
# ADDIS ABABA UNIVERSITY

## COLLEGE OF LAW AND GOVERNANCE STUDIES

## SCHOOL OF LAW

# ASSESSMENT OF THE QUALITY OF LAWS ISSUED BY THE HOUSE OF PEOPLES' REPRESENTATIVES DURING THE 3RD AND 5TH TERM

**By**

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*A Thesis Submitted to the School of Law, Addis Ababa University in Partial Fulfillment of the Requirements for the Award of Master's Degree in Law (LLM)*

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# Table of Contents

## LIST OF TABLES

## ACRONYMS

FDRE – The Federal Democratic Republic of Ethiopia

HPR – The House of People's Representatives

NEBE – The National Electoral Board of Ethiopia

EPRDF – Ethiopian Peoples' Revolutionary Democratic Front

CUD – Coalition for Unity and Democracy

UEDF – Union of Ethiopian Democratic Front

EDP - Ethiopian Democratic Party

CIPs - Complaint Investigation Panels

EU-EOM – European Union Election Observer Mission

MP – Member of Parliament

PR - Proportional Representation

CPSU – Communist Party of Soviet Union

AEUO – All Ethiopians Unity Organization

EDL – Ethiopian Democratic League

RAINBOW –Rainbow Movement for Democracy and Social Justice

PM – Prime Minister

NGO – Non Governmental Organization

GTP – Growth and Transformation Plan

CSO – Civil Society Organization

PMAC – Provisional Military Administrative Council

WPE – Workers Party of Ethiopia

PDRE – Peoples' Democratic Republic of Ethiopia

TGE - Transitional Government of Ethiopia

HoF - House of Federation

MEDREK- The Ethiopian Federal Unity Forum

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# DECLARATION

This thesis is a presentation of my original work. Wherever contributions of others are involved, every effort is made to indicate this clearly, with due reference to the literature, and acknowledgement of collaborative research and discussions.

The work was done under the guidance of Dr. Seyoum Mesfin, the School of Federalism, at Addis Ababa University.

Alexander Endalkachew: _____

This thesis has been submitted for examination with my approval as an Advisor.

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# CHAPTER ONE

## 1. INTRODUCTION

### 1.1. Background of the Study

The first criterion of a democratic parliament is that it should be representative of the people. In the first case, , this implies that parliament should reflect the will of the people as stated in the choices made by electors in voting for political parties representing and promoting their interests. A parliament that is considerably unrepresentative in this respect, whether through deficiencies in the electoral system or procedure, will to that extent forfeit legitimacy, and be less able to reflect public opinion on the important issues of the day. A democratic parliament should also reflect the social diversity of the population in terms of political views, gender, language, religion, ethnicity or other significant socio-economic interests.[1]

This objective of having a representative and democratic parliament is achieved partly through the composition of parliament, which is the result of the election process; partly through fair and inclusive parliamentary procedures, which provide an opportunity for all members to express their views, to take part in the work of parliament on an equal footing with others, and to develop their parliamentary careers.[2]

Opposition parties play a key role in holding the government to account, and in providing alternative policy options for public consideration. In parliamentary systems, where the government can exercise the initiative over debate and legislation through its parliamentary majority, it is important that there be guaranteed rights for an official opposition to place items for legislation and policy debate on the parliamentary agenda, as well as guaranteed time for such debate.[3]

[1] Inter Parliamentary Union (2006): Parliament and Democracy in the Twenty –First Century Geneva, Switzerland p13
[2] Ibid
[3] Ibid

Before delving into the current parlimanetary system in Ethiopia, it would be indispensible to say a few things about the attempts to establish a parliamentary system during the reign of Emperor Haileselassie and the Dergue.

## 1.2. Brief Overview of Parliaments before and after 1991

### 1.2.1 Parliaments during Emperor Haileselassie

During the reign of Emperor Hailesiallse, the first constitution was enacted in 1931 and a bicameral parliament was created and this parliament was carried forward to the 1955 revised constitution. In the first constitution, members of the upper chamber or the Senate numbering up to 125 were appointed for 6 years term by the emperor at irregular intervals and are chosen from among the nobility dignitaries, hierarchy of Ethiopian Orthodox Church and other prominent personage. The number of senators may never exceed one half of the total number of deputies.[4]

