sup>52</sup> A/HRC/23/39 (n 49), para 13 p 5.

<sup>53</sup> A/HRC/20/27 (n 5), p 20.

<sup>54</sup> Ibid Para 58 p 15.

<sup>55</sup> Ibid Para 60-61 p 15.

<sup>56</sup> A/HRC/23/39 (n 49), para 16 p 6.

## 2.4. Limits on Freedom of Association

Rights are not absolute and thus may have limitations to them. To enable other members of the society to exercise their right we may set limits but the integrity of humans makes certain rights absolute.<sup>57</sup> Concerning setting a limit to rights protection is the rule and limit is the exception.<sup>58</sup> As such limiting a right is a measure taken in exceptional cases and not a principle.

Coming to freedom of association Article 22(2) of the ICCPR reads that:

*2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and the police in their exercise of this right.*

In addition, we also have the other human rights treaties that have guaranteed the right set a limit to the right ICESCR Article 8 (1) (a), Arab Charter Article 28, ACHR Article 16(2).

When dealing with the limitations we should, however, take into consideration General Comment 31<sup>59</sup> which deals with limitation clauses regarding ICCPR. It puts forth that:

*"States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right."<sup>60</sup>*

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<sup>57</sup> Jayawickrama (n 28), p 182.

<sup>58</sup> A/HRC/20/27 (n 5), para 16 p 6.

<sup>59</sup> General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (adopted 29 March 2004) (2187th meeting) CCPR/C/21/Rev.1/Add.13 26 May 2004 (hereinafter GC 31).

<sup>60</sup> Ibid para 6 p 3.

What could be observed from the paragraph is that when limiting the right we should follow the basic principles of limitation which are legality, legitimacy, proportionality, necessity, and non-discrimination when it comes to freedom of association.<sup>61</sup>

For a detailed point on the limits to freedom of association a consideration of the Siracusa Principles<sup>62</sup> has been done below.

As per the Siracusa principles, the principle of legality implies that the limit to the right needs to be in force at the time of limitation and to be formulated in the national law of the state which is consistent with that of the convention.<sup>63</sup> This indicates that there is a need for legislation before we can say that the right is limited.

What this implies as per the decision of the European court is that there needs to be domestic legislation that is accessible to the society and clearly show the consequence of the act and conform to the international principles.<sup>64</sup>

The next element is legitimate justification what this shows is that the limitation needs to have a certain purpose that it seeks to achieve and that the existence of a legitimate reason would make the limit valid. In the given circumstance on freedom of association, a reading of the above provisions of the human rights documents shows that there are some legitimate reasons why it is to be limited.

To discuss the reasons that could be used as a ground to set limits on the right based on what the human rights documents laid down, national security or public safety is the first ground. In this case, the protection is towards the life, physical integrity, or property of the persons and should be valid with adequate safety and remedy in case of abuse and avoid vague limitations.<sup>65</sup> The

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<sup>61</sup> Mizane Abate Tadesse, “The Implications of 2009 Ethiopian CSOs Law on the Right to Freedom of Association” (2015) 27 J Ethiopian L 62, p 76-77.

<sup>62</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (1985) American Association for the International Commission of Jurists (hereinafter Siracusa Principles).

<sup>63</sup> Siracusa Principles para 15.

<sup>64</sup> Jayawickrama (n 28), p 190.

<sup>65</sup> Siracusa Principles p 9 Para 33-34

threat of force to the nation or its territory, such a threat should not be minor and there needs to be adequate safeguards set in place.<sup>66</sup>

Public order/ordre public is the other ground upon which freedom could be limited. Rules help the society function and which it is founded upon and respects human rights.<sup>67</sup> The exercise of power by organs that maintain public order should be controlled.<sup>68</sup>

Public health/ morals are the next reason that could be used to limit the right. Here to prevent health concerns or disease or to provide care the right could be limited but should take into account WHO's regulations.<sup>69</sup> On the other hand, morality depends on the time and place that it is invoked and should show that the limit is necessary for the society that is concerned.<sup>70</sup>

Right and freedom of others need to be considered beyond what is guaranteed in the covenant and in case of conflict we need to give special consideration to the right that is guaranteed in the covenant without limitations.<sup>71</sup>

The limit should be to the extent to be achieved for legitimate purposes. The limits should not be beyond the intended purpose that is to be achieved in that there should be a proportional relation between the two. The means that is to be employed should also be the least restrictive one among the alternatives available.<sup>72</sup>

The human rights committee in General Comment 31 has provided that the limit that is taken be proportional to the aims that it seeks to achieve and not violate the exercise of the right.<sup>73</sup> The African commission<sup>74</sup> has also employed the alternative that the limitation measures and the aim to be achieved need to be proportional.

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<sup>66</sup> Siracusa Principles para 29-31 p 8.

<sup>67</sup> Siracusa Principles Para 22 p 7.

<sup>68</sup> Siracusa Principles Para 23-24 p 8.

<sup>69</sup> Siracusa Principles Para 25-26 p 8.

<sup>70</sup> Siracusa Principles p 8 Para 27.

<sup>71</sup> Siracusa Principles p 8 Para 35-37.

<sup>72</sup> Tadesse (n 61), p 80.

<sup>73</sup> GC 31 (n 59), para 6 p 3.

<sup>74</sup> Media Rights Agenda and others v Nigeria (Comm. Nos. 105/93, 128/94, 130/94 and 152/96, African Commission on Human and Peoples' Rights, 1998) Para. 69 cited in Tadesse (n 60), p 80.

The requirement of necessity in a democratic Society is also mentioned. This criterion shows that the limit does not violate the democratic functioning of society even though no clear criteria of what a democratic society means is provided.<sup>75</sup>

What is considered as a democratic society was an issue at the ICCPR drafting process as it could lead to various definitions then it was declared that a state is said to be democratic where it respects the UN Charter, the UDHR, and other human right covenants.<sup>76</sup>

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<sup>75</sup> Siracusa Principles Para 20-21 p 7.

<sup>76</sup> Jayawickrama (n 28), p 186.

## Chapter Three

### 3. Freedom of Political Association

#### 3.1. Introduction

In the previous chapter, the guarantee of freedom of association in various international and regional human rights treaties has been provided. As such the associations that are formed could be for employer and employee associations, political associations, religious associations, civil society associations, etc. The right allows society members to come together and join to be able to express their shared values and interests.

This chapter deals specifically with the issue of freedom of political association and the international standards that exist regarding political association in general. To do this, the chapter will first consider the right to vote and to be elected in the international human right treaties. Then move on to consider freedom of political association and the elements of the right.

#### 3.2. Right to Vote and to be Elected

As already noted, the right to freedom association, as a self-standing right, is guaranteed in international and domestic law. When dealing with freedom of political association, we should also consider the right to be elected. The exercise of this right is also instrumental in the realization of the right to vote and be elected because political parties, which are one form of associations, are formed to exercise the right to vote and be elected.

Democratic governance involves the right to take part in public affairs and the right to vote and stand for election.<sup>77</sup> Fundamental human rights are better protected when there are genuine elections that are taking place.<sup>78</sup> The right to vote and to be elected is related to other human rights that are essential to the existence of a meaningful electoral process.<sup>79</sup>

Article 25 of the ICCPR has incorporated public participation which reads that:

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<sup>77</sup> “OHCHR | Human Rights and Elections” (Ohchr.org, 2019)

<<https://www.ohchr.org/EN/Issues/Pages/HRElections.aspx>> accessed May 8, 2020.

<sup>78</sup> Id.

<sup>79</sup> Id.

*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*

*(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*

*(b) To vote and to be elected at genuine periodic elections which, shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*

*(c) To have access, on general terms of equality, to public service in his country*

In addition to the ICCPR, the right has also been given recognition in various human right treaties. Article 21 of the UDHR, Article 13(1) of ACHPR, Article 7 and 8 of CEDAW and Article 5(c) of CERD and Article 29 of CRPD have also given recognition to the right.

