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

**THE NEED TO REFORM ELECTORAL LAW OF ETHIOPIA**

**BY**

**GEZAHEGN GASHAW**

**A THESIS SUBMITTED TO THE SCHOOL OF GRADUATE STUDIES OF  
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CONSTITUTIONAL AND PUBLIC LAW**

**ADVISOR: Dr. ABERA DEGEFA (ASST.PROFESSOR)**

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**Addis Ababa**

## **Declaration**

I, Gezahegn Gashaw Taffesse, hereby declare that this dissertation is original and never been presented in any other institution. I also declare that secondary information used has been duly acknowledged in this dissertation.

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## **List of Acronyms**

WPE	Workers Party of Ethiopia.
PDRE	People Democratic Republic of Ethiopia.
PAMC	Provisional Military Administration Council.
EPRDF	Ethiopian Peoples Democratic Front.
TPLF	Tigray People Liberation Front.
ANDM	Amhara National Democratic Movement.
OPDO	Oromo People Democratic Organization.
SPDM	South People Democratic Movement.
GPDP	Gambela People Democratic Party.
ESPDP	Ethiopian Somali Democratic Party.
APDP	Afar People Democratic Party.
HNL	Harari National League.
FDRE	Federal Democratic Republic of Ethiopia.
NEBE	National Electoral Board of Ethiopia.
IECSA	Independent Electoral Commission of South Africa.
EMB	Electoral Management Body.
UDHR	Universal Declaration of Human Rights.
ICCPR	International Covenant on Civil and Political Rights.
BUNDESTAG	Legislature Body of Germany.

## ***Abstract***

*The existence of modern state established on the basis of full participation of the people, political actors and the will of the people. The component and the realization of democracy addresses voters, candidates and political parties shall exist to run election. The forgoing three components shall have a game to play their role. This game must be complemented with electoral laws. Therefore, electoral laws are the game that displays the parties on the will of the people.*

*Having the above in mind, this paper fully devoted in addressing electoral laws and what matters to be embodied under those electoral laws to conduct the election.*

*International electoral principles and domestic electoral laws were evaluated in a critical manner to get experiences, to identify the gaps in accordance with the benchmark of different countries. The discrepancies under Federal Democratic Republic of Ethiopia(FDRE) Constitution and the subsequent effective legislation of electoral law, electoral system, electoral management bodies, electoral principles, electoral constituency and party system were carefully denoted were described article by article. Finally, discrepancies were critically picked and substantiated to show the need to reform electoral law of Ethiopia.*

*Key words: Election, electoral system and electoral management bodies.*

# CHAPTER ONE

## INTRODUCTION

### 1.1. General background of the study

Ethiopia historically known as Abyssinia has a long history with some of the oldest site of human experience known to scientists. Monarchy rule was dominant for the history of traces back to many centuries.<sup>1</sup>

Election, electoral law and democratization was unforeseeable in the full of history of monarchy. Removal of kings took place by both internal and external war and constitutional government was not seen in the long history of the country.<sup>2</sup> History tells us Emperor Hileselassie come up with the first written Constitution in 1931. Under this Constitution the Emperor designated himself to appoint member of the House of Senate while the House of Deputies elected by the deginators („mekuanent“) and the local chiefs („shumegnoche“) until the people reach to elect electorate.

The Emperor revised his Constitution in 1955 and established the Chamber of Deputies and Senates election but not the king to be elected rather his majesty the Lion of Judah. Under this Constitution and the first Electoral law Proclamation No.152/1956 laid down list of requirements to be candidates for Senate and Chamber of Deputies election. These criteria impose on the candidate must own immovable or movable property. On default of such property, the candidate shall pledge equivalent to 1000 and 2000Ethiopian dollars respectively.

The Emperor power became an end by Military Coup d“état then the Supreme Military organ established himself named Provisional Military Council. During this period the 1955 Revised Constitution and the constitutional organ of the government dissolved and suspended. Ethiopia became under confuse state. No election, no electoral law, and Constitution until 1987. The 1987 Pepoles Democratic Republic Constitution come up with the so called motto of Socialism with a single political party which was called Workers Party of Ethiopia (WPE). The electoral law

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<sup>1</sup> Berms and Vander Beken „Federalism and the Protection of Human Rights in Ethiopia, Berlin: (2008). Lit Verlag Dr. W. Hopf, p.1.

<sup>2</sup> Desta Abera, Ethiopia“s Role in Africa History, Addis Ababa: (2007), Shama Books, p.3.

Proclamation No 314/1987 and Proclamation No.23/1988 was proclaimed to run election of the National Shengo and Peoples Deputies.

The whole motto of the Constitution and the electoral provision was stating the election of vanguard WPE and party rule. Surprisingly in one session of WPE one liberal outlook member raised how opposition party to be organized and compute election. Former Ethiopian president Mengistu Hilemariyam in his speech said that “one political party never invite or establish opposite political party”. We establish WPE because of tactic not to be named party monopoly.<sup>3</sup> Thus, this period was highly characterized by gloomy for democracy, no real election and practical electoral laws.

The Transitional Charter established by insurgent and liberation of political actors in the country. The period of this transition was short and the only election conducted during this time was National, Regional and Wereda Council election in accordance with the Proclamation No.11/1992. This election laid down the Transitional clue for the country after so long oppressive military rule.

Following the adoption of the 1995 FDRE Constitution by the Constituent Assembly, States organs were established in the Constitution. Among this organ under article 54(1) of the Constitution, the House of Peoples Representatives election for a term of five years by people’s direct participation of the election. The Regional Government was established under this Constitution. Article 52 of the Constitution provides regions were empowered to have their own Constitution and regional people granted power to elect their representative in all regional government councils. The first FDRE constitutional government for the House of Peoples Representative election was conducted in accordance with electoral Proclamation No.64/1993. This Proclamation was repealed by Proclamation No.111/1995 to conform with the Constitution. Again this electoral Proclamation was amended by Proclamation No. 438/2005 with certain provisions believing that promoting democracy in the country. Still electoral law had discrepancy and subject for suppressive other political parties. Thus, the proclamation repealed and the third fully amended effective Proclamation No.532/2007 proclaimed.

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<sup>3</sup> Former Ethiopian president Mengistu Hailemariyam speech available at You tube.com Accessed on April 16/2018.

This proclamation lacks significant improvement in regard to electoral bodies independency, electoral constituency with progressive development of population number, electoral system, encouraging opposition political parties to play equal games in the country political activity, principles of electoral law , dispute resolution mechanism narrowing the appeal right and has discrepancies to cop up with international legal instruments that needs to reform.

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

Election and democracy are inseparable. Ethiopian election and electoral laws were symbolic. Electoral law enacted at different time serves for the interests of ruling class rather than to the interests of the people and electoral norms. The effective electoral law had the following limitations. For instance, the electoral board appointment and its budget allocation belong to the one party rule parliament. The nomination of National Electoral Board members remains in the hands of the ruling party leader Prime Minister. Electoral constituencies were not established to run fair and free election in accordance with the progression of population growth. Party rule and centralism as well as power consolidation is sill predominant. Participation of opposition parties in the legislature and state organs is invisible. (i.e. party pluralism become dormant). Electoral dispute resolution mechanism procedure were narrow the appeal right. Therefore, the current electoral law is under serious problem and needs to reform.

## **1.3. Objective of the Study**

The general objective of this study is to identify the major impediments of the current Ethiopian Electoral Law, to address the need to reform, and to show the discrepancy to be filled.

### **Specific objectives**

- To draw the attention of concerned authority about the ground reality of electoral law and get feedback to change their attitude.
- To show how electoral law play a vital role in promoting multi party system and democracy.
- To evaluate the existing electoral law, its implementation and discrepancy that lead to reform.

## **1.4. Research Questions**

The key questions of this research hope to answer:

- How the existing electoral law become paradox to promote multi party system and democracy?
- Whether the existing electoral law and electoral constituency accommodate the people progressive growth in fully participating of the voting system?
- Are Electoral Board nomination, appointment, electoral system, dispute resolution mechanism independent from party rule and meet international norms?

## **1.5. Significance of the Study**

This study is expected to be useful and important for the following reasons.

1. It creates awareness and forward solution for the attributed problems.
2. It may transmit a clear cut message to reform the existing electoral law.

## **1.6. Scope of the Study**

The study is delimited to evaluate the need to reform the current electoral law of Ethiopia.

## **1.7. Limitation of the Study**

The researcher face insufficient budget allocated for this research, difficulty of getting well organized and easily accessible research statistical data in relation to the topic. Finding on time the concerned government officials and opposition party leaders for interview. However, completed research by a sincere effort and collect the relevant information by using data gathering methods and tools.

## **1.8. Research Methodology**

For the purpose of this study descriptive study followed by survey is most suitable.

## 1.9. Data Collection and Sampling Method

The main data gathering method was document analysis from archives, different books, articles, journals, reports, relevant laws and internets. Institutions like Ethiopian Electoral Board, Opposition Parties Office, and Federal Democratic Republic House of Peoples Representatives. The gap of the data was filled through information from political party leaders and government officials.

The sampling method was employed through a sample random sampling. An interview question was prepared in English language. This helped them to understand the questions.

## 1.10. Literature Review

The word elections are defined by different writers. J, P Harris (1963) defines election as: “the heart of political participation or the process of decision making by the electorate, a body which is qualified by law to make decision.”<sup>4</sup>

Corpus Juris Secundum(1965) defines election as the embodiment of the popular will, receiving the ballots, counting and making the return.<sup>5</sup> Further added election is a democratic method of creating a representative organ of the people.<sup>6</sup> It further extended election is a means that the choice of the people or somewhat numerous body of electors and to the determination of qualified voters of electors pass on various public matters submitted to them.<sup>7</sup>

(Aubynn) (2007) behind the transparent ballot box: The Significance of the 1990s elections in Ghana pointed out that elections have been defined as the expression of the will of the people in a constitutionally stipulated period. Thus they contribute a ground for contestation and participation in recruiting leaders.<sup>8</sup>

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<sup>4</sup> J.P Harris, Election Encyclopedia of the Social Sciences, (1963)Vol. 5, Macmillan Company, New York, p. 235.

<sup>5</sup> \_\_\_ Conprus Juris Secundum: A complete Restatement of the Entire American law as Developed by all reported case American law book co. (1965) vol. 29. P.2.

<sup>6</sup>Ibid.

<sup>7</sup> Ibid.

<sup>8</sup>Aubynn, G. Behind the Transparent ballot box: The Significance of the 1990s Elections in Ghana(2007).Acra,p.27.

(Marian)(1994) on the Politics of American Democracy explained that elections are indispensable in a democracy as the governors must derive their mandate to rule from the voters.<sup>9</sup> An election is said to be a means by which people exercise their right to vote which right recognized by international law as an inalienable human right. In political systems, many people such as modern nations, government „by the people“ must, for the most part be indirect democracy .The people participate primarily by choosing policy makers in competitive elections. Such elections are instruments of democracy to the degree that they participate in the election process.<sup>10</sup>

Joshua (2008),on Is the Right to vote Really Fundamental pointed out that election laws generally regulate three kinds of actor“s in the election process: That is individual voters, political parties and candidates.<sup>11</sup>

Honglund (2009) on “Violence in war to Democracy Transition" explained the choice of electoral system may facilitate conditions favorable for election related violence. It is suggested that deciding an appropriate electoral system for both ethnically a like and divided societies, requires making compromises among different contending normative ends such as representation, accountability, inclusiveness and accessibility.<sup>12</sup>

Diamond and Plattner (2006) on Electoral System and Democracy mentioned that electoral laws are considered as a generator of political stability. The type of electoral system implemented in state matters for the stability of various ethnic, linguistic, religious and political groups to live peacefully with in a polity.<sup>13</sup> The type of electoral system is a sensitive issue especially in diversified societies within a nation. The way constituencies are created and seats are awarded should carefully to include various interest groups within the states, regions and location.<sup>14</sup>

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<sup>9</sup> Marian, B.The politics of American Democracy, (1994), New Jersey:Printce-Hall Inc.4<sup>th</sup> ed.,p.291.

<sup>10</sup>Ibid.

<sup>11</sup> Joshua A. Is the Right to vote Really Fundamental Cornel Journal of Law and Public Policy, (2008) Vol., 18 No 148.

<sup>12</sup>Honglund, Kristina (2008) “Violence in war to Democracy Transitions”, (2008) Cambridge University press, p.45.

<sup>13</sup>Dimand L. and Plattner M. Electoral System and Democracy Maryland: (2006), the John Hopkins University press. P.8.

<sup>14</sup>Ibid.

Lindberg, Staffan (2005) *Consequences of Electoral System in African a parliamentary Inquiry*, Electoral Studies Africa mentioned that in cases of Africa where neo-patrimonial politics is prominent, plural majority system performed much less in terms of ensuring representation, accountability inclusiveness, party development and political stability than proportional representation system.<sup>15</sup>

Reilly Ben (2000) *Electoral System and Conflict in Divided Societies* introducing „winner take all“ electoral system under context where ethnic based parties are predominant and political arena is less tolerated of opposing views contribute to the persistence of exclusionary and zero sum politics.<sup>16</sup>

Reynolds (1993) *Electoral Systems and Democratization* explained that the rational underpinning of proportional representation system is to reduce the disparity between parties“ share of national votes and its share of parliamentary seats.<sup>17</sup>

Lopez Pinter and Rafael (2001) *Electoral governance* explained that the legal framework of electoral management bodies should require or set up an impartial and independent from government or other influences. This area is critical on election administration machinery makes and implements important decisions that can influence the outcome of election.<sup>18</sup>

The International Institute for Democracy and Electoral Assistance (2014) provides some points regarding to electoral law reform. Among these, electoral law reform has been prominent in Africa politics since the third wave of democracy washed over the shores of the African continent in the early 1990s.<sup>19</sup> Since then some countries have made changes to voter registration rules and electoral system design and marginalized groups such as the disabled and ethnic minorities etc. this has brought about electoral law reform.<sup>20</sup>

To this end the researcher looked all the facts to address the existing actual problems.

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<sup>15</sup>Lindberg ,Staffan, *Consequences of Electoral System in Africana parliamentary Inquiry*, Electoral Studies, New York(2005),Oxford University press,pp.61-62.

<sup>16</sup> Reilly Ben. *Electoral System and Conflict in Divided Societies*, (2009),“Washington doc. National academic” press. p.26.

<sup>17</sup> Reynolds A., *Electoral Systems and Democratization*, New York: (1993) Oxford University press. P.46.

<sup>18</sup> Lopez- Pinter and Rafael, *Electoral Governance*, (2001), p. 5.

<sup>19</sup> \_\_\_\_\_ *Electoral Law Reform in Africa: Insists in to the Role of EMBs and Approaches to Engagement*, Policy paper. Institute for Democracy and Electoral Assistance.(2014),Bulls.Sweden.p.7.

<sup>20</sup>Ibid.

## **1.11. Organizational structure of the study paper**

The study paper divided in six chapters. Chapter one deal with an introductory part which contains back ground of the study, statement of the problem, objective and significance of the study methodology and literature review. Chapter two deal with definitions of election and electoral law, theories of election, historical development, principles and types of electoral law. Chapter three deals with definition and needs of electoral systems, practices of selected countries experience, models of electoral management bodies and electoral dispute resolution mechanisms. Chapter four deals the historical development of electoral law of Ethiopia. Chapter five deal with Ethiopian electoral system, constituency, electoral bodies, principles of election and election dispute resolution mechanism. Finally, in chapter six, it provides conclusion and recommendations.

## CHAPTER TWO

### **Elections, Electoral law, Theories of Elections, Historical Development of Election, Principles of election and Types of Electoral Law**

#### **2.1. Definitions: Elections and Electoral law**

##### **2.1.1. Definition of election**

The word election is defined by different writers. Among this one writer defines election: “the heart of political participation or the process of decision making by the electorate, a body which is qualified by law to make decision.”<sup>21</sup>

Other writer defines election as the embodiment of the popular will, receiving the ballots, counting and making the return.<sup>22</sup>It added election is a democratic method of creating a representative organ of the people.<sup>23</sup>Another writer further extended it is the expression of the will of the people in a constitutionally stipulated period. Thus they contribute a ground for contestation and participation in recruiting leaders. Elections are indispensable in a democracy as the governors must derive their mandate to rule from the voters.<sup>24</sup>

From the foregoing discussion the writer of this paper conclude that elections are the corner stone of democracy to exercise peoples will a means to hold power. Thus, a working democracy is the engine for the realization of human rights as alternatives, choice and the people will to elect his representative by exercising democratic rights.

##### **2.1.2. Definition of electoral law**

Electoral law defines by different scholars. One says electoral law is a set of rules which regulates the process of election. That set of rules is termed as electoral law. He added “Electoral law is the aggregate juridical norms which establish and regulate the principles and procedures

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<sup>21</sup>Supra note 4.

<sup>22</sup>Supra note 5.

<sup>23</sup>Ibid.

<sup>24</sup>Supra note 9.

for the organization and conduct of election to representative organs of state power and the relation between deputies and electors.”<sup>25</sup>

From the above definition the writer of this paper conclude that, the basic element of electoral law is the aggregate of juridical norms. These norms establish principles like universal, equal, free, secrete, and procedures for the organization purpose as well as conduct for election.

## **2.2. Theories of election**

In a democracy process, election is a fundamental participation of citizens. In this regard, Jean-Jacques Rousseau, on who furthered the social contract theory and advanced by Thomas Hobbes, provides that a good starting point in the justification of elections is a representative democracy.<sup>26</sup> According to Rousseau, governments draw their authority from those that they are governing. A legitimate governing is thus one that draws its power from the will of the people through elections. A legitimate government therefore, it is one that meets the needs and wishes of citizenry. This theory indeed the basis of democracy means it clear that these governments that get into power without the consent of the people cannot really be called governments in the democratic sense.<sup>27</sup>

In this same regard, John Lock advanced the proposition that political power is morally legitimate, and those subject to it are morally obligated to obey, only where the subjects have freely consented to exercise of such power and only where that power continues to be exercised within the terms consent given. Besides, elections are contributing one of the most important pillars of democracy.<sup>28</sup> This must be also regulated by electoral law. This law provide clear rule and define both the organization of election of these elections, and how to undertake the deduction of the votes in order to assign them to the corresponding. Therefore, election law is important to regulate such elections.<sup>29</sup>

From this notion the writer of this paper conclude that the conduct of elections and elections law are fundamental rules that determine the rules of election and politics as well as it guarantees for

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<sup>25</sup>A.K.H Machanenko, *The State law of the Socialist Countries*, (1976) Moscow, progress publishers, 269.

<sup>26</sup>AJ Simmons, *Justification and legitimacy essays on rights and obligations*,(2001),Cmbridge,p.129.

<sup>27</sup>Ibid.

<sup>28</sup>Ibid.,p.131.

<sup>29</sup>Ibid.

citizens to exercise their fundamental democratic rights through election and governments also assume its power through elections.

### **2.3. Historical development of electoral law**

The historical development of election goes back to early, medieval and modern period.<sup>30</sup> Each period had its own attributions and functions to the citizens. However, the writer of this paper more of concerned on the modern period of development of elections. Due to most modern election period was accompanied by electoral laws that is relevant to this research paper.

The modern period is classified in to two phases. The first phase comprises both 17<sup>th</sup> and the 18<sup>th</sup> centuries. The prevalent theory of suffrage of this period was connected with the idea of popular sovereignty: hence, suffrage was treated as a natural right of man.<sup>31</sup> During this period the „natural right“ idea started to find place in constitutional documents. In the case of France, „the electoral law of 1789 didn“t give full application to the natural right theory of voting. The suffrage was limited to citizens who paid a certain amount of direct taxes.<sup>32</sup> In spite of the natural theory of voting, electoral laws were not free from restrictions curtailing the right to vote. Under this theory men went as far as saying that all governments derive their power just from the consent of governed.<sup>33</sup>

The second phase of the modern period comprises the time starting from the 19<sup>th</sup> century up to now and is called the contemporary period. Under this phase, voting is considered to be a function of government unlike the natural right theory. In general this phase empowers the state organs, public office the peoples sovereignty and authority as well as organizations were established also the power limited by the law.<sup>34</sup>

From the above discussion we can conclude that these periods were contributed for the development of electoral law in one or other way for contemporary world.

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<sup>30</sup>Mandefro Eshete, Electoral Principles and systems are envisaged in proclamation No 64/1993: A comparative analysis, (1992) (Unpublished) A.A.U, Faculty of Law P.5.

<sup>31</sup>Ibid.,p.8.

<sup>32</sup>Ibid.

<sup>33</sup>Ibid.

<sup>34</sup>Ibid.

## **2.4. Principles of electoral laws**

There are generally recognized electoral principles because the possibility of establishing universal laws seems and indeed is nothing but fantasy; because each state has its own political system and its own way of economic development and since each of these principles is a manifestation of democracy but there is no imagine standard of democracy.<sup>35</sup> Thus, the impossibility of establishing of universal electoral law is will remain impossible. Instead, because those principles in one way or another are recognized by almost in all nations irrespective of their political outlook, economic status and social development it will not be obnoxious to categories them as a general accepted electoral principles.<sup>36</sup> One scholar mentioned that the principles of electoral laws are simultaneously the fundamental principles of electoral system.<sup>37</sup>

### **2.4.1. Principle of universal suffrage**

The principle of universal suffrage is the right of exercise of the right to vote in public office. The freedom of an individual to express a desire to a change in government by choosing between competing people or ideas without fear of reprisal is basic to self-government.<sup>38</sup>

The universal suffrage has become a common principle of electoral laws, in modern democratic states. The universal suffrage, as opposed to the limited suffrage recognizes the right to vote for all adults as a rule. The history of the development of modern democratic government means the history of the acquisition by its people of universal suffrage, and the election law of a country serves as a barometer for its democratization.<sup>39</sup>

According to article 21(3) of the Universal Declaration of Human Rights (UDHR)<sup>40</sup> and article 25(b) of the International Covenant on Civil and Political Rights (ICCPR)<sup>41</sup> provides that state

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<sup>35</sup>Mekonen Tilahun, The Ethiopian June 1992 election in the light of universal electoral principles, (1993) (unpublished) A.A.U, Faculty of Law, P. 9.

<sup>36</sup>Ibid.,pp.9-10.

<sup>37</sup>Supra note 25,p.182.

<sup>38</sup>Supra note 4,P.450.

<sup>39</sup>\_\_\_\_\_ The New Encyclopedia Britannica, Inc. Tokyo,(1976) Vol. 8, P. 120.

<sup>40</sup>Universal Declaration of Human Rights (the UDHR), Adopted by General Assembly Resolution A/RES/217A (iii)of 10 Des, 1948, article 21(3).

parties to hold genuine elections, guaranteeing the free expression of the will of the voters. As a result the principle of universal suffrage is now almost universally accepted and applied in practice in world.

The rationale behind to this principle is it consists of the right to vote of all adults without discrimination. However, there were exceptions to this regard. This includes, minors, citizenship, residence duration, and incapable persons like juridical and legal interdicted persons to perform juridical acts.

From the above discussion the writer of this paper infers the principle of universal suffrage subject for restrictions. Those restricted voters and candidates were not enjoying the principle of universal suffrage for the reason there is no absolute right to be exercised.

#### **2.4.2. Principle of equal suffrage**

The principle of equal suffrage denotes that everyone should be given equal rights. This principle requires that the weight of votes of citizens is equal independent of differences income education, religion, race, sex or political stand.<sup>42</sup>The establishment of constituencies is also based on certain principles. One among those principles is fundamental to the principle of equal suffrage. In other words equal suffrage is the principle of one man and one vote.<sup>43</sup>

The rationale behind to this principle is equality of votes. According to article 21 (3)<sup>44</sup> of the Universal Declaration of Human Rights (UDHR) and article 25 (b)<sup>45</sup>of the International Covenant on Civil and Political Rights (ICCPR) provides that state parties to hold genuine elections and guaranteeing the equal participation of the will of the voters. As a result, the principle of equality of suffrage is now almost universally accepted and applied in practice.

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<sup>41</sup>International Covenant on Civil and Political Rights (ICCPR), Adopted by General Assembly Resolution A/RES/2300A (xxi), of 16 December 1966 Entered into force: 23 March, article 25(b).

<sup>42</sup>Supra note 25, P.283.

<sup>43</sup>\_\_\_\_\_The New Encyclopedia Britannica, (1976)15<sup>th</sup>ed, Vol. 6, Inc., Tokyo, P. 533.

<sup>44</sup>Supra note 40,article 21(3).

<sup>45</sup>Supra note 41,article 25(3).

## 2.4.2. Principle of free suffrage

One writer mentioned that “the concept of free suffrage can be exercised in the process of the democratization of social, cultural and economic life of a country.” Election through which natural leadership and programmes selected are essentially for democracy. But the question is whether or not such elections do assure or guarantee democracy.<sup>46</sup>

Election law does not necessarily guarantee democracy. In other words, elections do take place also in totalitarian and authoritarian systems and have no democratic content at all. „Free“ elections can also take place in every country undemocratic societies and do not necessarily contribute to democratization.<sup>47</sup> To be free means that the voter shall be left in the unrestrained exercise, whether by civil or military authority, as his right or privilege, that is no impediment or restraint of any cheater shall be imposed on him/her, either directly or indirectly, whereby he shall be hindered or prevented from participation at the polls.<sup>48</sup>

The rationale behind to this principle is equality of votes. According to article 21(3) of the Universal Declaration of Human Rights (UDHR)<sup>49</sup> and article 25 (b) of the International Covenant on Civil and Political Rights (ICCPR)<sup>50</sup> provides that state parties to hold genuine elections and guaranteeing the free expression of the will of the voters. As a result and the principle of free suffrage is now almost universally accepted and applied in practice. This principle denotes citizens exercise their fundamental rights without any other external factors. That is to say, only the person that exercises his or her rights is the ultimate decision makers on elections.

Therefore, from this concept the writer concludes that the more presence of free suffrage doesn't amount to equal election is free. Rather the whole process of election is free from any interference, harassment, frauds and other wise.

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<sup>46</sup>Supra note 25, pp.283-284.

<sup>47</sup>Ibid.

<sup>48</sup>Ibid.

<sup>49</sup>Supra note 40, article 21(3).

<sup>50</sup>Supra note 41, article 25(3).

### **2.4.3. Principle of direct suffrage**

This principle envisages that members of the representatives bodies at all levels are elected directly by the electorate. Qualified electors vote for their representatives either directly or indirectly.<sup>51</sup>The direct method of voting is a kind of election where qualified voters are directly electing their representatives to the national council or national assembly. Under indirect election is voters of a certain area elect someone to vote for a deputy on behalf of them.<sup>52</sup>In principle, direct election is more democratic than indirect election but the latter may be more democratic in the circumstance of the country.<sup>53</sup>

The rationale behind to this principle is that elector's exercise their rights directly participated and decide in the elections. Article 25 (a) of the Universal Declaration of Human Rights (UDHR)<sup>54</sup> and article 21(1) of the International Convention on Civil and Civil and Political Rights (ICCPR)<sup>55</sup> provides that states parties should ensure for citizens to take part to elect their representatives through direct participation.

From the above discussion the writer concludes that direct election helps to electors exercise their fundamental rights in a given election in a direct manner.