Article 1(1) of ICCPR has provided the right of peoples to determine their political status and choose their government.<sup>80</sup> One element of this right that makes it differ from the other rights that are guaranteed alongside it is the fact that it is guaranteed specifically to citizens.<sup>81</sup> As it is guaranteed to citizens there shall be no distinction among citizens in exercising the right.<sup>82</sup> Regardless of the form of constitution or government that is in place, ICCPR expects that states are able to provide citizens the opportunity to enjoy this right through providing legislative and other measures.<sup>83</sup>

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<sup>80</sup> General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) : . 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments) (Fifty seventh session, 1996) (1) (2) Office of the High Commissioner For Human Rights (hereinafter GC 25) para 2 p 1.

<sup>81</sup> Ibid para 3 p 1-2.

<sup>82</sup> Id.

<sup>83</sup> International Standards of Elections, The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), Adopted by the Committee at its 1510th meeting (fifty seventh session) (12 July 1996), para 1 p 1.

Taking part in the conduct of public affairs could take either of two forms that is voter and a candidate.<sup>84</sup> The right to vote needs to be set in the law with reasonable restrictions.<sup>85</sup> And for citizens to vote, free, fair, and periodic elections need to be conducted.

The right to stand for elective office helps ensure that the right of the citizens to vote is guaranteed with a range of candidates to choose from.<sup>86</sup> If there is going to be a restriction on the right to stand for elective office it should be justified, reasonable and non-discriminatory.<sup>87</sup> And where there are groups or individuals that are excluded from elective office the law should indicate them clearly.<sup>88</sup> And it needs to be based on reasonable grounds and not limit the right that has been set in sub article (b) of the ICCPR.<sup>89</sup> Political opinion may not be used as a ground to deprive the right of an individual to stand for election.<sup>90</sup> Membership to specific parties should not be forced on individuals as it would be a limit on the exercise on the right to be elected.<sup>91</sup> This will also result in violation of freedom of association as it requires the willingness of the individual to be a member of a political association.

There is a relation between the right to freedom of association and public participation.<sup>92</sup> The rights that relate to freedom of association are also conversely related to public participation.<sup>93</sup>

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<sup>84</sup> GC 25 (n 80), para9 p3.

<sup>85</sup> Id.

<sup>86</sup> Ibid para 15 p 3.

<sup>87</sup> Ibid p 4 para 15 and Standards of Election (n 83), p 4 para 15.

<sup>88</sup> GC 25 (n 80), para 15 p 4.

<sup>89</sup> Standards of Election (n 83), Para 16 p 4.

<sup>90</sup> Ibid para 17 p 4.

<sup>91</sup> Id.

<sup>92</sup> Attorney-General's Department, "Right to Take Part in Public Affairs and Elections" (www.ag.gov.au, 2020) <<https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttotakepartinpublicaffairsandelections.aspx#7what>> accessed May 3, 2020.

<sup>93</sup> Id.

### 3.3. Political Associations

According to the Venice commission<sup>94</sup> the guidelines on political party regulation has defined political parties as:

*“A political party is ‘a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections.’”<sup>95</sup>*

Freedom of association along with the capacity to form and join associations working on political and public affairs is one complement to the right provided under article 25 of the ICCPR.<sup>96</sup> Political parties are the main types of organizations that are involved in elections.<sup>97</sup> The special rapporteur sees political parties as being a subset of associations with the right to freedom of association.<sup>98</sup> Freedom of association is related with other human rights that have been given recognition in various human right treaties. The rights help ensure that there is a proper election that is to be carried out.<sup>99</sup>

A right which is fundamental to political parties and which allows them to function among the other rights is freedom of association and it is the foundation for the other rights such as freedom of assembly and expression are to be given protection as well.<sup>100</sup>

Political parties are essential to ensure that there is a functioning democracy. Their participation in election creates an environment where the voice of the people is heard. Thus, freedom of association and democracy are affected due to measures taken against them.<sup>101</sup> Due to the role

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<sup>94</sup> Political Party Regulation (n 10), para 9 p 8.

<sup>95</sup> Ibid para 9 p 8.

<sup>96</sup> GC 25 (n 80), para 26 p 6.

<sup>97</sup> “TRAINERS’ MANUAL ON THE CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA” (1997), p 54.

<sup>98</sup> A/68/299 (n 7), para 30 p 12.

<sup>99</sup> “OHCHR | Human Rights and Elections” (Ohchr.org, 2019)

<<https://www.ohchr.org/EN/Issues/Pages/HRElections.aspx>> accessed May 8, 2020.

<sup>100</sup> Political Party Regulation (n 10), p 8 para 11.

<sup>101</sup> Case of Refah Partisi (The Welfare Party) and Others V. Turkey, (Applications Nos. 41340/98, 41342/98, 41343/98 and 41344/98) Judgment, Council of Europe, Strasbourg, 13 February 2003, para 87 p 28.

that they play political parties influence the whole regime in their country.<sup>102</sup> Political parties are distinct from other organizations involved in the political arena as they are to implement the proposal that they have provided early on.<sup>103</sup>

Political parties present candidates that represent institutions that will exercise political power nationally or locally,<sup>104</sup> thus, making it necessary for them to follow specific requirements distinct from the other forms of organizations.<sup>105</sup>

Parties are taken as one form of associations though they might have some peculiar characters. Being involved in parties is one of the ways that individuals will be involved in the public life and also express the opinion of those who share their views.

Freedom of association is a right which has a broad scope and includes the right to be a part of political organizations. This right is essential as it is the way through which people will be able to participate in the democratic process through forming and joining parties.<sup>106</sup> A wide range of human rights need to be respected along with freedom of association so as to ensure the effective exercise of electoral right.<sup>107</sup>

Freedom of Political association as indicated earlier is related to the right to be elected and to govern issues related to election there are some standards that have been developed. And the African human right system and the European human right system have made suggestions on how to deal with election and the issue of political associations through parties.

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<sup>102</sup> Case of Refah Partisi (n 101), para 87 p 28.

<sup>103</sup> Id.

<sup>104</sup> European Commission For Democracy Through Law (Venice Commission) code of good practice in the field of political parties, Venice Commission, 77th plenary session (Venice, 12-13 December 2008) and explanatory report, Venice Commission, 78th plenary session, (Venice, 13-14 march 2009) on the basis of comments by Mr Carlos Closa Montero (Member, Spain) and Mr Jean-Claude Colliard (Member, France), (hereinafter Code of Good Practice), para 10 p 6.

<sup>105</sup> A/68/299 (n 7), para 30 p 12.

<sup>106</sup> Office of the United Nations High Commissioner for Human Rights, “Chapter 23 Monitoring Human Rights in the Context of Elections: Manual on Human Rights Monitoring” (United Nations 2011), p 10.

<sup>107</sup> Ibid p 3.

### 3.4. Recognition by Human Right Bodies

In the African region we have African Union Declaration on the Principles Governing Democratic Elections in Africa<sup>108</sup> which has given recognition to freedom of association as well as various resolutions that the African commission on Human and Peoples Right has adopted to deal with elections and participatory governance as described in the preamble of the Guideline on Information and Elections in Africa.<sup>109</sup> The guideline has dealt with the issue of election and also matters related to political parties and candidates. Accordingly articles 20-22 have dealt with political parties and candidates. It provides the obligation of candidates to disclose information related to political parties. In addition to the basic information financial reports and information on the use of government resources is also disclosed as per the articles.

The other adaptations that we have are from the European Commission through the Venice Commission Guidelines. There is the guidelines on political party regulation, code of good practice in the field of political parties, guidelines on prohibition and dissolution of political parties and analogous measures, opinion on the prohibition of financial contribution to political parties from foreign sources, guidelines and explanatory reports on legislation on political parties: some specific issues and report on the participation of political parties in elections.<sup>110</sup>

In addition to this there is the report by the special rapporteur on freedom of association and assembly in relation to election. One thing to note here however; is that the principles that are applicable to associations will apply to political associations as well. Political parties are usually governed by legislation that is distinct from the other forms of associations but it still maintains some of the rights that have been given to the other associations.<sup>111</sup> In the pages that follow the elements that are related to political association and going to be discussed.

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<sup>108</sup> African Union Declaration on the Principles Governing Democratic Elections in Africa, (2002) AHG/Decl.1 (XXXVIII).

<sup>109</sup> African Commission on Human and Peoples' Rights, Guidelines on Access to Information and Elections in Africa, (adopted 10 November 2017), 61st Ordinary Session (hereinafter the Guideline).

<sup>110</sup> "Texts on Political Parties" (Coe.int, 2014)

<[https://www.venice.coe.int/WebForms/pages/?p=02\\_parties&lang=EN](https://www.venice.coe.int/WebForms/pages/?p=02_parties&lang=EN)> accessed May 9, 2020.

<sup>111</sup> Political Party Regulation (n 10), para 27 p 12.

### 3.4.1. Registration

Political associations distinct from the other forms of associations may be required to register and this could have some substantive and procedural requirements.<sup>112</sup> Registration has some advantages for political parties like that of gaining personality or protection for their names and logos.<sup>113</sup> And the advantages are not discriminatory if given to all the parties.<sup>114</sup> Response should be provided in a short and reasonable period to enable the parties to present their candidates in the next election.<sup>115</sup>

Both acceptance and rejection should be prompt and rejection needs to be communicated in writing and capable of challenge before a tribunal.<sup>116</sup> The date of nomination, fees or deposits should be reasonable and not be discriminatory.<sup>117</sup>

No matter the legal philosophy that a party promotes it should be able to get recognition and register.<sup>118</sup> Here what matters is the fact that the party is willing to participate as an association regardless of its political views.

The structure for registration specifically the date of opening and closure of the registration as well as how and when the registration is to be taken along with the process of verification of registration may be set in the law.<sup>119</sup> The same registration process should be applicable for all political parties.<sup>120</sup>

This criterion is distinct from other forms of associations as registration is not a requirement but it shows that some advantages could be obtained by parties through registration. One point to keep in mind is that the process even if set in place should not act as a barrier to forming associations but a formality.

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<sup>112</sup> Political Party Regulation (n 10), para 65-66 p 19.

<sup>113</sup> Ibid p 20 para 71.

<sup>114</sup> Id.

<sup>115</sup> Ibid p 19-20 para 69-71.

<sup>116</sup> A/HRC/20/27(n 5), para 60-61 p 15.

<sup>117</sup> GC 25 (n 80), para 16 p 4.

<sup>118</sup> “International Electoral Standards Guidelines for Reviewing the Legal Framework of Elections” (International IDEA 2002), (hereinafter Electoral Standards Guidelines) p 50.

<sup>119</sup> Id.

<sup>120</sup> Id.

### 3.4.2. Minimum Member Requirement

This criterion is related with the first condition which is that of registration; as a party to register may need to have a minimum number of supporters. A minimum number of supporters may be required by a candidate to be a nominee in the election; but the number should not be a barrier to candidacy.<sup>121</sup>

In requiring a minimum number of supporters the number should be reasonable as to enable minority representation and it should be proportional to the population or be determined based on the voting population in a constituency.<sup>122</sup> In requiring high support signatures the voices of the minority will be left out if care is not taken as requiring such high numbers could be a problem. It is necessary that a reasonable time frame be set for the collection and verification of the signatures.<sup>123</sup>

### 3.4.3. Funding

Funding is the way through which associations are to function on their day to day activity. It has consequences as it allows them to function, represent diverse views and also strengthen democracy.<sup>124</sup> It also enables them to finance their election campaign.<sup>125</sup> Funding could have negative consequences on the democratic potential of parties thus it needs to be regulated.<sup>126</sup> This in turn makes it necessary that the issue of finances be covered by election legislations.<sup>127</sup>

The finance of parties could come from public and private sources and in some cases from foreign sources.<sup>128</sup> Public funding enables parties that are not able to raise funds the capacity to compete in the election.<sup>129</sup> This will help such parties cover the necessary costs of the election even though private resources may be scarce. In distributing public funding there could be several criteria's set and be provided based on equity.<sup>130</sup> State resources should be protected from being

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<sup>121</sup> GC 25 (n 80), para 17 p 4.

<sup>122</sup> Political Party Regulation (n 10), p 21 para 76.

<sup>123</sup> Electoral Standards Guidelines (n 118), p 50.

<sup>124</sup> A/68/299 (n 7), para 34 p 13.

<sup>125</sup> Electoral Standards Guidelines (n 118), p 65.

<sup>126</sup> A/68/299 (n 7), para 34 p 13.

<sup>127</sup> Electoral Standards Guidelines (n 118), p 65.

<sup>128</sup> Id.

<sup>129</sup> A/68/299 (n 7), para 35 p 13.

<sup>130</sup> Electoral Standards Guidelines (n 118), p 66.

misused for campaign reasons by the party in power.<sup>131</sup> In relation to private funding it could be designed so as to ensure equality to raise funds.<sup>132</sup> There could be limits on the contributions set so as to level the playing field.<sup>133</sup>

Funding for political parties from foreign sources could be allowed, limited or prohibited to prevent undue influence of foreigners in domestic political affairs.<sup>134</sup> The prevention insures that the political matters of the state are not interfered with through the giving of funds.

#### **3.4.4. Cancellation and dissolution of registration**

Prohibition or dissolution which is the complete ban on the existence of a party is a more serious measure than that of deregistration.<sup>135</sup> It is a measure that is taken when less restrictive measures are inadequate.<sup>136</sup>

A political party is to be dissolved when it is necessary in a democratic society or when the party has threatened democracy and freedoms.<sup>137</sup> Advocating violence or aiming to overthrow the government through violence acts such as armed struggle could result in dissolution.<sup>138</sup> If such is the case if a political party is to be dissolved there should be a violation as to amount the restriction of the right as per the grounds of limitation in the ICCPR. Accordingly public safety, public order public health or morals need to be at stake along with necessity in a democratic society. Additionally when the registration of a party is to be cancelled or dissolved the measure should be proportional to the act that has resulted in the passing of such a measure. A party should not be dissolved due to minor administrative breaches or the fact that the parties' ideas are

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<sup>131</sup> Electoral Standards Guidelines (n 118), p 67.

<sup>132</sup> *Id.*

<sup>133</sup> *Ibid* P 66.

<sup>134</sup> A/HRC/20/27 (n 5), para 71 p 18.

<sup>135</sup> Political Party Regulation (n 10), p 23 para 89.

<sup>136</sup> *Ibid* p 23 para 90.

<sup>137</sup> European Court of Human Rights. Case of Sidepopoulos and others v. Greece (57/1997/841/1047), para.46 cited in European Commission for Democracy Through Law, Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, Venice Commission at its 41<sup>st</sup> Plenary Session, CDL-INF (2000) 1, (Venice, 10 – 11 December, 1999) para 10 p 8.

<sup>138</sup> European Commission for Democracy Through Law, Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, Venice Commission at its 41<sup>st</sup> Plenary Session, CDL-INF (2000) 1, (Venice, 10 – 11 December, 1999) para 10 p 8.

unfavorable or offensive.<sup>139</sup> The acts of a member unless proven to represent the act of the political party as a whole should not be taken as the acts of the party and should not result in the dissolution of the party as a whole.<sup>140</sup>

#### **3.4.5. Exclusion from Membership**

Individuals should be able to establish their own political parties and organizations through election laws and be able to compete amongst themselves.<sup>141</sup> Membership to political parties should be based on the willingness of the individual and should not be forced.<sup>142</sup> Individuals should be able to form and join parties without any form of imposition.

Some groups could be prevented from being a part of associations. International human rights law has provided that the members of the armed forces and that of the police may be restricted from freedom of political association but the restriction should not be a blanket restriction.<sup>143</sup> In the same manner article 11(2) of the ECHR has provided that members of the armed forces, the police, and that of administration of the state are restricted from being able to form an association.<sup>144</sup> The right and freedom of others makes it necessary that officials be restricted from membership as it could cause conflict in performing their duties.<sup>145</sup> The right of others could be at stake if we allow the involvement of such groups in politics as this could tamper with their impartiality.

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<sup>139</sup> Political Party Regulation (n 10), para 92 p 24.

<sup>140</sup> Ibid para 94 p 24.

<sup>141</sup> Electoral Standards Guidelines (n 118), p 49.

<sup>142</sup> A/68/299 (n 7), para 30 p 12.

<sup>143</sup> A/20/27 (n 5), para 54 p 14.