### **2.4.4. Principle of secrete suffrage**

This principle is required to allow individuals to have the almost freedom or they need to elect whomever they want. This meant that: "equality at least was not something given but something that had to be engineered; the secrecy of the vote a first and necessary step administrative step toward one man one vote principle."<sup>56</sup>Article 21(1) UDHR<sup>57</sup> and article 25(b) ICCPR<sup>58</sup>of provides that the people have the right to take part in election by on the basis of their will through secret voting procedures.

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<sup>51</sup>Supra note 25,p.285.

<sup>52</sup>Ibid.

<sup>53</sup>Ibid.

<sup>54</sup>Supra note 40,article 25(a).

<sup>55</sup>Supra note 41, article 21 (1).

<sup>56</sup>International IDEA, International Electoral Standards, Guidelines for Reviewing the Legal Frame work of Elections, Stockholm: (2002) International Institute for Democracy and electoral Assistance, p. 5.

<sup>57</sup>Supra note 40, article 21 (3).

<sup>58</sup>Supra note 41,article 25(b).

The rationale behind to this principle elector during exercise of their fundamental rights in election their decision must undertake in the manner of secrecy. Only the electorates are the final decision makers of their alternatives. No other third parties interfere in the decision making process of election. Moreover, from this notion the writer infer that principle of secret suffrage evade the voter from extraneous pressure, challenges, it gives to fill complete freedom not supplied by candidate the vote is supplied at the polling station and done in private booths.

#### **2.4.5. Principle of Periodical election**

The other principle of electoral law is periodicity of election. Deferent countries have their own election period in their constitution and electoral law (Act). In this regard, article 21(3) of the Universal Declaration of Human Rights<sup>59</sup> and article 25(b) of the International Covenant on Civil and Political Rights provides that elections must be held periodically. General elections are usually held at four or five year intervals.<sup>60</sup>

The rationale behind to this principle must undertake periodically in light of the law provides. The aim of this principle citizens get a chance to get to resume or change their representative on the basis of the commitment to enter before coming to power. Besides, the term of office of people representative pre-determined by the law of a given country,

Therefore, electoral law has ensured the applicability of such fundamental principles. Besides, this universal, international community accepted and ratified principles all domestic states must be implemented without any arbitrary reservation.

#### **2.5. Types of electoral laws**

It is obvious that elections are the only means to bring about a legitimate and truly representative government. In order to undertake these elections, electoral law plays vital role. In this regard scholars classify electoral laws in to three. “The first types of electoral laws are those laws motivated by proper constitutionally intended purposes.”<sup>61</sup> The second category of laws is those

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<sup>59</sup>Ed, William A. Darity, Jr., International Encyclopedia of the Social Sciences, (2005)2<sup>nd</sup> ed., Vol, 9, Deteroit: Macmillan Reference, USA, p. 1.

<sup>60</sup>Ibid.

<sup>61</sup>Micheal J. Klarman, Majoritarian Judicial Review: The Entrenchment problem, (1997) Vol. 85, No 3, Geo LJ 49 P. 530.

laws motivated by a mixture of intended and partisan purposes. The third category of laws is those laws designed entirely to fulfill partisan ends.<sup>62</sup> These three categories of electoral laws have been discussed here in under.

The first category of laws that cases does not generally raise problems for the law of democracy. If a law is legitimately motivated to enhance free democratic participation, there is no constitutional problem.<sup>63</sup> Potential difficulties may arise if the law limits democratic rights in contrary to the law. Courts are occasionally faced with theory problems caused by well-motivated laws that also happen to limit democratic rights.<sup>64</sup>

The second categories of electoral laws are characterized by the mixture of proper constitutionally intended purposes and partisan ends. These are encompasses most election laws.<sup>65</sup> Electoral representations public minded desire to improve the democratic process will often co-exist with the temptation to achieve re election by altering the terms of democratic competition.<sup>66</sup> Elections are complex and dynamic regulatory environments where separating what portion of a law is public minded from what is partition oriented represents an ongoing challenge for courts. Courts will often be confronted with a mix of possible motives to consider.<sup>67</sup>

The third category of electoral laws is those laws “What only plausible or no proof justification was pure partisanship.”<sup>68</sup> Because of that a law may be directed toward a partisan and without mitigating proper purposes flows from the principal age at problem at the health of the law of democracy.<sup>69</sup>

The above three types of electoral laws adopted as a state choice under their Constitution. This to be effective only when the laws are fully practiced and implemented on the ground as though the legislature enacted of same as prior intent.

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<sup>62</sup> Supra note 61.

<sup>63</sup> Justin Levitt, “The Partisanship spectrum, (2014) W.N and marry L. Rev 1787, Vol. 24, p. 1809.

<sup>64</sup> Ibid.

<sup>65</sup> Supra note 63.

<sup>66</sup> Ibid.

<sup>67</sup> Supra note 61.

<sup>68</sup> Samuel Issachar off and Richard, H. Pildes, Election Administration in United States: The state of Reform, (2014) Cambridge University press, P. 10

<sup>69</sup> Ibid.

## CHAPTER THREE

### **Electoral Systems, Needs, Types, Merits and Demerits, Practices of Selected Countries Experience, Models of Electoral Management Bodies and Disputes Resolution Mechanisms**

#### **3.1. Definitions of electoral system**

One writer defines an electoral system is the allocation of seats in the elected assembly.<sup>70</sup> Others define electoral system as it is the method used to calculate the number of electoral positions in government that individuals votes and parties after election.<sup>71</sup> Another define electoral system as: Translate the votes cast by electorates in general election in to seats won by parties and candidates get parliamentary seats in the legislature at the national and where relevant, the sub national level as well.<sup>72</sup>

Further electoral systems have three basic elements. The first one is the electoral formula. This formula includes plurality/majority, proportional or mixed electoral system.<sup>73</sup> Under this formula plurality distinguished from majority. The former enumerates the largest number or share of a given quantity through not necessarily a majority and the latter indicates a candidate needs a majority of votes as opposed to a mere plurality in order to be elected.<sup>74</sup> Such as the alternative votes or some version of the two round systems. The second one is ballot structure (i.e. whether the voter votes for a candidate or a party and whether the votes makes a single choice or expresses serious preferences). The third is district magnitude (i.e. the number of representatives to the legislature that a particular district elects).<sup>75</sup>

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<sup>70</sup>Supra note 61.

<sup>71</sup>Arend Lijphart and Bernard Grofman. *Choosing an Electoral system Issues and Alternative*, (1984) west port connecticut press, London, p. 78.

<sup>72</sup>Reynolds, A. *Elections, Electoral Systems, and Conflict in Africa*, (2009), *Brown Journal of World Affairs*, XVI (I) pp. 75-83.

<sup>73</sup>Ibid.

<sup>74</sup>Ibid.

<sup>75</sup>Reynolds, A. et al., *Electoral system Design: The International IDEA Hand book*, (Stockholm: (2005) International Institute for democracy and Electoral Assistance, p. 35.

### **3.2. The need for electoral systems**

Electoral systems are important for several reasons. First and for all without an electoral law and established institution, a state cannot be democratic. As electoral law is democratic expression of a state, there should be electoral law or voting systems that enable citizens to come to the political power or delegate others in to political power.<sup>76</sup> Secondly, electoral system is not a mere conducting of elections periodically it is rather beyond that and it includes “the way structured how people cast vote, how votes are counted, and finally the winners decided.”<sup>77</sup> If a good electoral system is available in a state, it will enhance people’s confidence to be represented in the government, voters’ turn out increases, various policy options are provided to the public to select out of it. To find the best voting system, it needs a clear look into political, social, cultural and economic conditions of a state. This brings about democratic representation in a given country.<sup>78</sup>

The writer of this paper address that, electoral law should mention a clear institutionalized electoral system in designing of the electoral system. It also needs great commitment for the real representation of different groups in the legislature. Moreover, these electoral systems accommodate the social, cultural, political and economic condition as well as the diversity nature of a country.

### **3.3. Types of electoral systems**

According to some literature, electoral systems are categorized in to three broad families. These are “Plurality systems, proportional representations and mixed systems.”<sup>79</sup> Each categories and sub categories are discussed in the following manner.

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<sup>76</sup>Douglas, Amy, and Behind the Ballot Box: A citizen is Guide to Voting systems, London: (2002) Westport, Connecticut, p. 1.

<sup>77</sup>Ibid.

<sup>78</sup>Ibid.

<sup>79</sup>Alina Rocha Menocal, Why electoral systems matter: An analysis of their incentives and effects on key areas of government (odi), p. 3.

### 3.3.1. Majority/plurality electoral system

The historical background of majority electoral system goes back to 15<sup>th</sup> century originated from Great Britain. According to this system only one candidate is elected on the basis of plurality or majority vote from a single district.<sup>80</sup> The two basic attributes of this system are votes cast in single member districts in which only one member of the legislature is elected and the winner is determined by who gets the largest votes. In the contrary, under the plurality electoral system the winner candidates shall won the election on the basis of the vote casted for a simple majority from each electoral district.<sup>81</sup>Plurality/majority system is sub divided in to five namely, first past the post, two round system, alternative vote and party block vote and block vote.<sup>82</sup>

The first sub category of plurality system is „first-past-the post“. In other words, it is the „winners take all“ electoral system. It said to be „nominal electoral system“. According to this system the vote will be counted on the base of simple majority vote that give privilege to the candidate to win the election. Such system used for election for Lower House in the United Kingdom, Canada, India, United States, Kenya, Ghana and many common wealth states.<sup>83</sup>

The second sub category of plurality electoral system is two round systems. This system addresses the second ballot of runoff system by which if any of candidates not receives absolute majority in the first round. In other words those candidates who receive the most votes than others shall contest in the second round and the one who receives absolute majority vote wins the election. Countries like Australia, Colombia and Russia, Mail and Ukraine, French, Egypt and Somalia also currently uses this method to run their presidential election.<sup>84</sup>The rationale behind of this sub category and the preceding countries were to realize real representation of the voter and to give opportunity for candidates who had majority support of the voter.

The third sub category of plurality electoral system is alternative vote. In this voting system candidates need an absolute majority of votes to win the election.<sup>85</sup>Accordingly, where no one

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<sup>80</sup>Pippa Norris. Choosing Electoral systems: Proportional, Majoritarian and Mixed systems, Blatimore: (1997)the Johns Hopkins University press, p. 299.

<sup>81</sup>Renwick, Alan, The politics of Electoral Reform Changing the Rules of Democracy, (2010) New York: Cambridge University Press, p. 3.

<sup>82</sup>Ibid.,p.13.

<sup>83</sup>Ibid.

<sup>84</sup>Ibid.

gets over 50 percent after first preferences are counted, then the candidate at the bottom of the pile with the lowest share of the vote is eliminated, and their votes are redistributed amongst the candidates.<sup>86</sup>This distribution of votes and elimination of candidates continues until one of the candidates“ achieves absolute majority.<sup>87</sup>The rationale behind of this sub category is to realize real representation and avoid wastage of vote as well as to promote mass supportive candidates.

The fourth sub category of plurality electoral system is party block vote. Under this electoral system there are multi member district for election. Voters have a single vote and chose between party list of candidates rather than individual. The party which wins most voters has all the seats in the district and its entire list of candidates is duly elected.<sup>88</sup> The rationale behind of this category is to give preference to the party candidates and to avoid overcrowding of the candidates in the constituency.

The fifth sub category of plurality electoral system is block vote. This electoral system prefers individual candidates unlike party block vote. The rational of this system is to encourage individual candidates for election in countries those have no political party.<sup>89</sup>

From this assertion the writer of this paper conclude that electoral system sub categories under plurality electoral system had its own merits and demerits. However countries prefer accordingly to conduct the election.

### **3.3.2. Merits and Demerits of plurality/majotarian electoral system**

The merits of plurality electoral systems are it promotes effective and stable government. It reduces the influence of political parties based on racial and ethnic cleavages. It favors larger parties, which encourages parties to develop national polices of reduces the influence of small parties. It also is encouraging cooperation and national integration.<sup>90</sup>It ensures a close relationship between voters and representatives. It encourages local accountability; it increases

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<sup>86</sup>Supra note 80.

<sup>87</sup>Ibid.

<sup>88</sup>Supra note 75, p.52

<sup>89</sup>Ibid.

<sup>90</sup>Supra note 81.

the possibility of producing a clear winner, and it easily major changes of policy according to the electorate wishes.<sup>91</sup>

The demerit of plurality electoral system is it doesn't accurately reflect the votes cast in an election. The discrepancy between votes cast and seats are „lost“ in that only one person is elected for constituencies. It benefits parties with a geographical concentration the determinant of parties with scattered support.<sup>92</sup>This may (a) encourage abuse of the delimitation of constituencies, (b) it encourage coalition governments, because of the emphasis on majoritarian. Thus, the majoritarian system denies representation to smaller parties than any other system. It gives chance for candidates“ simple majority vote in system like first past the post.<sup>93</sup>

### **3.3.3. Proportional representation system**

The historical origin of proportional representation goes back to 1885 then developed and adopted in 1989 by Belgium. Four scholars namely Victor d' Hondut (Belgium), Thomas Hare (England), Edward Hagenbach-Bischeff (Switzerland) and A. Saint-Legue (France) were the founder and developer of this electoral system.<sup>94</sup>Such system achieved usually through party lists of candidates, and these lists can be either open (where voters rank the candidates in order to preference) or closed (where the ordering in the hand of the party leadership and is decided prior to the election.<sup>95</sup>Under this system the electoral law provides minimum threshold for casting vote to get seats in the legislature.<sup>96</sup>This system is sub categorized in to two namely list proportional and the single transferable vote. The former system relies on the party present's list of candidates to the constituency. The voter votes to the party candidates. The winner party can take seats in the legislature by their vote proportion share through threshold. In the latter the party will be ranked by the voter vote. According to their rank the party get seat in the legislature.<sup>97</sup> The rationale behind of all proportional representation system is to consciously reduce the disparity

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<sup>91</sup>Ibid.

<sup>92</sup>Diamond, Larry and Marc Plattner, Electoral system and Democracy, (Marry land: (2006), The Johns Hopkins University press, pp. 17-21.