<sup>144</sup> Code of Good Practice (n 104), para 109 p 24.

<sup>145</sup> Political Party Regulation (n 10), P 28 para 117.

## Chapter Four

### 4. Freedom of Political Association in Ethiopia

#### 4.1. Introduction

Political association is one of the associations that are formed by individuals and this chapter is devoted to assessing political association in Ethiopia. The right is granted to political parties to exercise as forming political associations along with the right to be elected has been given recognition. The Ethiopian constitution is no different and has given recognition to the rights. The right is granted to all of the citizens of Ethiopia who could form a party and run for office.

To examine the matter from the perspective of the Ethiopian legal system, available legislation will be analyzed. This chapter begins in the next section with a look at freedom of association and the limit to the right followed by the historical development of political associations in Ethiopia. An analysis of the current legislation is made followed by a deeper analysis of the Electoral Proclamation. And to achieve this, the paper is to take specific areas of concern that are necessary for political association and consider how they are incorporated in the proclamation in light of international standards.

#### 4.2. Normative Framework on Freedom of Association

To deal with the domestic normative framework, reference is first made to the FDRE Constitution; it is the first document that will be considered being the supreme law of the land.<sup>146</sup> In the FDRE Constitution chapter three guarantees fundamental rights and freedoms. When we see these provisions, we find various human and democratic rights guaranteed in two separate parts. Freedom of association is among the rights guaranteed in the chapter under part two, which deals with democratic rights.

Freedom of association is guaranteed under Article 31 of the FDRE Constitution which reads:

*Every person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.*

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<sup>146</sup> Article 9(1) of the FDRE Constitution.

As per the provision, the right has been guaranteed to all without any distinction. This is a distinct feature of the right from the other rights that have been guaranteed in the constitution which are only given to Ethiopians.<sup>147</sup> Moreover, so long as the association is formed for a lawful purpose there is no restriction on the purpose for which it may be set up thereby giving broad discretion.<sup>148</sup>

However, there is an argument here that the right is not guaranteed to everyone and that it has been restrictively guaranteed only to citizens since it is considered a democratic right and cannot be guaranteed to all.<sup>149</sup> This is based on the argument that the right as indicated above is found in the section dealing with democratic rights thus making it a right that is only guaranteed to citizens.<sup>150</sup>

This, however, is a wrong assumption for some reasons. The first reason is that the mere fact that the right has been placed in the category dealing with democratic rights does not strip it of its status of being a human right.<sup>151</sup> This goes in line with the fact that various human rights have been provided in the section dealing with democratic rights but this does not mean that they are not to be exercised by non-citizens.<sup>152</sup> There is also an indication of the applicability of rights specifically in each article and based on this the provision has provided that the right applies to everyone.<sup>153</sup> In addition to the international duty the text of the provision has provided that the right is “for every person” and not just to “every citizen” so the argument provided is not in line with what the constitution intended to convey.<sup>154</sup>

The second reason is that the state has to comply with its international duty promising to guarantee the right for all without any discrimination.<sup>155</sup> As the duty that the state has with the

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<sup>147</sup> Tadesse (n 61), p 72-73.

<sup>148</sup> Id.

<sup>149</sup> Ephrem Tadesse Birhanu, “Contemporary Challenges and Prospects Of Human Rights Civil Society Organizations In Ethiopia: Freedom Of Association Too Qualified?” (MSc, 2009), p 57.

<sup>150</sup> Tadesse (n 61), p 73.

<sup>151</sup> Ibid p 73-74.

<sup>152</sup> Ibid p 74.

<sup>153</sup> Id.

<sup>154</sup> Birhanu (n 149), p 57-58.

<sup>155</sup> Ibid p 57.

right based on the international treaties has provided that the right is guaranteed both to citizens and non-citizens.<sup>156</sup>

Concerning the aspects of freedom of association, it could have negative and positive aspects. The constitutional provision, however, has only embodied the positive aspect of the right and avoided the negative aspect.<sup>157</sup> The right is found as applying to the freedom to be a part of any association one desires but has failed to incorporate the freedom not to be compelled to be a part of an association.<sup>158</sup> Additionally, the international treaties that the state has ratified will be used as a point of reference to interpret the chapter on fundamental rights as is provided under article 13(2).

Various forms of associations have been given recognition in the Ethiopian legal system through the FDRE Constitution as well as specific proclamations. Thus, to understand the exercise of freedom of association by different forms of associations we need to refer to the different proclamations. There is the recognition given to trade unions under article 42 of the FDRE Constitution as well as Labor proclamation number 1156/2019<sup>159</sup> which has guaranteed freedom of association. There is also the recognition that has been given to Charity and Civil Society Organizations proclamation number 1113/2019<sup>160</sup>. The next association that has been given recognition is religious association under article 27(2) of the FDRE Constitution.

Rights, when guaranteed, have corresponding limits and are not absolute with some exceptional rights. Freedom of association as found in the FDRE constitution has limitations to it. Article 31 has an internal limitation: “Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.”

The provision has provided two circumstances whereby the right could be limited. First, the right could be limited where an organization is formed by violating the appropriate law. And the second circumstance is where the organization is formed to subvert the constitutional order.

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<sup>156</sup> Tadesse (n 61), p 74.

<sup>157</sup> Birhanu (n 149), p 58.

<sup>158</sup> Id.

<sup>159</sup> Labor Proclamation, 2019, Proclamation No. 1156, Neg. Gaz. Year 25 No. 89.

<sup>160</sup> Organizations of Civil Societies Proclamation, 2019, Proclamation No. 1113, Neg. Gaz. Year 25 No. 33.

Concerning the limit that has been set, we see that there are some concerns in that the internal limitation has provided that the limit for the organizations that are set could be based on appropriate law which is a vague term to apply as what is considered appropriate lacks clarity.<sup>161</sup> The other concern here is that the article has made a clear prohibition of the formation of an organization that is created to subvert the constitutional order.<sup>162</sup>

Ethiopia should comply with various ratified human rights treaties. There cannot be a failure to comply with the treaties by raising domestic legislation as an excuse. As per article 27 of the Vienna Convention on the Law of Treaties,<sup>163</sup> “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. In addition to the ground that has been set in the FDRE Constitution, the grounds of limitation found in the international treaties will be applied.

### **4.3. Historical Development of Freedom of Political Association**

The historical development of freedom of association in the Ethiopian legal system shows that it developed with the changes that took place in the constitution. And in the following page, the historical account of the right is discussed.

During the reign of Emperor Haile Selassie, trinity of the monarchy along with church and state was how power was seized.<sup>164</sup> Through adopting a revised constitution the emperor had made some changes to incorporate freedom of association and universal adult suffrage; however, there was still a lack of an article incorporating political parties.<sup>165</sup> Prior to the 1974 revolution political parties and programs were not allowed as the emperor had prohibited the formation of political

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<sup>161</sup> Justine Limpitlaw, “Media Law Handbook for Eastern Africa” (Konrad-Adenauer-Stiftung Regional Media Programme: Sub-Saharan Africa 2016), p 222.

<sup>162</sup> Id.

<sup>163</sup> Vienna Convention on the Law of Treaties 1969 (23 May 1969. Entered into force on 27 January 1980), vol. 1155.

<sup>164</sup> Merera Gudina, “Party Politics, Political Polarization and the Future of Ethiopian Democracy,” International Conference on African Development Archives (2007)

<[http://scholarworks.wmich.edu/africancenter\\_icad\\_archive/108](http://scholarworks.wmich.edu/africancenter_icad_archive/108)> P 5.

<sup>165</sup> Id.

parties.<sup>166</sup> What could be understood from the law is that there is a strict prohibition of political association in all its forms and was open only for the emperor.

The next regime that followed was an authoritarian and state sponsored organization Workers Party of Ethiopia (WPE) with a military regime.<sup>167</sup> Through the 1987 constitution of the People's Democratic Republic of Ethiopia (PDRE) the *Dergue* took power in monopoly as a constitutionally elected civilian government.<sup>168</sup> The Constitution of the PDRE<sup>169</sup> under article 47(1) had given recognition to freedom of association but the system was a one party system.