<sup>93</sup>Ibid.

<sup>94</sup>Supra note 81, p.20.

<sup>95</sup>Ibid.

<sup>96</sup>Ibid.

<sup>97</sup>Supra note 75,p.63.

between a party's share of the national votes and its share of the parliamentary seat.<sup>98</sup> The conceptual principle behind proportional representation is that distribution of seats brought about by an election should be closely resemble in distribution of votes. This large number of specific proportional representation systems.<sup>99</sup> It also emphasizes on representation of diversified community, options and other cleavages of the society when compared to plurality majoritarian systems, it is defended for its inclusiveness and creating grand coalition.

### **3.3.4. Merits and Demerits of proportional electoral system**

The merits of proportional electoral system are basically addresses the division of legislative seats equal to the proportion of the votes that a party receives. It therefore, permits delicately differentiated representation which expresses all of countries diversity. Thus the proportional representative system is a useful tool for protecting ethnic majorities since majority and minority opinion are represented in the legislatures.<sup>100</sup> It moves away from the winner takes all approach and promotes coalition and cooperation which creates an opportunity for the whole political system to be represented in the legislature. It ensures a close relationship between voters and representatives.<sup>101</sup>

The demerits of proportional electoral system are: it is complicated for voters in casting vote, especially those in developing countries to understand the system. It leads to increase the number of parties; it creates the development of splinter groups and an emphasis on minority view points.<sup>102</sup> In some countries, it undermines stable government by making an absolute majority difficult and encouraging coalitions. It favors the role of the political party, especially in the compilation of the party's list candidates. It reduces the relationship between voters and representatives in so doing undermining the principle of accountability and leading to large impersonal constituencies.<sup>103</sup>

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<sup>98</sup>Ibid.

<sup>99</sup>Michael G. and Paul M.,The Politics of Electoral Systems, (2005) Oxford University Press Inc. Now York, p. 634.

<sup>100</sup>Supra note 79.p.30.

<sup>101</sup>Supra note 76,p.1.

<sup>102</sup>Ibid.

<sup>103</sup>Nils- Christian Bormann and Matt Golden, Democratic Electoral Systems Around the world, 1946-2011, (2013),Elsevier ltd. USA, p. 362.

### 3.3.5. Mixed electoral systems

Mixed electoral system can be traced back to Germany's adoption a mixed member plurality and proportional system following the Second World War.<sup>104</sup>The system represents a „compromise“ or a „third way“, between plurality systems and proportional representation. It is also called additional members system. The system holds elections and translates the vote cast in to seats with a majoritarian formula in the one hand and proportional formula on the other. Countries like Germany, Italy, New Zealand and Russia recently using this system.<sup>105</sup>The rationale behind to this system is compromising of the two electoral systems. It also attempts to combine the positive attributes of both plurality/majority and proportional representation systems. Under this systems there are also electoral systems using different formulas running alloy side each other. The votes casts are cast by the same voters and contribute to the election of representatives under both systems.

Under mixed member proportional system, the proportional representation seats are awarded to compensate any district proportionally by the district seat results. For example if one party wins 10 percent of the national vote but no district seat then they would be awarded enough seats from the proportional representation lists. In such representation even though varies country to country maximum of 10 percent of threshold were given for be the legislature member.<sup>106</sup>Accordingly, voters may get to separate ballot paper to elect in plurality system and mixed member proportional system. Germany follows this system. However, in New Zealand the voter receive one ballot paper with the party folds being divided from totals for the in divided district candidates.<sup>107</sup>

There is also unique parallel mixed electoral system. Under this system the number of list seats a party receives is determined solely by the number of lists votes it receives regardless of how many single member district seats it has won.<sup>108</sup>The system promotes the voters to hold two ballot for plurality and mixed parallel vote for parties on a limited seats within the threshold to

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<sup>104</sup>Supra note 75

<sup>105</sup>Supra note 72.

<sup>106</sup>Supra note 99,p.99.

<sup>107</sup>Supra note 75.

<sup>108</sup>Andre Barners and others, Electoral systems and Electoral Reform in Canada one Elsewhere: An Overview, (2016), Canada, Toronto Legal Research Center, P. 1.

accommodate parties as an additional members of the legislature. Countries like South Korea, Japan and Thailand follow this electoral system.<sup>109</sup> Those countries were under Asian Continent with mono ethnic groups and their democracy culture not developed to gain better experience.

### **3.3.6. Merits and Demerits of mixed electoral systems**

The merits of mixed electoral systems are mixed electoral systems provide for fairly proportional out comes, maintain the geographic link between constituents and members, provide for greater choice, and allow the opportunity for smaller parties to be represented in parliament.<sup>110</sup> Its disadvantages that they may be difficult to use and understand and they create two classes of member (i.e. electoral district versus list).<sup>111</sup>

From the forgoing discussion the writer of this paper looks each electoral system have their own merits and demerits. However, each state should have a critical glance to opt either of them alternatively or cumulatively in relation to social, economical and cultural development as well as political setup.

### **3.4. Models of Electoral Management Bodies (EMBs)**

An election management bodies can be defined as: Is an organization or body that has the sole purposes, and is legally responsible for, managing some or all of the elements that are essential for the conduct of elections.<sup>112</sup>

According to scholars, electoral management bodies it emerged in the late 18<sup>th</sup>c when mass elections were introduced in Europe and North America.<sup>113</sup> EMBs has further asserted developed within the executive arm of the government because the running of elections was then considered as a public service operation best carried out by the government.<sup>114</sup> Therefore, in many old democracies such as those of western Europe and North America EMBs were structured within

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<sup>109</sup>Ibid.

<sup>110</sup>Supra note 108.

<sup>111</sup> Ibid.

<sup>112</sup>Supra note, 75.

<sup>113</sup>Mozaffar, S, The Comparative Study of Introduction governance, (2002)International Political science, Review 13, p. 23.

<sup>114</sup>Lopez- Pinter, R, Electoral Management bodies as institution of governance, (2000),New York, United Nations Development Program, p. 131.

the government as department of the ministries of home affairs, interior and territorial administration.<sup>115</sup> Importantly the design of EMBs are related to the rules of electoral administration, and EMBs are the institutions responsible for making sure that these rules are being implemented effectively and impartially during the election period.<sup>116</sup>

An electoral management body can have a different model that may result from a holistic design on it may depend on the existing system of a country state administration. While there are many variations and three models of electoral management bodies named as: independent, governmental and mixed models.<sup>117</sup>

### **3.4.1. The independent model**

One of the models of electoral management body is independent model. According to this model of EMBs is used in countries where elections are organized and managed by EMBs that is intuitively independent and autonomous from the executive branch of government; its members are outside the executive.<sup>118</sup> Under this model, the EMBs have and manage its own budget, and is not accountable to the government ministry or department. It may accountable to the legislature, the judiciary or the head of the state.<sup>119</sup> EMBs under this model may enjoy varying degrees of financial autonomy and accountability, as well as varying levels of performance accountability. Many new and emerging democracies have chosen this model. For instance, Canada, India and South Africa are followers of this model.<sup>120</sup>

The main point under this model is the electoral management body accountability, budget allocation; appointment of board members, dispute resolution mechanism and enforcement of electoral law ascertaining independency of electoral management body must be free from the interference of the executive branch of the government.

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<sup>115</sup>Ibid.

<sup>116</sup>Supra note 75,p.6.

<sup>117</sup>Ibid.

<sup>118</sup>Ibid.,p.8.

<sup>119</sup>Ibid.

<sup>120</sup>Ibid.

### **3.4.2. The government model**

Another model of electoral management body is government model. According to this model elections are organized and managed by the executive branch of a ministry (such as ministry of the interior and/ or through local authorities.<sup>121</sup> This model exist at the national level, they are led by a minister or civil servant and are answerable to a cabinet ministry. Their budget falls within a government ministry and/ or under local authorities. Countries like UK, USA and Sweden followers of this model.<sup>122</sup>The rational of this model is the executive branch of the government intended to control the full activity of electoral management body activity.

### **3.4.3. The mixed model**

This model of electoral management bodies usually involves two components EMBs and a dual structure. (1) a policy (like an EMBs under the independent model).(2) an implementation of EMBs located within a department of state and /or local governments(like an EMB under government model).<sup>123</sup> Under this model elections are organized by a component governmental EMBs, with some level of oversight provided by the component independent EMBs. For instance, France, Japan and many French colonies in West Africa the Mali and Senegal are followers of such model.<sup>124</sup>The rational of this model is to create balance between the independent and the Government model.

## **3.5. Elections Dispute Resolution Mechanisms**

### **3.5.1. Definition of election dispute**

Election related disputes are intrinsic part of the electoral process is determined to a large degree by the capacity of the state to effectively resolved these disputes. The judiciary is an important role in the adjudication of electoral disputes.<sup>125</sup>

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<sup>121</sup>Ibid

<sup>122</sup>Ibid,p.9.

<sup>123</sup>Ibid

<sup>124</sup>Ibid.

<sup>125</sup>Alen, Davis, Electoral Dispute and Resolution, (2004), Cambridge University Press 13.

Election disputes might occur before, during or after election. This might include the right to stand as a candidate, dispute arising from electors' registration, voting, vote counting and results. Generally, the fundamental issues of election dispute the validity of result and therefore, the right to challenge the outcome problem and penalization of those who are responsible for the malpractice in the process.<sup>126</sup>

The core function of an electoral complaints body is to maintain credibility through the availability of a clear legal right of action of individuals and relevant actors.<sup>127</sup> A strong electoral structure must have the capacity to resolve complaints and disputes arising elections through a fair, transparent and efficient process.<sup>128</sup>

Election laws must also provide clear rules and procedures for which, when, how and in what form complaints or demands must be filed, including reasonable but tight dead time and time limits should be established for a complaint and for the adjudicative bodies that deal with those cases.<sup>129</sup>

Countries have enshrined the resolution of electoral conflict to constitutional courts or bodies of constitutional justice. In other countries, the judicial is responsible for those conflicts with the possibility of appeal at the way to the Supreme Court. Some countries have chosen and create special electoral tribunals to adjudicate cases arising of elections, as an element of this democratic transition. Some countries have mixed systems electoral dispute resolution.<sup>130</sup> Mixed system is characterized in a significant rule given to the political branches of government, such as parliament, in the resolution of disputes, but the responsibility is shared with either the ordinary courts or administrative entities.<sup>131</sup>

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<sup>126</sup>Vidlaine Autheman, The Resolution of Dispute Related to "Election Results": A snapshot of Court practice in selected countries around the world, (2004), IFES publication USA, p. 1.

<sup>127</sup> \_\_\_\_\_ Garde, Guide lines for Understanding, Adjudicating, and Resolving Disputes in Elections, International for Electoral Systems, (2004), USID, p. 17.

<sup>128</sup>Ibid

<sup>129</sup>Denis Petit, (2000), Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring system, (2004), Warsaw, pp.6-9.

<sup>130</sup> Ibid ., p. 99

<sup>131</sup>Ibid., p. 101

## 3.6. Electoral system of selected countries experience

### 3.6.1. Canada

The researcher opted Canada for the reasons of Canada state structure and organs of the Government is to the nearest similar to our country. For instance Canada has a parliamentary system patterned on the Westminster model, under a Constitution adopted in 1867 that now ranks as the fifth oldest among the national constitutions still in force. The Federation started with four provinces and now has ten plus three self governing territories in the north.<sup>132</sup>

At the federal level, there is a parliament composed of two houses, the directly elected House of Commons and the appointed senate.<sup>133</sup> The House of Commons (chamber des communes de Canada) is democratically elected body whose members are known as members of parliament.<sup>134</sup> There were 308 parliament members, in the 2011 general election with the size of the population. The total number of population of Canada during 2015 general election was 35,763,860. The registered voters during this election was 17,451,328. The total seats of the House of Commons 338. The political parties competing in that election were Liberal, Conservative, New Democratic, Quebecs and Green Parties. Accordingly the liberal party acquired 6,993,276 votes, accounts 39.5 percent won 54 percent 184 seats. Conservative party acquired 5,630,614 votes, accounts 31.9 percent 29 percent won 99 seats. New Democratic Party 3,470,350 votes, accounts 19.7 percent 13 percent won 44 seats. Block Quebecs 821,147 votes accounts 4.7 percent 3 percent won 10 seats. Green party acquired 602,944 votes, accounts 3.4 percent 0.3 percent won 1 seats.<sup>135</sup>

According to section 37 of the 1867 and 1982 Canada Constitution, the House of Commons is directly elected by citizens for a term of five years. They are elected by simple plurality electoral system (i.e. first-past-the-post) electoral system in each of the country's electoral districts which are colloquially known as ridings.<sup>136</sup> The constitutional act of each province and territory is

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<sup>132</sup>Michael G. and Paul M., *The Politics of Electoral Systems*, (2005) Oxford University Press Inc. New York, p. 99

<sup>133</sup>Ibid.

<sup>134</sup>Ibid

<sup>135</sup> Available at <http://www.ourcommons.ca/> accessed on Dec.15/2017.

<sup>136</sup>Canada, „The Constitution Acts of Canada 1867 to 1982. Available at: <https://www.ourcommons.ca/> accessed on Dec.15/2017

allocated a certain number of seats in the House of Commons according to the formula set out in section 51 of the constitution.<sup>137</sup>

The provision of the Constitution provides seats of the House of Commons distributed to thirteen provinces. Ontario has 106 allocated members, seventy five for Quebec and distributed for others.<sup>138</sup> Electoral constituency was organized 105,810 inhabitants to represent one candidate for the House of Commons. The electoral system is plurality and sub categorized first past the post.<sup>139</sup>

In Canada different electoral reform proposals are under taken since 2003 till now. Some of the proposals indicate that, the present electoral system will be changed to mixed member electoral system. The draft bill expressly provides one ballot system did not accurately reflect the wishes of the voters and would encourage strategic voting.<sup>140</sup>

From the above election result one concludes that the first past the post electoral system envisaged under the Constitution and election Act of Canada is exposed to wasting of votes, simple majority encouraged acquiring government power.

### **3.6.2. South Africa**

South Africa is a country structured under federal state. The electoral system is nowadays opposite to our country. This helps for comparison to our system and Canada. Some literature provides that from 1910 until 1994 electoral system in South Africa was single member plurality. It is well known that plurality rule in a single member district in parliament.<sup>141</sup> During this time South Africa had some of the formal institutions of a representative democracy but these lacked legitimacy due to apartheid regime in which only white South Africans were properly enfranchised. Thus, the main feature of electoral politics prior to 1990s was that that last majority of South Africans were permanently on racial grounds.<sup>142</sup>

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<sup>137</sup>Ibid., Section 51.

<sup>138</sup>Ibid., Section 37.

<sup>139</sup> Canada Election Act 2016. Available at <https://www.law-losisJustice-ge-ca>, Accessed on Dec. 19/2017. █

<sup>140</sup>Supra note 108, P.17.

<sup>141</sup>Ibid., p335.

<sup>142</sup>Ibid., pp,355-357.

Currently, the electoral system, allocation of parliamentary seats and related issues of South Africa is list proportional.<sup>143</sup> It is clear that, South Africa emerged from this process as a parliamentary democracy with three level of governments; a national assembly, provincial legislators in the nine provinces, and local and municipal councils.<sup>144</sup>

In this regard the 1996 Constitution<sup>145</sup> Electoral Act of 1998<sup>146</sup> established that parliament would consist of a 400 Members National Assembly and 90 member Senate (which later became known as the National Council of the nine 9 provinces. The total number of population of South Africa during 2014 election was 53,692,632.<sup>147</sup>The parliament seats occupied by 400 directly elected members by list proportional electoral system. One candidate is represented from 100,000 inhabitants“ organized one constituency.<sup>148</sup>

In the 2014 general election of the National Assembly, 30 (thirty) political parties were contested for election. The researcher omitted the result of political party which has no significant vote“s of different votes. For instance, African national congress acquired 11,436, 921 accounts 65.5 percent vote won 249 seats. Democratic Alliance 4,091,584 votes, accounts 22.23 percent won 89 seats. Economic Freedom fighters 1,169,259 vote, accounts 6.35 percent won 25 seats. Inkhata Freedom party acquired 441,844 votes, accounts 2.4 percent won 10 seats. National Freedom party acquired 288,742 votes; account 1.57 percent won 6 seats.<sup>149</sup>

Electoral dispute resolution mechanisms in South Africa electoral law remains in the hands of Electoral Court for a status of Higher Court. This electoral court has the power to dispose the election matters (disputes). It was established by the act of the parliament in accordance with section 166(a) of the Constitution.<sup>150</sup>

The electoral process of South Africa is governed by a constitutional and electoral regulatory framework coupled with amendments on various Acts. The independent electoral commission

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<sup>143</sup> Ibid

<sup>144</sup>South Africa, “Constitution of the Republic of South Africa. Available at: <http://www.info.gov.29/dowments/constitution/1996/at108-96.PDd,Section>

<sup>145</sup>Ibid., Section 46 (1) and 105 (1) (D).

<sup>146</sup>South Africa Electoral Act No. 73/1998, section 114(1) and (2).

<sup>147</sup>Avilable at <http://en.wikipedia.org/wiki/file> accessed on Dec 14/2017.

<sup>148</sup>Supra note 144,secion 46(1) and 105(1)(d).

<sup>149</sup>Available at <http://www.en.wikipedia.org/wiki/file> accessed on Dec.19/2017

<sup>150</sup> Supra not, 144 (1)(a)(ii).

Act underlies the composition, appointment and conduct of commissioners.<sup>151</sup>The 1996 constitution of South Africa has provided for the existence of an independent electoral commission as clearly stated in articles 190 and 191 which deals with the composition. The Electoral Commission Act of 1996 deals with the function of the IEC and other details not specifically provided by the Constitution.<sup>152</sup>

The composition of the members of electoral commission stated under section 6(1) of the Constitution are five members compose of the independent electoral commission. Among that one should be a judge.<sup>153</sup>The selection process, and ultimately the appointment of these commissioners by the president of the republic for a seven year mandate renewable once, starts with the constitution of a panel consisting of representatives of the following institutions i.e human right commission, the gender commission, the public prosecutor and the president of the Constitutional Court.<sup>154</sup>

After public nomination the panel screens and proceeds with public interviews of short listed candidates and submit a list of at least eight candidates to a committee of the national assembly constituted proportionally with representatives of all political parties represented in the parliament. Five of this candidates will then be nominated by the committee of the national assembly, which in turn will recommended them to the president for appointment by means of a majority resolution.<sup>155</sup> Section 8(1) of Electoral Commission Act of 1996 provides the president designates a chair person and vice chairman person among members of the commission.<sup>156</sup>

Section 18-20 of the electoral commission act deals with the electoral court which is an adjudication body of the Independent Electoral Commission of South Africa (IECSA) and which has the status of the supreme court of South Africa.<sup>157</sup>This court was established to review matters pertaining to elections such as electoral disputes and complaints about infringements of the electoral code of conduct and appeals against decisions therein. It may also investigate allegations of misconduct, incapacity or to a committee of the national assembly for further

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<sup>151</sup>EISA, Election Observer Mission Report, South Africa,(2009),P.11.

<sup>152</sup>Ibid.

<sup>153</sup>Ibid., p.13.

<sup>154</sup>Ibid.

<sup>155</sup> Ibid

<sup>156</sup>Ibid.

<sup>157</sup> Ibid., p. 16

action.<sup>158</sup>The court is composed of chair person, who is a judge from appellate division of the Supreme Court, two other judges of the Supreme Court and two other members, both citizens of South Africa<sup>159</sup>

### 3.6.3. Germany

Federal Republic of Germany is a country belongs to European Union. The country structured as Federal State. The electoral system is mixed one. This helps the researcher to compare the three electoral systems to have experience which one to be the best to our country.

The first Bundestag election took place in 1949, each voter had a single vote to fill 400, regular seats (Gendmendate). Sixty per cent of the candidates were to directly elected by plurality in a single member district.<sup>160</sup>The remaining 40 percent were to be chosen from party list. Each party that gained at least 5% percent of the votes in any of the nine (1949) Lander participated in the proportional distribution of seats.<sup>161</sup>The overall allocation of parliamentary seats to the individual parties was to be established by proportional representation. Currently Germany has 16 Lander which are vested in significant powers.<sup>162</sup> Germany has a parliamentary system that reflect a large legislative body, the Bundestag composed of representatives from across the sixteen states and that in turn appoints of head of governments. A smaller legislative body the Bundsrat, contains members directly appointed by the state governments.<sup>163</sup>According to article 38(1) of the Basic Law, the Bund stage is the main body responsible for the legislative powers and scrutiny of the government and its work<sup>164</sup>. The Basic law provides that the members of the Bundestag are elected in general direct, free, equal and secret elections for four year terms.<sup>165</sup> Article 51 of the Basic Law on the other hand the Bundesrate consists of the land of government,

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<sup>158</sup>Ibid., p. 15.

<sup>159</sup>Ibid

<sup>160</sup>\_\_\_\_\_Federal Republic of Germany Elections to the Federal Parliament (Bundestag), OSCE /DDHR Election Assessment Mission Report odihr /2009/08/39164.en pdf.

<sup>161</sup>Ibid.

<sup>162</sup> Ibid Micheal Sulmeyer, Making Democracy Harder To Hach: should Election Be classified As „Critical Infrastructure, (2017), Michigan Journal of Law Reform, pp.25-27.

<sup>163</sup> Micheal Sulmeyer, Making Democracy Harder To Hach: should Election Be classified As „Critical Infrastructure, (2017), Michigan Journal of Law Reform, pp.25-27.

<sup>164</sup> Germany,“ Constitution of Germany“Available at <https://www.Jurisprudential.de/jurisprudential.html>.accessed on Nov.13/2017.

<sup>165</sup>Ibid.

which appoints and recalls them. Each land shall have at least three votes and some additional seats for the additional inhabitants shall be also allocated.<sup>166</sup>

During 2017 general election, the total number of population of Germany was 81 299, 876.<sup>167</sup> According to this number, one electoral constituency for Bundestag election accommodate 135, 952 inhabitants. “The total seat of Bund stag is 598. Germany follows mixed electoral system.(i.e. 299 plurality electoral system and sub categorized first past the post). The rest half of Bprundstag members seat to be elected through proportional electoral system particularly list proportional with 5 percent thresh hold.”<sup>168</sup>

In 2017 Germany Bundstag election for the federal parliament 61,688,485 voters were registered. The total turn out during this election was 46,976,341 accounts 72.2 percent. Christian Democratic union party acquired 50370344 accounts 32.9 percent seat won 246. Social Democratic party acquired vote 9,539,115 accounts 20.5 vote seat won 153. Alternative for Germany acquired vote 5,878,115 accounts 12.6 percent seat won 94. Free Democratic party acquired vote 4,999,278 accounts 10.7 percent seat won 69. The Left acquired vote 4,297,278 accounts 9.2 percent seat won 69. Green party acquired vote 4,158,400 accounts 8.9 percent seat won 67.<sup>169</sup> According to this electoral result the German government forced to establish coalition government with Social Democratic party.

The Electoral management body of the Federal republic of Germany established by article 8 of Electoral Act of 1993. The Federal Ministry of Interior appoints the Federal Returning officer and his Deputy.<sup>170</sup> The Federal Returning officer appoints the other eight members of the Federal electoral committee. The model of electoral management body is a government model because of the Federal Returning officer appoints by Ministry of interior and accountable to the executive branch of the government.<sup>171</sup>

In relation to disputes arising from electoral matters “the German Federal Constitutional Court has the power to entertain the case. According to Article 93 (4) (a) of the Basic Law provides

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<sup>166</sup>Ibid., Article 51.

<sup>167</sup>Available at <http://www.en.wikipedia.org/wiki/file> accessed on April 8/2018.

<sup>168</sup>Germany “federal election act: Available at <http://www. Section 1> accessed on Nov.13/2017.

<sup>169</sup> Supra note 167.

<sup>170</sup>Supra note 168, article 8.

<sup>171</sup>Ibid.

that the federal constitutional court has the power to decide in relation to electoral complaints.<sup>172</sup> This article clearly provides that “... on constitutional complaints filled by any person alleged that one of the basic rights.<sup>173</sup> The right to elect and be elected is one of the basic rights provided under same Basic law.<sup>174</sup>

From the above description, we can conclude that the current electoral system of Germany resulting from these developments in a mixed member system of proportional representation with a two tier districting system on the basis of free, direct, secret and universal suffrage for citizens of German nationality. Besides this the allocation of seats 50 of the seats to single member plurality system and the other 50% seats goes to proportional party list system.

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<sup>172</sup>. Supra note 164, Article 93 (4) (a)

<sup>173</sup>Ibid

<sup>174</sup>Supra note 172.

## CHAPTER FOUR

### Historical Development of Electoral Laws in Ethiopia

#### 4.1. The period of pre 1991 Transitional Charter

The first written Constitution came up with an instrument of legitimizing the Ethiopian Monarch as absolute domestic and modernized at the international level in 1931.<sup>175</sup> The Constitution established by cameral parliament the so called senate elected by the King from nobility and local chiefs. The Deputy was nominated by the nobility and the local chiefs.<sup>176</sup> The monarchy Constitutional provision under article 32 undermines the people's right by designating the Emperor himself to appoint the member of House of Senate while leaving member of the House of Deputy nomination for dignitaries („Mekuanent“) and the local chiefs („shumegnoch“) to be elected until the people reach for election.<sup>177</sup> Therefore, the Constitutional provision during this time has no significant clue about the election and electoral laws.

The King revised his Constitution in 1955. The “Constitution again established by cameral parliament. That is the House of Senate and Deputy. Still the appointment of the Senate remains in the hands of the Emperor”<sup>178</sup> similar to 1931 Constitution. “The first historical electoral law Proclamation No.152/1956 was enacted to promote the election of the House of Deputy.”<sup>179</sup> Accordingly, electoral constituencies were established under article 17 of this proclamation. One electoral awraja consists of approximately fifty thousand registered voters from two hundred thousand inhabitants.<sup>180</sup> During that time the total number of population of the country was 18,643,276.<sup>181</sup> Each electoral district shall be represented to Deputies. The electorates were imposed duty to own immovable or movable property or the candidate shall pledge equivalent

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<sup>175</sup>Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian prospect*, (1997) Lawronecivill, NJ: Red Sea Publishers, P. 17.

<sup>176</sup>The 1931 Ethiopian Constitution, article 32.

<sup>177</sup>*Ibid.*

<sup>178</sup>Revised Constitution of the Empire of Ethiopia (1955) *NegritGazeta Proc. No. 149/1955 year 15, No 2, Article 102-103.*

<sup>179</sup>Proclamation to provide for the Election of the Chamber of Deputies of Imperial Parliament (1956). *NegantGazeta, Proc. No. 152/1956. 15<sup>th</sup> year No. 12.*

<sup>180</sup>*Ibid.*, article 17.

<sup>181</sup>Available at <http://www.en.wikipedia.org/wiki/file> accessed on Dec 14/2017

money not less than 1000 and 2000 Ethiopian Dollars respectively.<sup>182</sup>The amended Proclamation No.264/1968 come up with the consolidation of the law relating to election of Chamber of Deputies. Further the law provides the urban electoral constituency shall contain 30,000 inhabitants apart from the rural area.<sup>183</sup>

On the dissolution of constitutional monarchy rule in 1974 the defacto dergue regime dethroned the Emperor and suspended the 1955 revised Constitution.<sup>184</sup>The Provisional Military Administration Council (PAMC) acted as the Supreme political organ of in the country by arrogating all decision power unto itself.<sup>185</sup>Some scholars amounted to this period defacto Constitution by inspiring the PAMC action and some proclamation like Urban House and Land as well as Rural Land Nationalization.<sup>186</sup>The period was characterized by no electoral laws and institution to elect elected government.