Once again a change took place in the political arena and along with it came changes. And with the change in government the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power and adopted the transitional charter<sup>170</sup> in 1991 which had given recognition to the right in article 1. The transitional charter was based on the UDHR and hence had given recognition to various human rights. Article 1(b) of the transitional charter gave recognition to multi-party democracy.

With the changes made, there have been some improvements in the recognition of political associations. The FDRE Constitution was soon adopted and has given recognition to freedom of association as shown in the previous section. There are specific legislations that are placed to deal with the issue of elections and political parties. Such legislations are to be prepared by the federal government<sup>171</sup> to ensure the uniformity of the laws along with the various regional states of Ethiopia. Based on this in relation to the issue of voting and the right to be elected the federal government has passed proclamations.

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<sup>166</sup> 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.

<sup>167</sup> Id.

<sup>168</sup> Id.

<sup>169</sup> The Constitution of the Peoples Democratic Republic of Ethiopia, Proclamation No. 1 of 1987, Neg. Gaz. Vol. 47, No. 1.

<sup>170</sup> Transitional Period of Ethiopia Charter, 22nd July 1991, Addis Ababa, 50th No.1.

<sup>171</sup> FDRE Constitution Article 51(15) and 55(2)(d).

#### 4.4. Freedom of Association and Electoral Right in the FDRE Constitution

The right to vote and to be elected recognized in the international legal arena has also been recognized in domestic legislation. The right is recognized under article 38 of the FDRE constitution, which reads:

1. *Every Ethiopian national, without any discrimination based on color, race, nation, nationality, sex, language, religion, political or other opinion or other status, has the following rights:*
  - a) *To take part in the conduct of public affairs, directly and through freely chosen representatives;*
  - b) *On the attainment of 18 years of age, to vote in accordance with law;*
  - c) *To vote and to be elected at periodic elections to any office at any level of government; elections shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*
2. *The right of everyone to be a member of his own will in a political organization, labor union, trade organization, or employers' or professional association shall be respected if he or she meets the special and general requirements stipulated by such organization.*
3. *Elections to positions of responsibility with any of the organizations referred to under sub-Article 2 of this Article shall be conducted in a free and democratic manner.*
4. *The provisions of sub-Articles 2 and 3 of this Article shall apply to civic organizations which significantly affect the public interest.*

According to Article 38, upon attaining 18 years of age, individuals can vote and be elected. Individuals are given the ability to participate in those processes that are taken as public affairs.<sup>172</sup> Election could involve two elements the first one is the right to vote for a candidate one supports and the second one is the right to compete with others by representing a particular interest.<sup>173</sup> It also provides that in the conduct of public affairs individual citizens take part either directly or through freely chosen representatives. Voting enables citizens who are involved in

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<sup>172</sup> Trainers' Manual (n 97), p 54.

<sup>173</sup> Id.

elections to make decisions through their chosen representatives.<sup>174</sup> This shows that public participation is to be achieved through representatives chosen through elections thus making political parties important.

The right has been recognized and provided so as to guarantee the right for all to be a part of an association willingly upon fulfilling the necessary requirements that the organization has set up. Article 38 thus indicates the fact that being part of an association is to be made willingly and one should not be forced to do so. This has been provided in the previous chapters. To be part of an association the willingness of the individual is necessary.

One distinctive element of the right to vote and be elected is that it extends beyond the traditional offices towards other areas that also need to have free and fair elections.<sup>175</sup> With the right to be elected the corresponding right to associate with others has also been included which shows that the two rights are interrelated. If the rights are interrelated with respect to the formation of political associations cross reference will be made to article 31 of the constitution regarding formation of political association.

#### **4.5. Political Association in Ethiopia**

As indicated above, political participation is a right guaranteed in the various international treaties that the state has ratified as well as in the FDRE constitution. Participating in the public interest would mean that citizens have chosen representatives who are to voice the opinion of the public and in doing so individuals are able to form political parties. This has also been recognized in the FDRE Constitution as a right.

In addition to the FDRE Constitution, we also have other treaties that should be implemented on the steps to be taken in forming a political party. The specific details regarding the formation of political associations are found in the proclamations that are enacted in relation to election, registration, and conduct of political parties.

To deal with the formation of political associations and the steps that are to be followed reference needs to be made to the specific proclamation. The newly adopted legislation which is the revised

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<sup>174</sup> Trainers' Manual (n 97), p 54.

<sup>175</sup> Girmachew Alemu, Yonas Birmeta and Wondemagegn Tadesse, Ethiopian Human Rights Handbook (American Bar Association 2013) p 121.

Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation Number 1162/2019 (Electoral Proclamation)<sup>176</sup> will be deeply analyzed.

#### **4.5.1. The Ethiopian Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation Number 1162/2019**

The Electoral Proclamation is a revision to the previously existing separately provided proclamations that have been laid down to deal with political parties which are the electoral law of Ethiopia<sup>177</sup>, registration proclamation<sup>178</sup> and electoral code of conduct<sup>179</sup>. The Electoral Proclamation in the preamble states that it is necessary that citizens exercise the right to be members of political parties or form one and also determine the mechanisms by which they will be able to obtain personality as well as to operate.

The Electoral Proclamation is inclusive of matters related to the Board, voters, candidacy matters, conduct of parties, observers, and election matters among other rights and duties. Even though the Electoral Proclamation has dealt with all such matter the analysis will specifically focus on those matters related to freedom of political association.

##### ***I. Registration***

The registration of a political party is a critical element for the operation of political parties in Ethiopia. Accordingly, chapter two of the Electoral Proclamation has dealt with the registration of parties. As per article 66(1), a political party to be able to operate in Ethiopia needs to be registered by the Board and receive a certificate of registration. In the process of registering the political party may need to pay a registration fee. The fee could relate to the registration fee or fee for the review of basic documents as per article 67(4) of the electoral proclamation.

The responsibility of the Board regarding registration is provided in article 68 sub-articles 1-5. Once having received the application the Board is to examine the documents within 21 days and if any documents are missing the Board is to give the party an additional 30 days to present the

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<sup>176</sup> The Ethiopian Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation, 2019, Proclamation No. 1162, Neg. Gaz. Year 25 No. 97 (hereinafter Electoral Proclamation).

<sup>177</sup> A Proclamation To Amend The Electoral Law Of Ethiopia Proclamation, 2007, Proclamation No. 532, Neg. Gaz. Year 13 No. 54.

<sup>178</sup> The Revised Political Parties Registration Proclamation, 2008, Proclamation No. 573, Neg. Gaz. Year 14 No 62.

<sup>179</sup> Proclamation on the Electoral Code of Conduct for Political Parties Proclamation, 2009, Proclamation No. 662, Neg. Gaz. Year 15 No. 8.

missing documents. Following this, within the next fifteen days, the Board is to publicize the name, symbol, and other matters through available media to the public. And open doors to any opposition that may come within 14 days following the publication. Thereafter the Board examines the necessary documents based on the law and issue the certificate within 45 days of having received the application.

As per the decision of the European Court of Human Rights, the requirement that political parties register is not to be taken as a violation of the freedom of association.<sup>180</sup> However, one thing to note here is that the substantive and procedural requirements that are set should be reasonable and be used so as to achieve legitimate aims.<sup>181</sup>

Registration of political parties could have several advantages to political parties like that of ensuring that they are given personality or that they are given certain advantages or protect their names and logos which are unique to them.<sup>182</sup> Article 66(2) of the Electoral Proclamation has laid down the advantages in that registration will enable parties to be involved in legal action, own property, or perform acts related to their purpose. So long as the parties are given an equal opportunity to register the advantages are not to be considered to be discriminatory.<sup>183</sup>

Moreover, the deadlines should be reasonable and short so as to ensure that newly registered parties are able to present the candidates that would represent them in the next election.<sup>184</sup> There needs to be a quick response be it acceptance or rejection and if rejected there needs to be a written communication which could be challenged by those registering before a tribunal.<sup>185</sup>

Regarding those parties that had registered before the adoption of the new proclamation, they are to update their numbers related to the minimum support that has been set by the Electoral Proclamation. Article 160(2) indicates that parties must fulfill the necessary criteria by the timeframe set by the Board. Registered associations should not be required to re-register as it

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<sup>180</sup> Political Party Regulation (n 10), para 65 p 19.

<sup>181</sup> Ibid para 66 p 19.

<sup>182</sup> Ibid para 71 p 20.

<sup>183</sup> Id.

<sup>184</sup> Ibid para 69 p 19.

<sup>185</sup> A/HRC/20/27 (n 5), para 60-61 p 15.

could result in arbitrary rejection and or time gaps in the performance of the activity of the association.<sup>186</sup> Thus this could have serious consequences for the registered parties.

What needs to be considered is whether the timeframe set in the law is in line with the international standard. As the timeframe needs to be set lower to allow the candidates to participate in the election. As is evidenced in the Electoral Proclamation, we see that the time needed from the moment of application to the moment of being certified and has been set as 45 days in the electoral proclamation. In relation to this, the failure to present the necessary documents could also result in an additional thirty days added for the presentation of the necessary documentation thus pushing the date further.

In the interview with Mr. Nathnael Melaku<sup>187</sup> from National Electoral Board of Ethiopia<sup>188</sup> for the 2012 election registration is closed but they could register anytime for the coming elections. So far by the data from 11 March 2020 fifty political parties have applied to be registered and their files are still being investigated and reviewed, and specifically, there are 29 regional parties and 25 nationwide parties that have applied. The time it takes to register could be a while and longer than provided in the law as the parties may fail to provide all the necessary documents and this might take a while. Thus minor problems are easier to deal with but major problems could be more problematic to deal with thus pushing the deadline further.

In an interview with Dr. Chanie Kebede<sup>189</sup> of Ethiopian Citizens for Social Justice,<sup>190</sup> he explained that his party applied for registration on May 2019 and received the certificate of registration on January 2020. As a result, the party claimed to have been faced with certain challenges due to the much-extended period taken for registration. They had been asked to present their certificate on various occasions for election related campaigns to gather support which again led them to ask letters from the NEBE since they had not received the certificate.

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<sup>186</sup> A/HRC/20/27 (n 5), para 62 p 15.

<sup>187</sup> Interview with Mr. Nathnael Melaku, Program Officer to the Deputy Chair Person and Works on Political Party Affairs, National Electoral Board (Addis Ababa, Ethiopia, 19 March 2020).

<sup>188</sup> National Electoral Board of Ethiopia (hereinafter NEBE).

<sup>189</sup> Interview with Dr. Chanie Kebede, Vice Chairman of Ethiopian Citizens for Social Justice, Head office of Ethiopian Citizens for Social Justice (Addis Ababa, Ethiopia, 11 March 2020).

<sup>190</sup> Ethiopian Citizens for Social Justice (hereinafter Ezema).

The interviewee said that the challenge is the result of the gap in the law and the fact that the Board was not totally developed and had a lot to do.

To consider the experience of other states in Australia an application for the registration will be completed in 12 weeks with a possibility of extension in case of objection during the process of registration or that of conduct of election or by election.<sup>191</sup> In the Czech Republic, the ministry shall register or reject the party 15 days from beginning the registration process.<sup>192</sup> In the case of Canada registration takes effect as soon as practicable once the party has a confirmed candidate in the general election.<sup>193</sup>

As compared to the experience of other countries the time frame that the registration is to be completed in is relatively shorter. The issue is the practical applicability of the timeframe which is extended beyond what is written in the law as is gathered from the interviewees. Thus, this is a contradiction to the speedy response that is expected of the registering body.

## ***II. Minimum Member Requirement***

The next requirement is that of minimum member requirement. A party before being able to register needs to be able to fulfill the minimum member threshold. This minimum threshold for a nationwide and regional political party has been provided under articles 64 and 65 respectively. As a threshold for a nationwide party as per article 64(1) is at least 10,000 founding members from which not more than 40% of the founding members are residents of the same region and the remaining from four different regions with at least 15% of the founders coming from each region. And for a regional political party article 65(1) provides that at least 4,000 founding members out of which 60% of the founding members are from the same regional state. The individuals should describe willingness to be a member. The Electoral Proclamation indicates that a party needs to fulfill this criterion to be eligible for registration along with other necessary documents.

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<sup>191</sup> Commonwealth of Australia, “Political Party Registration” (Australian Electoral Commission, 2017) <[https://www.aec.gov.au/parties\\_and\\_representatives/party\\_registration/](https://www.aec.gov.au/parties_and_representatives/party_registration/)> accessed May 2, 2020.

<sup>192</sup> Jean-Benoit Pilet and others, “Criteria, Conditions, and Procedures for Establishing a Political Party in the Member States of the European Union” (European Parliament ed, 2012), p 21.

<sup>193</sup> Elections Canada, “Registration of Federal Political Parties” ([www.elections.ca](http://www.elections.ca)) <<https://www.elections.ca/content.aspx?section=pol&dir=pol/bck&document=index&lang=e>> accessed May 2, 2020.

There could be a requirement that the unions and political parties have a certain number of members so as to be established but it should not be discouraging.<sup>194</sup> There is however no reference number as to what is considered as excessive so it depends on the reason for setting such a high number. The Electoral Proclamation has set a number which is to be considered as per the standards.

Based on this when we check the minimum threshold that has been set the numbers could be set as a way to avoid the formation of parties that lack popular support. On the matter through the interview with Dr. Chane Kebede of Ezema what I was able to learn is that as a party this was not a problem to them *per se*, but, it could be a problem to small parties, which have a low number of constituency or which had been previously registered in one region but lack support from other regions. Thus, small parties would just result in narrowing the political space. Such small parties cannot possibly express the desire of the population.

According to an interview with Mr. Desta Dinka<sup>195</sup> of Oromo Federalist Congress<sup>196</sup> the minimum number requirement that is set is a restriction as the numbers are very high and unnecessary. Parties can be formed by a few members that are willing to make some changes and differences and also have political awareness. As we know, the Ethiopian population does not have such high awareness about politics and also lacks the willingness to learn. So, the minimum number requirement makes it very difficult to find such individuals with such a high number. And even if one fulfills the number required the individual will just be selected randomly so as to achieve the required number. The reason for such a high number is to decrease the number of political parties, but this should not be done by the government or the Board; rather, the people will do that as they will select those parties they like. Moreover, the party is to collect the founders from various regions, which requires an extensive budget which is hard to get.

In an interview with Mr. Nathnael Melaku of NEBE; yes the numbers are restricted and it should be restricted as the proliferation of parties could lead to the creation of disconnected ideas and parties that lack capacity. This, in turn, results in confusion. So, it is better that they form a

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<sup>194</sup> A/HRC/20/27 (n 5), p 14 para 54.

<sup>195</sup> Interview with Mr. Desta Dinka, Youth League Chairman of Oromo Federalist Congress, Head Office of OFC (Addis Ababa, Ethiopia, 28 April 2020).

<sup>196</sup> Oromo Federalist Congress (hereinafter OFC).

unified front. Political parties could share the same views and those with similar views could come together and join as one and form a unity rather than being disconnected. There could be various civil society groups and the likes but when it comes to the issue of political parties it is better that the parties come in a united front. So there is a restriction, but it must be done to prevent the issues discussed above. If you have enough people that believe in your idea and goal, you can collect the required signatures, showing that your political party's ideas have merit.

To consider the experience of other countries in Bulgaria as per the political parties act<sup>197</sup> it provides in Article 15(4) 500 founders and Article 15 (7) 2,500 members are needed in order to be registered, in Lithuania the Law on Political Parties<sup>198</sup> provides in article 5 that 2,000 founders are necessary, and in Latvia as per the Law on Political Parties<sup>199</sup> in section 12(2) requires at least 200 founders. While in South Africa a minimum of 50 registered voters in registering in terms of section 15A and 500 voters in registering in terms section 15 are needed.<sup>200</sup>

If the numbers are set at a certain level the voice of some groups might be left out which could restrict the group from being able to express themselves. Thus if we are setting restrictions to the right it should comply with the standard set in the ICCPR article 22(2) as well as the FDRE Constitution.