The Dergue come up with written Constitution after one decade. The constitution promised the conduction of members of National Shengo which the highest legislative body was under articles 62 and 63(1) (a) of the Constitution.<sup>187</sup>Proclamation No.314/1987 was enacted to promote the Constitutional promise. Article 2(2) of this proclamation stipulates the establishment of the electoral commission with its accountability to Provisional Military Administration.<sup>188</sup> Another feature of this proclamation no political party established in the country to compute in the election rather the vanguard party (WPE). This proclamation remains silent about the constituency inhabitant numbers. The total number of population at this time accounts 42,783,665.<sup>189</sup>Therefore, there was no any indication about how many inhabitants represent one constituency.

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<sup>182</sup>Supra note 179, article 18.

<sup>183</sup>Proclamation to amend the Proclamation for the Election of Members of Chamber of Deputies of the Emperial Parliament (1968).Negarit Gazeta. Proc. No 264/1968. 25<sup>th</sup> year, No. 15.

<sup>184</sup>Proclamation to provide Provisional Military Government Establishment proclamation (1974),Negarit Gazeta, Proc. No 1/1974, 34<sup>th</sup> year, no 1, articles 1 and 6.

<sup>185</sup>Ibid.,article 5((a).

<sup>186</sup>Brietzke,p., Law, Development and Ethiopian Revolution, (1982) Pennsylvania, Bucknell University press, p.13

<sup>187</sup>Proclamation to provide for the Ratification of the Constitution of Peoples Democratic Republic of Ethiopia.(1987), Negarit Gazeta. Proc. No. 1/1987, articles 62 and 63 (1) (a).

<sup>188</sup>Proclamation to provide National Electoral Commission Establishment Proclamation (1987).Negarit Gazeta, Proc No 314/1987, 46<sup>th</sup> year, No 1, articles 1&6.

<sup>189</sup>Supra note 181.

## 4.2. The 1991 Transitional Charter

The Transitional Charter was promulgated shortly after the fall of the government of Peoples Democratic Republic of Ethiopian (PDRE) in 1991. “The Transitional period Charter, which arrogating supremacy so itself in the legal system,”<sup>190</sup> served as the interim constitution. Legally speaking, the charter implicitly superseded the PDRE Constitution and marked another points of discontinuity in constitutional development of Ethiopia.

The Charter itself established a state with a legislature (i.e. council of representatives) of 87 members composed of representatives of national liberation movements, other political organization, and prominent individuals.<sup>191</sup> Even though the Charter established Council of Representatives, the members of the council were not elected by the people. Subsequently, the National Regional self governments were established by Proclamation No.7/1992.<sup>192</sup> In the mean time the first electoral law during this time was proclamation No. 11/1992 was enacted.<sup>193</sup> This law provides national /regional and woreda council members” election commission and which is followed proclamation no. 64/1993.<sup>194</sup> This law provides detailed provisions on electoral matters. The basic task of this proclamation was to facilitate the election of Constituent Assembly in a free, direct, equal, popular suffrage<sup>195</sup>and of served until the coming in to force of proclamation No. 111/1995. <sup>196</sup>According to article 5 of electoral law of the Transitional Period,<sup>197</sup> the electoral commission was established and accountable to the council of representatives. The commission had five structures (i.e. executive, secretariat and head of Secretariat, national/regional, woreda and polling station electoral committees.

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<sup>190</sup> Proclamation to provide for the Transitional Government of Ethiopia Charter (1991) Negarit Gazeta.Proc. No 1/1991 50<sup>th</sup> Year No 4.

<sup>191</sup> Ibid., articles 6 and 7.

<sup>192</sup> Proclamation to provide for the Establishment of National Regional Self-Government, (1992) Negarit Gazeta.Proc. No. 7/1992, 51<sup>st</sup> year No. 2.

<sup>193</sup> Proclamation to provide for the Establishment of the National /Regional and Wereda Council Members Election Commission (1992),Negarit Gazeta, Proc. No 11/1992, 51<sup>th</sup> year No. 6.

<sup>194</sup> Proclamation to provide Electoral Law of Ethiopia (1993),Negarit Gazeta. Proc. No 64/1993, 52<sup>nd</sup> year No 56.

<sup>195</sup> Ibid.,article 14.

<sup>196</sup> Proclamation to make the Electoral Law of Ethiopia Conform with the Constitution of the Federal Democratic Republic of Ethiopia (1995) Proc No, 111/1995 Negarit Gazeta. 54<sup>th</sup> year No. 9.

<sup>197</sup> Supra note 193 article 5.

There was also an election complaint handling mechanism at National/regional and woreda electoral committee.<sup>198</sup> The complaints were in relation to rejection of candidacy, a person or apolitical organization can lodge a complaint to woreda electoral committee and the woreda committee decides within five days. Still a person or a political party can appeal to national /regional electoral committee and this committee shall decide within five days and its decision shall be final.

Under the Proclamation No. 64/1993 established “National Electoral Board and its accountability to the Councils of Representatives.” Members of the Board designated by the same and it had seven members on the basis of National representation, technical competence, integrity and experience.<sup>199</sup> However, the law nothing to say about members of the Board was free from political organization. In fact the council of representatives was not elected by the people rather consisting different liberation movement groups.

According to article 13 of same proclamation provides that a candidate with more votes received than that by others competitors within the constituency shall be declared a winner. Besides, only single candidate nominate from each constituency. Subject to minority nationalities, each constituency consists of one hundred thousand inhabitants.<sup>200</sup>

During the election of constituent assembly the number of population of Ethiopia was 52,540,360.<sup>201</sup> The election conducted on the basis of free, direct, and equal suffrage.<sup>202</sup> This was clearly indicates that the first time in Ethiopia the first-past the post electoral system adopted.

As regards to election complaints Articles 69-72 provides that there were four levels of procedures. These are complaints in relation to as an elector, a candidate, voting and balloting. These articles in the polling station a person can got a decision within 24 hours then appeal to woreda election offices and still if she/he had a complaint he/she can lodge a complaint to

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<sup>198</sup> Supra note 194, article 74.

<sup>199</sup> Ibid., article 3.

<sup>200</sup> Ibid., article 13.

<sup>201</sup> Supra note 181.

<sup>202</sup> Supra note 194, article 14.

woreda court. In relation to as a candidate the first complaints in the polling station and decide within 24 hours and appeal to zone or region election committee and then to zonal high court.<sup>203</sup>

In relation to voting a person should lodge within five hours to pulling station. The polling station should decide within 24 hours then appeal to woreda court. In relation to ballot, a person should got a decision within 24 hours from polling station and appeal to woreda court. This provision there was no time schedule provided about the decision of the court. Simply say “the court summarily renders decision in considering the time table of election.”<sup>204</sup>

### **4.3. The 1995 Federal Democratic Republic Ethiopian Constitution**

The 1995 FDRE draft Constitution was discussed by “Constituent Assembly an assembly of elected representatives, elected for the purpose of adopting the Constitution”.<sup>205</sup> After adopting of this Constitution, the other electoral law was enacted and enforced as of 23<sup>rd</sup> February 1995.<sup>206</sup> The rational underpinning of this proclamation was to conform with the newly adopted and ratified Constitution.

According to article 54(1) of the FDRE Constitution, members of the House of Peoples’ Representatives shall be elected by the people for a term of five years on the basis of free, direct and equal popular suffrage.<sup>207</sup> Besides, with subject of minority nationalities the members elected from each electoral constituency (district) by plurality of the votes cast.<sup>208</sup> The other point in relation to this number of representation, members of the house shall be represented on the basis of population and special representation.<sup>209</sup> The total number of seat shall not exceed 550 and with the exception of minority nationalities shall have 20 seats.<sup>210</sup> The term nationality was not defined and accompanied by law. The researcher carefully read the Constituent Assembly minutes to understand the intention of the Constituent Assembly members intention due to the provision accommodate electoral system, electoral constituency and number of House

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<sup>203</sup> Ibid. articles 69-72.

<sup>204</sup> Ibid.

<sup>205</sup> Supra note 194, article 74.

<sup>206</sup> Supra note 196.

<sup>207</sup> Proclamation to pronounce the coming into effect of the Constitution of the Federal Democratic Republic of Ethiopia (1995), Negarit Gazeta, Proc. No 1/1995, 52th year No 56, article 54(1).

<sup>208</sup> Ibid., article 54(2).

<sup>209</sup> Ibid., 54(3).

<sup>210</sup> Ibid.

of Peoples Representative and the term minority nationality. However, the researcher would not observe either the merit or demerit of debate on the provision.<sup>211</sup>

The electoral law also provides first past the post (plurality) electoral system. Besides, in relation to constituency, each constituency shall be made up of one hundred thousand inhabitants in considering the wereda and without affecting regional boundaries.<sup>212</sup> The possible explanation may be the former proclamation No.64/1993 under article15(2) and proclamationNo.111/1995 under article 15(2)determine one hundred thousand inhabitants for one electoral constituency by dividing statistical data of the total population number for 547 House of People Representative seats.

As regards to Electoral Management bodies, both the constitution<sup>213</sup>and electoral law<sup>214</sup>established National Electoral Board. It was accountable to the Councils of Representatives or its successor (i.e. the House of Peoples“ Representatives.) Election complaint handling mechanisms, the electoral law, provides four levels of complaints and disputes arising from electoral process.<sup>215</sup> As compare to the previous electoral law (i.e proc. No 64/1993) come up with the new concept of candidate registration and ballot complaints. According to this electoral law, if a person has a complaint of same, first he/she can lodge polling station and wereda electoral office then to the electoral Board and appeal to Regional Supreme Court and Central High Court respectively.<sup>216</sup> However, the complaint coming from electoral board appeal to Central High Court has as amended and vested in Federal Supreme Court.

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<sup>211</sup> Minutes of the Constituent Assembly, vol.6.(1995),Addis Ababa. Ethiopia, p.33.

<sup>212</sup> Supra note 196,article 15.

<sup>213</sup> Supra note 207,article 102.

<sup>214</sup> Supra note 196,article 3.

<sup>215</sup> Ibid. articles 69-71.

<sup>216</sup> Ibid., articles 70(4) and 72(4).

## CHAPTER FIVE

### **Ethiopian electoral system, Constituency, Electoral bodies, Principles of elections and Electoral dispute resolution mechanism**

#### **5.1. Ethiopian electoral system**

From our previous discussion, Ethiopian electoral laws were enacted in a different time. However, no elections were conducted according to international electoral principles. The FDRE Constitution provides under article 54(2)<sup>217</sup> the electoral system of plurality voting system among the three categories and nine sub categories of electoral systems in general. The subsequent amended electoral Proclamation No.111/1995 was to cop up with the Constitutional provision. This proclamation again repealed and come up with amended effective electoral Proclamation No.532/2007.<sup>218</sup> It consists of 111 articles and has the following limitations. First of all under article 25 it adopted the plurality electoral system. (i.e. the first past the post ).It is uncertain why Ethiopia adopted such electoral system. The researcher observed the supreme organ constituent assembly who adopted the Constitution minute and that minute did not disclose the intention of them about the electoral system. The preambles of subsequent proclamations of electoral law have no clue for the adoption of the plurality-first past the post electoral system to understand the intention of the legislature. It is true that the non existence of the intention of the legislature for the selection of such system seems without research base. The absence of research on this system made abrogate the development and improvement of electoral system in general. The plurality electoral system lacks real representation in conducted elections and creates difficulty to obtain real winner for the reason of division and wasting of votes. For instance, in particular constituency 10,000 voters were registered to vote for the candidate nominated in that constituency.

The three party candidates were presented to get the voters vote. The voter votes for opposition party candidate (A) 2,000 vote, party candidate (B) 2,500 votes. Again party candidate (C) get

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<sup>217</sup> Supra note 207 article 54 (2).

<sup>218</sup> Proclamation to Amend The Electoral Law of Ethiopia (2007). Negarit Gazeta, Proc. No 532/2007, 13<sup>th</sup> year, No 54, article 25.

3,000 vote the remaining 2,500 votes were wasted for the reasons not meet the criteria listed in the voting code of conduct requirements. Each party has also their own vote that divide the vote.

Therefore, from the above examples, the winner candidate C who obtained 3,000 votes from the total 10,000 thousands voters didn't obtained even 50 percent plus one majority vote to win the constituency election. This shows that the voter who gave their vote for other party and the voters vote which were not counted were complaining the winner not to be their representative as if the winner elected by too simple majority.

Another paradox to be addressed on the plurality electoral system is non inclusiveness of minority parties, different political out looks and disparity of political parties The system also encourage party monopoly of vanguard party in the law making Houses. It restricts multi-party system participation, and opposition party followers will lose of confidence over the state as if their parties out of the legislature. No significant debate and discussion made in the legislatures if one party policies and objectives brought the discussion. Unrepresented opposition parties and the people who vote for other party will complain the government addressing the election not fair and free. The people loss their confidence and the Government become unstable.

In this regard "One political leader told that the first past the post electoral system followed by Ethiopia is marginalize other opposition political parties. Moreover, he said it couldn't invite different ideas, opinions and protection of minority groups in political participation."<sup>219</sup>

Germany adopted mixed member proportional representation electoral system. 299 the Bundestag members were elected through first past the post majority vote and the remaining 299 seats elected through list proportional representation system with provided a 5% threshold from the countries total number of 598 Bund stag members.<sup>220</sup>

The electoral system, allocation of parliamentary seats and related issues of South Africa is list proportional. The Constitution clearly establishes a proportional electoral system. The choice of the proportional representation system based on the political party lists, determines the number

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<sup>219</sup> Interview made with Professor Beyene Petros, President of Ethiopian Social Democratic party on March 15/2018.