The numbers have been increased and what we need to check is whether it is proportional and necessary. In this case, the reason obtained from the interview is that the values are set to prevent the existence views which could create confusion in the public's mind. The other concern is that of it being proportional to the right it restricted. In this case, the measure is one with the intention to create a political atmosphere with stronger political voices capable of raising the numbers on the opposite end. And lastly, parties are necessary in a democratic society as democracy is influenced highly by political groups. In a democratic society so as to create a political atmosphere that is competitive and with diverse views parties need to exist. The experience of other countries shows that the numbers that they require need to be proportional to the population

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<sup>197</sup> Bulgarian Political Parties Act, 39th National Assembly, (18 December 2004 and 23 March 2005).

<sup>198</sup> Republic of Lithuania Law on Political Parties, 25 September 1990 No I-606, (last amended on 6 November 2014 No XII-1292).

<sup>199</sup> Republic of Latvia Law on Political Parties (22 June 2006).

<sup>200</sup> Electoral Act 73 of 1998, Electoral Commission Act 51 of 1996 and Regulations Reflecting the Law as at March 2019, Published by Juta Law in association with the Electoral Commission S.A. (EC)(2019).

of the state. And considering the population of Ethiopia with the required numbers it is acceptable. This will create a political atmosphere that is stronger. Thus based on the reasons it could be said that the numbers are acceptable and is as per the international standard and experience.

### *III. Access to Funds*

In relation to funding, political parties could get the funds that are necessary from government, party members, or through the donations that they receive. Article 100 of the Electoral Proclamation regulates government funding. The funds that the party receives from the government could either be in cash, kind, or services. A set of rules and principles could be there in giving grants. According to article 100(2) of the electoral proclamation, the number of votes that a party wins at the federal and state council elections, female nominee candidates, members, and leaders in the party, and disabled nominee candidates disabled members, and those in leadership are taken into consideration to allocate government funds.

One point here is that regardless of being elected to be able to receive funding other than those parties representing minorities as per sub-article 3 minimum vote of 0.25% of the total votes for the house of peoples representatives and 0.5% of the total votes for state council is necessary so as to receive funding.

The support that the government gives as per article 101 could be from government allocation or from the support or aid received from foreign, domestic, or any other body. The support is to be given without any form of discrimination and the parties are supposed to be transparent and accountable regarding the use of the funds that they receive as per article 102.

In addition to government funding, there are other sources of funding listed under article 108 of the electoral proclamation, including member dues, donations, and grants from Ethiopian companies or nationals, government grant, and support; they can also organize conferences and events as well as sell some written materials. There is, however, a restriction that a party may not engage in commercial and industrial activity.

There are certain sources of income that are prohibited and the list is laid down in article 109. Funds from foreign institutions or corporations governments or parties, NGOs and welfare organizations, religious organizations, prisoners serving sentence, groups planning to take power through unconstitutional methods, groups designated as terrorists, donations from unknown

sources, governmental or semi-governmental developmental organizations, donations with a future execution objective or plan are all forms of prohibited donations.

One of the essential elements to freedom of association is that of associations' ability to access funding. And in the case of elections, funding is essential and has tremendous consequences for freedom of association of political parties.<sup>201</sup> Funding is essential for political parties as it would allow them to function on a daily basis, participate in the political arena, and represent plural views, interests, and perspectives, which would strengthen democracy.<sup>202</sup> As funding could have some negative consequences on the democratic potential of parties it requires regulation.<sup>203</sup>

Even though the government has the capacity to receive donations from foreign sources it is completely prohibited for a party to do the same. There could be different rules that could be applied in the case of political parties. There could be some rules regarding foreign funding which would allow, limit, or prohibit funding with the aim of preventing undue influence of foreign influence in the domestic political affairs.<sup>204</sup>

Here as parties are involved in the internal function of the state and its democratic structure allowing a political party to access foreign funding has negative impacts. The aim here is that political parties should avoid the receiving of funds that would result in creating an influence on them and have an impact on their decisions or have ulterior motives. The involvement of foreign funds in the case of political parties involves the integrity of the state which makes it necessary that it be restricted. Foreigners could use this to their favor and interfere in internal affairs through the parties. And the fear is that foreign donations and the others listed in the proclamation can potentially have the same effect. The Electoral Proclamation has thus prohibited such fund which is in line with what is an acceptable standard internationally for political associations.

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<sup>201</sup> A/68/299 (n 7), para 34 p 13.

<sup>202</sup> Id.

<sup>203</sup> Id.

<sup>204</sup> A/HRC/20/27 (n 5), para 71 p 18.

#### *IV. Cancellation of Registration and Refusal to Register*

The next element of discussion is that of cancellation of registration of political associations. Article 96 has provided that there are three grounds upon which registration may be canceled and the reasons are request for cancellation of the registration by the party itself, when the Board decides based on the proclamation, and lastly when the court decides that the registration be canceled based on the proclamation.

Canceling registration is a measure set to be taken by the Board as per article 148(4). It provides that there is a possibility that the Board may cancel the registration of a political party or a candidate depending on the gravity of the act.

The Board may cancel the party's registration for various purposes listed under article 98 of the Electoral Proclamation. Accordingly, the reasons could be failure by the party to inform the Board of some changes that the party has made, failure to submit some periodical audits and reports, not taking part in election for two successive election periods, the party was registered based on fraudulent documents, involving in fraudulent and criminal activity are among those listed but the list is open ended.

In addition to the reasons that have been indicated above article 98(2) provides that a violation of other provisions of the proclamation to the same degree as those listed in the previous sub-article leads to cancellation. In such cases, the Board will give a written warning to the party to correct the issue in a month and if the party fails to do so the registration will be canceled. Article 98(3) provides that the party could be given the opportunity to defend its case and the Board may decide to just suspend the party before canceling its registration.

The fraudulent registration of a member or using fraudulent information in the registration could also result in the cancellation of registration. Article 64(5)(b) shows that there is a possibility of the cancellation of the registration of a party and banning such party from being able to register as a party for the next 5 years and banning the leader or member of the party from being a leader or member of a political party.

Freedom of association is a right that lasts with an association so long as it exists.<sup>205</sup> Suspension and involuntary dissolution of an association should only be done when there is danger to national law which also complies with international laws it restricts freedom of association.<sup>206</sup> Thus it should be a measure that is to be employed when the other methods fail and needs to be proportional.<sup>207</sup>

When a party's registration is canceled there needs to be a reason and be proportional. As such it should be necessary for national security or public safety, public order, public health or morals, or the protection of the rights and freedoms of others. Article 98 provides as a reason that involvement in fraudulent and criminal acts and registering through the use of fraudulent documents which could be taken as a danger to national security. Fraud in the registration process could also lead to cancellation as per article 64(5)(b). And this makes it necessary in a democratic society as registering through fraud could be a danger to the safety of the public. Other than this the other criteria's seem minor and could have been avoided through the use of other simpler methods thus making cancellation disproportional.

Articles 148(4) and 98(2) have both used vague terms as a reason for cancellation. The main concern is that of the use of vague terms could result in being used out of proportion to cancel the registration. This could be a problem and result in cancellation which does not fulfill the conditions set to limit the right as it lacks clarity. Limitations when being taken should be clear as lack of clarity and vagueness results in implementation that is beyond what is anticipated.

As per article 160(3), the failure by a previously registered political party to fulfill the criteria necessary so as to comply with the Electoral Proclamation could result in cancellation. Here the parties will be given a period of time within which they are to comply with necessary conditions and if they fail to do so their registration will be canceled. And to help in this process NEBE has issued directive number 003/2012 which has provided that the parties update their minimum numbers to the required amount in the proclamation.

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<sup>205</sup> Case Of United Communist Party Of Turkey And Others V. Turkey (133/1996/752/951), council of Europe, European Court of Human Rights, para. 33 p 17.

<sup>206</sup> A/HRC/20/27 (n 5), p 18 para 75.

<sup>207</sup> Id.

According to Mr. Nathnael Melaku of NEBE, the reregistration scheme that is in place has certain aims. Here what is needed is that the parties fulfill the conditions set in the Electoral Proclamation as they were registered before the adoption of the Electoral Proclamation and it is an integral part that they update the numbers. So it is not to register them again but is just aimed at making sure that they are aligned with the new legislation. The parties have been granted enough time to do this until 12 March 2020 starting from the adoption of the Electoral Proclamation.