<sup>220</sup> Supra note 168.

of seats to be allocated at the national and provincial level.<sup>221</sup> Political parties are allocated the number of votes cast in their favor, voters therefore do not vote for individuals, but for political parties who secure seats and consequently appoint members according to the numbers of seats won.<sup>222</sup>

The Canada electoral system resemble to Ethiopian electoral system. However, different electoral reform proposals are under taken since 2003 till now. Some of the proposals indicate that, the present electoral system will be changed to mixed member electoral system that of similar to Germany. The draft bill expressly provides one ballot system did not accurately reflect the wishes of the voters and would encourage strategic voting.<sup>223</sup>

One political party leader told the researcher that recently Ethiopia calls bargaining of opposition party and intended to reform the current electoral law with its electoral system. The draft legislation come up with mixed parallel electoral system. Accordingly, the proclamation intended to continue plurality (i.e. first past the post) for the existing 550 legislature seats. On other hand it also intended additional legislature seats which accounts 110 legislature member on the existing 550 seats by upgrading the total seats of legislature to 660. The latter 110 seats will be added through the electoral system of mixed parallel.<sup>224</sup>

From our previous discussion about unique mixed parallel electoral system, those countries following such electoral system were mono ethnic groups as opposed to our country. The system also discourages the participation of multi-party system in the legislature for the reasons of the additional seats were decided in advance with very least seats of twenty percent. It also incurs costs on budget, create ineffective and inefficient utilization human resource, and limit active participation of the members in the legislature. The bargaining procedure and the draft legislation were made prior to amendment of article 54(2) of the FDRE Constitution. Both bargaining and drafting procedure to be said unconstitutional.

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<sup>221</sup> Supra note 151, p.16.

<sup>222</sup> Ibid.

<sup>223</sup> Supra note 108.

<sup>224</sup> Interview made with Ato AdaneTilahun Secretary General of All Ethiopian Unity Party, on March 19/2018

In general the Ethiopian electoral system is similar to Canada which is outdated and subject to reform. Therefore, the researcher prefers the Germany experience to ensure real democracy, to have inclusive government, promote peoples participation, to stabilize peace and security.

## **5.2. Ethiopian electoral constituency**

The FDRE Constitution under sub article 54(3) determines 550 Members of Parliament for the House of People Representatives.<sup>225</sup> One candidate shall be elected by one hundred thousand inhabitants for one electoral constituency. The effective electoral Proclamation No. 532/2007 remains silent about the electoral constituency to represent one candidate for the House of Peoples Representatives. It provides under article 20 (1) (b), the organization of the constituency formed on the basis of the number of population and the total number of constituency shall not exceed 550 seats. This provision contains undetermined population number for one constituency. It also repeatedly stated the seats of the parliament under the constitution. The Constitution promised the revision of population number for one constituency with the development of population and reserved 20 seats for minority. The effective proclamation contradicts the constitutional provision by stating evasive denial of determining population number and wants to complement minority reserved seats with candidate elected directly. In this regard one official from the National Electoral Board of Ethiopia believed that, “the existing electoral law didn’t clearly denote the inhabitants „of total number of population in one constituency.”<sup>226</sup> He added “those previous elections were conducted on the basis of the repealed Proclamation No.64/1993 and No.111/1995 provision that determine 100,000 inhabitants for one electoral constituency.

During that time electoral polling station was structured in 45,812.<sup>227</sup> This structure is still serving to conduct the election. Those polling stations were organized in to 530constituencies for each constituency to represent one hundred thousand inhabitants. This constituency was the determining factor for the seats of the House of Peoples Representatives in addition to 20 seats reserved for minority that accounts 550 seats. The Emperor proclamation No. 152/1956 denoted that two hundred thousand inhabitants represent one constituency to vote two candidates. During

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<sup>225</sup> Supra note 207, article 54(3).

<sup>226</sup> Interview made with Ato Tesfalem Abay, Communication Director of the National Electoral Board of Ethiopia, on Jan 26/2018.

<sup>227</sup> Ibid

that time the total population of the country was 18,643,278 (eighteen million six hundred forty three thousand two hundreds seventy eight) while the population number in transitional Period during the enactment of Proclamation No.64/1993 was 52,540,360 (fifty two million five hundred forty thousand three hundred sixty).Accordingly, the proclamation provides one hundred thousand inhabitants for one constituency. After the enactment of FDRE Constitution the amended proclamation No.111/1995 followed by adopting the former proclamation of the same even the population number reaches 52,301,872(fifty two million three hundred one thousand eight hundred seventy two). The current population number is projected one hundred million two hundred five thousand two hundred twenty four 103,205,224and the challenge comes the new generation born accounts 50,903,352(fifty million nine hundred three thousand three hundred fifty two) remain unrepresented due to unrevised electoral constituency. It is true that electoral constituency should be established by dividing the total population number to the parliament seats according to Canada, South Africa and Germany experience. Therefore, the total population must be divided to the constitutional determined parliamentary seats 530 for electorate elected directly. Accordingly 95,835(ninety five thousand eight hundred thirty five) population is missing from each electoral constituency. The sum of each electoral constituency shows 50,903,352 (fifty million nine hundred three thousand three hundred fifty two population were unrepresented and still the population growth is very high due to uncontrolled high birth rate. The dalliance of census contributes problem to get the accurate number of the population to show the extended severity of unrepresentation and how far electoral constituency have vital role for the whole representation to promote democracy, determine the seats of the parliament and resource management all this needs to reform electoral constituency.

The FDRE Constitution determined at abiintio, the seats of the House of Peoples Representatives is 547 under article 54.This provision stipulates the inclusiveness of the up growing population number to determine the electoral constituency. However, the effective electoral proclamation No. 532/2007 denied to accommodate the constitutional promise with regard to rearranging the electoral constituency. From the experience of those countries we have seen before electoral constituency shall be determined by the seats of the legislature. The House Peoples Representative seat was decided in the Constitution in two ways one is direct election from electoral constituency accommodates 527.The other is seats assigned for minorities that accommodate 20 seats. The other impediment of the proclamation is apart from complementing

minority reserved seats with direct electorate, it lacks the intention of constituent assembly stating “subsequent law should be enacted for electoral constituency to address 20 seats and define the word minority.”<sup>228</sup> However, there is no visible law until this research is prepared.

The existing electoral system and electoral constituency encourage the seats of House of Peoples Representatives to be occupied by predominant ruling party. Article 73 of FDRE Constitution is self evidence for the above statement. According to the data gathered EPRDF members OPDO posses 180 seats, ANDM posses 138 seats, TPLF posses 38 seats, SPDM posses 123, Addis Ababa EPRDF members posses 23 seats. The allies parties APDP posses 8 seats, ESPDP posses 24 seats, BGUDP posses 9 seats GPDP posses 3 seats and HNL, posses 1 seats representative in the House of Peoples Representatives.<sup>229</sup>

The supreme power authority relies on EPRDF party. Members of EPRDF who have majority seat in the legislature are not allowed to form their own government unless the EPRDF elect joint government. This derogates the majority seat won party to become predominant in the legislature. The allied parties also were supportive to implement the policies and programs of EPRDF. Thus, this rules and procedures must be declined to promote majority rule.

### **5.3. National Electoral Board of Ethiopia**

The FDRE Constitution adopted under article 102 and the amended effective electoral Proclamation No.532/2007 under article 4 the National Electoral Board of Ethiopia (NEBE) as an electoral body to manage and conduct the ongoing election. From our previous discussion we have seen that there are three models of electoral bodies. These are: the government, the independent and the mixed models.

As we have discussed before each model has its own merits and demerits. Different countries have selected either of the models when suitable to them. The National Electoral Board of Ethiopia is accountable to the House of People Representative under article 102 of FDRE Constitution. The House of Peoples Representative allocate budget for National Electoral Board under article 106 of effective electoral Proclamation No.532/2007. Article 6(1) and (2) also

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<sup>228</sup> Supra note 210.

<sup>229</sup> National Electoral Board of Ethiopia, Official report of general election of 2015, Addis Ababa, Ethiopia.

provides the nomination of nine members of National Electoral Board shall be made by the Prime minister and Chairman of ruling party which was appointed from dominant seats political party in the House of Peoples Representatives. This provision becomes paradox to the independency of the Board. Due to the majority history of parliamentary seats was still possessed by one EPRDF party. The preceding appointment for approval will be presented by the ruling party chairman and Prime Minister before the House of Peoples Representative. This also shows the Prime Minister had the full opportunity to appoint this party members or supporters to accomplish the ruling party political and policy missions.

One party leader told that the appointment procedure and parliamentary approval of the Board members was ceremonial because of the parliament itself occupied by one ruling party members. On the other hand the nomination and appointment for approval brought by the vanguard of same party chairman Prime Minister. Further added in one Board party session the national electoral board chairman said that “all opposition party leader have you ever been seen a political party better than EPRDF.” This statement was self evidence to illustrate of the attachment of the board and the executive that raise challenging debate for the independency of the board.<sup>230</sup> The board empowered to assign five members of the polling station electoral officers under article 22(8) of the effective Proclamation.<sup>231</sup>

One political leader told that from his experience and statistical data most polling station officers were government employees. This shows that the country ruled nationwide by one vanguard party and the employees assigned from the government office were not independent because of they were state machinery in their office. On the other hand the government is employed and responsible to pay their salary. Further, added it is difficult to ascertain the independency of polling station officer to run free and fair election.<sup>232</sup>

The Proclamation further stipulated the procedure of five members of public election observer elected by the people under article 22(9) and 82(1) (b). Accordingly, election observers were elected by the people. On the other hand international observers to be allowed on the benevolence of the government under article 78(1). From this discussion the polling station and

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<sup>230</sup> Interview made with Ato Tiruneh Gmeta Executive member of Oromo Federal Congress on March 17/2018.

<sup>231</sup> Supra note 218, article 22(8).

<sup>232</sup> Supra note 219.

as well as the large size of the country never allow to have elected observers in each polling station particularly none vanguard opposition party. International observers“ were not conducting unless the government gives permission.

Section13 (1) and (2) of Canada Elections Act provides that chief electoral officer appointed by the House of Commons for a terms of 10 years with no second appointment.<sup>233</sup>Section 3 and 6 of the South Africa Election Commission Act provides that an electoral commission which is independent and subject only to the Constitution and the law.<sup>234</sup> Its members are nominated and recommended by a National Parliament and appointed by the president consists of five members and one of them shall be a judge.<sup>235</sup> Whereas article (9) of the Electoral Act of Germany provides that the returning offices are appointed by the Ministry of Interior and it consists five members and one of shall be a judge.<sup>236</sup>

From this discussion the researcher can say that the whole nomination of the board members appointment and approval falls in the hands of executive and ruling party. Even the polling station electoral officers, election coverage, the attainment of international observers“ permission granted to the executive. The accountability and budget allocation remain in the hands of the legislature. Therefore, Ethiopian electoral model is mixed one.

## **5.2. Universal Principles accommodation under Ethiopian electoral law**

### **5.2.1. The Principles of Ethiopian electoral law in general**

Internationally Constitutional recognized government should precede each principle of election conduct as adopted under article 21 of the UDHR and article 25 of the ICCPR, international norms and theories. This international principle includes universal suffrage, secret suffrage, equal suffrage, free suffrage and periodic election.

#### **5.2.1.1. The principles of universal suffrage under Ethiopian electoral law**

The effective electoral Proclamation stipulates the international legal instrument adoption under articles 26 and 28 of the effective electoral Proclamation No.532/2007 adopted those principles.

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<sup>233</sup> Supra note 139.

<sup>234</sup> Election Commission Act 51 of 1996,section 3 and 6.

<sup>235</sup> Ibid.

<sup>236</sup> Supra note 168.

However, the researcher more of concerned the enforcement of those principles in the following manner. For instance, universal suffrage denotes election must be universal meaning except those restrictions like age, citizenship, residence duration. The voters shall vote the conducting of election. The FDRE Constitution under article 38 stipulated the attainable age for election and the effective electoral Proclamation under articles 33 and 45 stipulated age, citizenship and residence and other detail requirements for electorate and candidates to elected and be elected respectively.

The FDRE Constitution under article 54(1) and the effective electoral Proclamation under article 26(1) provide direct suffrage electoral principle. Accordingly, the people of Ethiopia empowered to elect their representatives in direct participation when conducting the election. The forgoing discussion and the constitution have no any evidence obtained discrepancy as far as universal suffrage is concerned.

### **5.2.1.2 The principles of free suffrage under Ethiopian electoral law**

The FDRE Constitution under article 54(1) and the effective electoral proclamation under article 26(1) provide free suffrage electoral principle. Accordingly, the people of Ethiopia empowered to elect their representatives in free participation when conducting the election.

The FDRE Constitution and the amended effective proclamation under same articles stipulate free, fair, secret and transparent election. These principles are synonyms to international norms. However, the subsequent amended effective proclamation each provision contradicts to the principles. For instance, the Electoral Board nomination, appointment permission of international observer, coverage of election observer in large country size with highly duplicated electoral polling station constituency and active involvement of executive in the electoral Board members activity, party centralism with the constitutional ground under article 73 magnify the dominance of one party role in the House of Peoples Representatives.

The EPRDF centralized and consolidated party rule shows among EPRDF officials the former Prime Minister Meles Zenawi said that “when my organization elected me rather than when my

people elected me.”<sup>237</sup> All this shows the election is not free, fair and transparent rather than party rule which is paradox to people rule of democracy.

### **5.2.1.3. The principles of secret suffrage under Ethiopian electoral law**

The principle of secret suffrage principle enumerates independency of the voter to cast his or her vote in free will without any interference and suppression. The UDHR article 25 (b), ICCPR article 21 (3), FDRE Constitution and the amended effective electoral law under articles 54(1) and 26(1) respectively provide with its effective mechanisms.

One party leader told that the electoral ballot box which is fully closed and invisible to trust whether the ballot box early filled or latter filled by voters paper. Further added the observer wear the Ethiopian cultural cloth which is called „gabi“ to shade voters“ paper carried by him to fill in the ballot box. To avoid such suspicion, it preferred glass made ballot box and electronic voting system.<sup>238</sup>

The researcher also prefers to conduct free, fair and transparent election and to avoid gossiping public suspicion and to build trust glass made ballot box and electronic voting system preferred.

### **5.1.2.4. The principles of direct suffrage under Ethiopian electoral law**

Under international legal instruments stipulated that citizens exercise their rights directly participated and decide in the elections. Article 25 (a) of the Universal Declaration of Human Rights (UDHR) and article 21(1) of the International Convention on Civil and Civil and Political Rights (ICCPR) provides that states parties should ensure for citizens to take part to elect their representatives through direct participation.

In this regard the FDRE Constitution under article 54(1) and the effective proclamation under article 26(1) provide direct suffrage electoral principle. Accordingly, the people of Ethiopia empowered to elect their representatives in direct participation when conducting the election. This accommodation is under Ethiopian Constitution and electoral law almost resemblance to international legal instrument.

### **5.1.2.5. The principles of equal suffrage under Ethiopian electoral law**

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<sup>237</sup> \_\_\_\_\_Hidassie News Paper, vol., 117(2009), Mega publishing company

<sup>238</sup> Supra note 219.

Under international legal instruments stipulated that citizens exercise their rights equally participated and decide in the elections. Article 25 (b) of the Universal Declaration of Human Rights (UDHR) and article 21(3) of the International Convention on Civil and Civil and Political Rights (ICCPR) provides that states parties should ensure for citizens to take part to elect their representatives through equal participation.

In this regard the FDRE Constitution under article 54(1) and the effective electoral proclamation under article 26(1) provide equal suffrage electoral principle. Accordingly, the people of Ethiopia empowered to elect their representatives in equal participation when conducting the election. The principle of equal suffrage prescribes every voter have their own equal rights to vote and also one card one vote. The exceptions are for restricted peoples such as legal and judicial interdiction.

#### **5.1.2.6. The principles of periodic suffrage under Ethiopian electoral law**

The other universal principle is periodic election. According to this principle constitutional recognized government should carry election within certain period of time. Article 21(3) under UDHR and article 25(b) under ICCPR impose state parties should carry periodic election. This provision lacks clarity for duration of the period. However, “one literature denotes that states shall conduct periodic election for four or five years.”<sup>239</sup>The term Periodic election should be interpreted in a broad term accommodating term of general election and term office of electorate for determined duration. The objective of periodical election is limiting the government power on term and term office. It also promotes peoples power to evaluate the government performance according to his promise and step down before the term or re-election for the second term. The FDRE Constitution under article 54(1) adopted the House of Peoples Representatives general election for five years. The FDRE president term office is for six year and for two terms under article 70(4) of the Constitution. The term office of Prime Minister is uncertain under article 72 of the same. The uncertainty of the constitutional provision about the term office of the Prime Minister paves the way to stay on power when his political party elects life time. Accordingly, the former Prime Minister stayed on power for the last 21 years for the reasons of undetermined electoral term. The Constitution also lacks uniformity on determining term office between

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<sup>239</sup>Alfered,Chanda,”The Role of the Media in promoting Democracy and Human Rights”, Southern African Human Rights Review 4,(1994),p.4.

President and Prime Minister. The existence of President and Prime Minister is unclear to establish the two executive government organs. Thus, Ethiopia shall adopt presidential state type.

### **5.2.1.7. Electoral dispute Resolution Mechanism**

From our previous discussion dispute resolution mechanism is a tool to handle grievance. There were different experiences in the world. Countries preferred to resolve disputes of election in different institutions. For instance, countries like Argentina, Canada, South Korea and India preferred Supreme Court. Other country like Germany preferred Constitutional Court. While, most Latin America countries and South Africa preferred electoral court and United States of America, Hungary and Italy have opted mixed system of the two systems.

Ethiopia opted mixed electoral dispute resolution mechanism. Frequently, article 37 of the FDRE constitution provides that everyone has the right to bring a justiciable matter to and obtain a decision or a judgment by, a court of law or other competent body with judicial power.<sup>240</sup> This provision is a broad concept for justice from both judicial and administrative tribunals.

Article 96 (4) of the effective electoral proclamation, complaints in relation to vote counting and result can lodge an appeal to the Federal Supreme Court against the final decision of the National Electoral Board. By cumulative reading of article 37 FDRE Constitution and article 96(4) of the effective proclamation the primary tribunal under National Electoral Board to be said administrative tribunal to review complaints related in the polling station and electoral constituency, while the appeal lodged to the court to be said judicial interpretation of electoral law. The discrepancy addressed between article 72 of Proclamation No 111/ 1995 and the effective electoral law is the former vested in the appeal right to Federal High Court. In the latter case this power vested in Federal Supreme Court. This limits the party right one layer of justice.

International election dispute standard indicates that electoral law should set deadlines for filling complaints, appeals and it also time for dispute adjudicating bodies.<sup>241</sup> Articles 93-96 of the amended effective electoral proclamation states that, the different decision making bodies to when complaint presented should give their decision based on the election time table. For instance, complaints relating to vote counting and result, the complaint should file his complaint

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<sup>238</sup>Supra note 207, article 37.

<sup>239</sup>Supra note 127.

to the appropriate body within 48 hours and the body in charge should render decision again within 48hrs. If a complaint dissatisfied by the decision given, he/she can appeal to the Federal Supreme Court in 5 days.<sup>242</sup> The provision is also silent when the decision is awarded. It's simply says the court shall give decision as soon as possible. This shows the provisions lacks time bind for the court to award the decision.

From the above description the writer of this paper conclude that the appeal jurisdiction of the Federal High Court under the former electoral law (i.e. Proc. No. 111/1995), it would create an opportunity for possible error made by Federal High Court to be revised by Federal Supreme Court. Besides, this change will narrow the right to lodge an appeal from the Federal High Court to that of Federal Supreme Court.

As we saw here, the law didn't set the time in which court should come up with a decision that it only says "as soon as possible."It is the same for all complaints. The law also clearly provided that any complaint or appeal which is filed after the period specified under the law will be barred by limitation.

Therefore, the writer of this paper conclude that the law seems to recognize the fact that time is an essence of resolving electoral disputes and need promote decision from the concerned bodies.

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<sup>242</sup> Supra note 118, article 96 (4).

## CHAPTER SIX

### Conclusion and Recommendations

#### 6.1. Conclusion

Electoral laws play vital role as a game that display political parties in given country. Development of electoral law in the world had passed through different historical period. Mostly the modern period contributes the lion share by accompanied Constitutional provision and strict subsequent electoral laws. There are international legal instruments on which state party forced to enforce those provisions incorporated under them. There are also heart touching electoral principles and theories in the world shall be implemented without reservation to ensure real democracy. There were different electoral systems developed by scholars helping us a bench mark for different countries. Experience of different countries shows that, the system of election developed through time by adopting and repealing either one or the two electoral systems.

There were models of electoral management bodies developed by different scholars. Nowadays either of each model will be enforced alternatively or cumulatively. Electoral dispute resolution mechanism is one instrument to resolve electoral complaints. Experience of country to this extent shows in the form of Constitutional, Ordinary and Electoral Court empowered to interpret the constitutional and subsequent electoral laws. Ethiopia is a country of Land of Origin in the world. However, electoral laws and democratic election system still remain untouched. Most rulers were Monarchy Kings. History shows the removal of Monarchy or Military rule subject to civil war or Military cupde“tat and insurgent movement. The history of written law that protect the partisan King Emperor Haile sellasie come up with by Cameral parliament. However the Senate members were elected by the Emperor himself sating under his Constitution article 32 stipulate until the people reach to elect their representative Chamber of Deputies elected by degnators (mekuanenet) and local chiefs (shumegnoch). The Revised 1955 Constitution adopted only Chamber of Deputy election with its own criteria, Senate member appointment remains still in the hands of the King. The first historical electoral law promulgated according to the revised 1955 Constitution to enhance Chamber of Deputy election. The electoral constituency was stipulated one constituency should accommodate for fifty thousand voters registered two hundred thousand in habitants.

The period of 1974 up to 1987 were disastrous period due to there was no Constitution and Constitutional government. Election and introducing electoral environment as well as survival of human being with respect of human right become unpredictable. The Constitution namely PDRE enacted in 1987 adopted for a single party monopoly of WPE. The proclamation enacted during this period intended to enhance the WPE National Shengo election.

The 1991 Transitional Charter was the precedent to repeal the 1987 PDRE Constitution. The representatives of Peoples representatives in Charter were simply appointed by themselves from liberation front, insurgent groups, prominent individuals and different organizations. The proclamation proclaimed during this period promoted National, regional, and wereda Council election. This election was conducted in the absence of opposition party. This shows that Ethiopian people were not exercising their democratic rights.

The 1995 FDRE Constitution come up with promising election of Peoples Representatives. This Constitution decides the number of House of peoples Representatives under its provision. The seats will be acquired by both direct election and reserved seats for minority groups. The electoral constituency was decided by previous electoral Proclamation for one constituency one hundred thousand inhabitants. The effective electoral proclamations tacitly replead and become silent about the constituency numbers of inhabitants. The population number is up growing to demanding unrepresentation. Party rule and party election were predominant by the ruling EPRDF party. The electoral system adopted under the Constitution is plurality. The first past the post voting system closed the way for other political parties and individual to win the election. Thus, this system must be subject to reform to overcome the problem of inclusive government.

The Electoral body is established under FDRE Constitution and the effective subsequent electoral proclamation. The accountability of the Board addressed to the House of Peoples Representatives. The power to allocate budget for the National Electoral Board of Ethiopia gave to the House of Peoples Representatives. The nomination and approval of the National Electoral Board members remain in the hands of EPRDF party legislature. The electoral executive officers were assigned by the government from his employee. Both internal and external observer shall be permitted by the executive. The large country size limits opposition parties to assign their own observer. From this Ethiopia adopted mixed type of electoral model. Internationally recognized some principles like secrecy; periodic election was impaired under the Constitution. That is the

term office for head of state Prime Minister is uncertain. The secret ballot voting system exposed to gossiping and suspicion due to the closed ballot box bag. Absence of glass made ballot box and electronic voting system limits the transparency of the voting process.

Electoral dispute resolution mechanisms hold by un-independent electoral board. Courts granted the appellate power jurisdiction. This appellate power become narrow in the effective electoral Proclamation by waving Federal High Court power that allows the second layer trial up to Federal Supreme Court. Speedy trials become delayed since there is no time limit when the court awards the decision.

## **6.2. Recommendations**

Electoral law is necessary to play vital role in promoting multi party system and democracy. By virtue of this, the writer forward the following recommendations to overcome the problems attributed with electoral law of Ethiopia.

1. Article 54 of the FDRE Constitution should be amended before the reform of electoral law in general, electoral system and electoral constituency in particular.
2. Plurality (i.e. first past the post) electoral system should be changed to mixed system. That is absolute majority for fifty percent and the remaining fifty percent for party list proportional electoral system.
3. The public and all political parties should be given the power to nominate members of electoral bodies to encourage their participation and to ascertain the independency of the National Electoral Board Ethiopia.
4. The Constitution should adopt independent types of electoral management body model to ensure the independency of the National Electoral Board of Ethiopia.
5. The ruling party rule should be revised and substituted by party who win majority seats in the legislature to establish his own government.
6. Electoral constituency must be revised to accommodate unrepresented people that grow after establishment of the former electoral constituency by considering the country economic development, budget accommodation, effective and efficient utilization of

resource by forecasting the high uncontrolled birth rate in the following ways:

- 6.1. For ethnic minority, the voter number for one constituency should be accounted to the minimum for two hundred thousand inhabitants.
- 6.2. For ethnic majority, the voter number for one constituency should be accounted to the minimum for five hundred thousand inhabitants.
7. The Constitutional reserved seats for minority must be come up with effective law to define the term „minority“ and subscribed rights to them.
8. The term office of the Prime Minister should be determined only for two office terms for each four or five years according to state type determined.
9. Permanent Court should be assigned under ordinary court at High Court level to adjudicate electoral cases that enable widening the appeal rights and the mod for speedy trial.
10. Glass made ballot box and electronic voting systems should be adopted to carry out transparent and secret election.

Finally, the incorporation of the overwhelming problems of electoral laws is quite impossible in this paper. However, it helps to as a reference for further research to be made to address the preceding issues.

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## **I. Interview questions for National Electoral Board of Ethiopia**

1. The present electoral system on the way to reform. What is the ground for the reform? Would you explain?
2. What are the gaps of the existing electoral law?
3. How do you explain the independence of the Electoral Board?
4. What are the ground /procedures of the appointment of members of the Board? Would you explain?
5. Under the existing electoral law, what is the ground of delimitation of constituencies? How many populations in one constituency? Would you explain?
6. What result can expect from the reform of evectional law?

## **II. Interview questions for opposition parties**

- 1.Does the existing electoral law reflect the majority of the political actors? Why?
- 2.How do you evaluate the relevance of Ethiopian electoral system envisaged under electoral law vis-a vis the Ethiopian situations?
- 3.In your opinion, what are the limitations of the existing electoral law?
- 4.How do you see (express) the electoral board as neutral and impartial electoral management body? Is there a need to any modification? What are they? How do you see the appointment procedure of officials of the board? What mechanisms to be taken or modified?
- 5.Does the existing electrical law provide for national electoral board of Ethiopia to be constituted as well as to function as an independent and impartial institution? How to explain?
- 6.How do you see complaint and dispute resolution mechanism envisaged under the existing electoral law? What are its limitations?