Mr. Desta Dinka of OFC provided that retroactive application of registration makes things difficult. The collection of the signatures would still require funding as they had to collect the names again which is difficult to do.

Reregistration could create some gaps in the activity of the association which should be avoided by the new laws.<sup>208</sup> When the registration requirements are changed this should not result in revocation of registration of Parties and they need to be given enough time to fulfill the conditions.<sup>209</sup> This creates a delay in some activity that the party was to perform.

The other issue related to this is the refusal to register a political party. Accordingly, the Board may refuse to register a political party for various reasons. The first reason has been indicated under article 69(1) of the electoral proclamation. The party's name or its abbreviation, its emblem or symbol is culturally or ethnically unacceptable, similar with that of another party, and could result in voter confusion. In addition to the elements already described together with the founding document if a party aims to spread hate and conflict or prohibit certain groups from being members based on different criteria among the nations and nationalities of the state, desires to achieve its purpose through armed struggle, has foreign nationals as members or is formed to pursue an unlawful activity.

The reason for registration is that of guaranteeing that logos and names of associations are protected and allowing the registration of another party with the logo of another is against this making it necessary that registration be prohibited. The rest of the elements that are provided are also intended to protect the public safety and national security as internal conflict could cause this

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<sup>208</sup> A/HRC/20/27 (n 5), para 62 p 15.

<sup>209</sup> Political Party Regulation (n 10), para 68 p 19.

if not prevented. The grounds for the failure to register as seen from the perspective of the law are appropriate.

As per article 98(4) if a party has any complaint regarding the cancellation it may appeal to the federal high court within 30 days. The same goes for the refusal to register a political party where the decision could be appealed to the high court within 30 days as per article 69(2). Additionally, as a measure for the ethical violations, the Board may take some measures which are also appealable under article 149 to the federal high court.

There needs to be an effective remedy that is available to the political parties and their members who may be restricted from exercising freedom of association unreasonably.<sup>210</sup> There is also the duty to provide independent and impartial organs like that of electoral management bodies and media regulatory authority, independent judiciary so as to ensure an even playing field.<sup>211</sup> The regulatory body needs to be impartial and effective so as to ensure that it can function properly. And these are the key conditions for the effective exercise of freedom of association in election.<sup>212</sup>

Here in line with the standards that have been set the proclamation has set up NEBE and also the judicial system in case of the need for appeal. This shows that the law is setting up a system that is impartial to deal with the matters that are disputed by a party.

#### *V. Excluded Groups*

Freedom of political association is expressed through the right of individuals to form political parties. The Electoral Proclamation under article 63(1) and (2) had provided that every Ethiopian has the right to form a political party or be a member of one who is above the age of 18.

However, even though the right is guaranteed for all there are some groups that have been excluded. And when it comes to political party membership article 63(3) of the Electoral Proclamation has provided those excluded. Accordingly, judges, prosecutors, members of the defense, employees of the police, and employees of the Board are banned from membership unless they leave their occupation. Thus we see that certain impositions of membership exist but

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<sup>210</sup> A/68/299 (n 7), para 41 p 15.

<sup>211</sup> Id.

<sup>212</sup> Id.

this should not be taken as a violation of the right of association but rather as a necessary limitation. Impartial and proper functioning of such groups is necessary which is why such groups are supposed to be excluded from membership.<sup>213</sup> So to ensure that they perform their duty free from conflict they should be left out.<sup>214</sup>

The right and freedom of others is seen as legitimate and necessary in a democratic society when restricting political association of public officials.<sup>215</sup> In relation to this, the European Court of Human Rights has ruled in *Ahmed v. the United Kingdom*<sup>216</sup> that the prohibition of certain class of public holders from being involved in political activity so as to avoid impartiality is not an abuse of the right.<sup>217</sup> But the restrictions should not be applied broadly as to restrict all those involved in public office.<sup>218</sup>

Here the legislation has only restricted the capacity to a certain group of individuals that are involved in public office. This is a valid reason from the perspectives described. Hence, the exclusion is necessary.

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<sup>213</sup> Political Party Regulation (n 10), para 117 p 28.

<sup>214</sup> *Id.*

<sup>215</sup> *Ibid* para 118 p 28.

<sup>216</sup> *Ahmed and Others v. The United Kingdom* (1998) (65/1997/849/1056) cited in *id.*

<sup>217</sup> Political Party Regulation (n 10), p 28 para 118.

<sup>218</sup> See, for example, the case of *Vogt vs. Germany* (application No. 17851/91) in which the court found that the dismissal of a public teacher on the basis of her membership in a political party was an infringement on Articles 10 and 11 of the ECHR cited in *id.*

## Chapter Five

### 5. Conclusion and Recommendation

#### 5.1. Conclusion

The right to freedom of association is a human right of individuals to join together to pursue common interests. The right is essential for and interrelated with other human rights such as freedom of assembly, expression, thought. The right has positive and negative aspects. The positive aspect relates to the right to form or join an association while the negative aspect relates to the right not to be part of an association. The right is guaranteed in international and regional human rights treaties such as the ICCPR. The limitations to the right have also been laid down in these treaties. Associations could be of various types such as trade unions, religious associations, and political associations.

In the domestic system, the right is recognized under the FDRE Constitution. This paper examined the right to freedom of political association, which involves the formation of a political party to present candidates and take part in elections. The specific concern is that of political associations in Ethiopia. The 1991 Transitional Charter was the first legal document to give recognition to the right in domestic law. Thereafter the right was given recognition in the FDRE Constitution.

The study examined the political associations of Ethiopia and analyzed new features of the Ethiopian Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation Number 1162/2019. The study evaluated against international standards the extent to which the Electoral Proclamation enhances the realization of the right to freedom of association. The study made an analysis of forming a party, registration, minimum number of members, funding, and cancellation of registration of political parties and exclusion of some groups from membership in parties.

From the interviews and analyses, the study found some gaps in relation to registration and cancellation of registration. Concerning registration, the Electoral Proclamation has set a date of finalizing registration and the time has been set but it is evident from the practice that the time frame is long, which is a problem for associations. Concerning cancellation, the Electoral Proclamation has some problems and concerns. Among the articles it has been provided that the

violation of other provisions of the proclamation to the same degree and depending on the gravity of the act has been provided as reasons for the cancellation of registration which lacks clarity. And also using cancellation as a measure out of proportion to the violations caused. These gaps in the Electoral Proclamation limit the full realization of the right to freedom of political association.

Concerning the requirement of minimum number of members, the Electoral Proclamation sets a criterion, which is different for regional and nationwide political parties. But, the number is not restrictive for political association considering the population of Ethiopia. Funding is essential to associations, particularly political parties. Foreign sources have been excluded totally from sources of funding. This, however, complies with the international standard which allows restriction on such sources. With respect to excluded groups, we see some individuals who are excluded due to their profession this however is acceptable to ensure their impartiality in the performance of their duties.

## **5.2. Recommendation**

Based on the analysis made the following recommendations have been given:

- The first element reviewed was that of registration of political parties. The analysis shows the legislation is provided as per the standard but there needs to be a change in the practice as the time taken to register is extensive beyond the time necessary so a change in the practice of the legislation is necessary. The research recommends that the registration time taken by the Board be reduced.
- The other matter that the paper reviewed was the cancellation of registration. Regarding cancellation what the research has uncovered is that there are some vague terms that the Electoral Proclamation has employed which could be a danger as it could lead to cancellation for minor issues; as what is meant by the gravity of the act and violation to the same degree are somewhat unclear. Therefore, the study recommends that the legislature create clear and understandable reasons that could result in the cancellation of the party's registration and avoid such vague reasons.
- The other issue related to cancellation is that the registration of a party could be canceled for reasons like the failure to submit to the Board the changes in its name or office and also failure to submit reports. Here before resorting to cancellation the NEBE may first suspend the party. However, as cancellation is a serious measure the legislation should

provide other measures which are proportional so as to avoid excessive limitation on the exercise of freedom of association. Therefore the researcher recommends that the legislature provides less restrictive measures and avoid such measures which are not proportional.

- The final recommendation is that even though the group that is excluded from political party membership has been drafted with the proper limit care should be taken by the NEBE to not include those groups that should be able to associate as the list is open ended.

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