The constitution, which was claimed as the "giant of the King by his own freewill", created a semblance of a bicameral parliament whose Upper House is strong, composed of important members of the nobility and whose Lower House had an advisory role.[5] Popular election of any form was unthinkable at that time. Therefore, the said two houses were constituted in the following manner:

"The Upper House members, being important members of the nobility, were to be handpicked by the monarch, while the members of the Lower House were nobles elected by the nobility in the Upper House. The Houses served as a communication bridge between the government and the people."[6]

It was the revised constitution that clearly spelled out that the Emperor was the head of State and the government exercising multiple powers in all aspects of the government. Members of the Lower House or Chamber of Deputies numbering 250 were to be elected for 4 years term and are

[4] Redden, Kenneth (1966): *"The Law Making Process in Ethiopia"*. The Faulty of Law, Haile Selassie I University, Addis Ababa, p. 2.
[5] Tsegaye Regassa (2001): *"Ethnic Federalism and the Right to Self Determination as a Constitutional Legal Solution to the Problem of Multi-Ethnic Societies: The Case of Ethiopia". (LLM Thesis, unpublished)*
[6] Ibid

eligible to an indefinite number of terms of office. However, the members of the Chamber of Senate are fully appointed by the emperor.[7]

As stated above, the first parliament of Ethiopia was to serve only as an advisory institution. It was only after 24 years that the full legislative power with a right of accepting, amending and even rejecting decrees issued by the Emperor when the Parliament was not in session, was conferred on this body by the Revised Constitution of 1955.[8]

As regard to the law making power of the Emperor's parliament, any draft law to be submitted to the houses need to be supported by the Emperor or by 10 or more members. That means the sources of the primary legislations were the Emperor and the Parliament. The Emperor used to be constitutionally empowered to issue two types of primary laws, i.e. *Orders* and *Decrees*, while the parliament has the authority to issue one type of primary legislation, i.e. *proclamations*.[9] Orders which used to be exclusively enacted by the Emperor were primary laws principally related to issues of the creation or dissolution of organs of state and government power or their branches, the chartering of municipalities, the raising and disbanding of unity of the army, etc. It should be noted that the Emperor had the power to issue orders without referring to any other organ of state or government power.[10]

### 1.2.2. Parliament or "*Shengo*" during Dergue Regime

In September 1974, Emperor Haileselassie was deposed, the revised constitution suspended and a military junta known as *the Dergue* emerged, establishing itself as the Provisional Military Administrative Council (PMAC). It was without a constitution and a parliament that the Dergue ruled between 1974 and 1987.

After the dethronement of the Emperor and abrogation of the revised constitution by the PMAC on September 12, 1974, although there were legal instruments which regulate the function of the government, one can confidently generalize that Ethiopia was ruled by a military junta for 13

[7] Redden, supra note 4: p. 36
[8] Aberra Jembere (1996): "*The Functions and Development of Parliament in Ethiopia" in: G.M. ZOEHOUT et al (Eds). Constitutionalism in Africa: The Quest for Autonomous Principles, p. 15*
[9] Redden, supra note 4, p. 5
[10] Art. 27 of the 1955 Revised Constitution

years without any basic law that may be characterized as constitution until the enactment of the PDRE Constitution on September 12, 1987.[11]

There was only one type of primary legislation under the Dergue, i.e. the proclamation that was enacted by its congress. The congress of the PMAC, being the highest organ of state power then, was also the only source of the sole primary legislation of the time, i.e. the proclamation.[12]

The military regime had also created a national Shengo. The role of the Shengo, the highest legislative body, was undertaken by the State Council which was the visible administrative organ of state power with the highest responsibilities for undertaking the day to day state functions.[13]

As a permanent executive, legislative and administrative body of the national Shengo, the State Council reduced the role of the national Shengo in a rubber-stamping body of the Workers Party of Ethiopia (WPE).[14]

The State Council has such broadest power of enacting laws and even declaring state of emergency when the Shengo was not in session.[15]

Because the national Shengo had been holding its regular session once a year, its members needed not to be regularly paid by it, but were to stay at their regular jobs.

Unlike the 1931 and the 1955 revised constitutions or the future FDRE Constitution, the PDRE Constitution made the national Shengo a *unicameral* type. It was to be chaired by the head of state, the president, not by a Speaker. Interestingly, it was exactly 13 years ago that Proc. 1/1974 was replaced by Proc. No. 1/1987 and consequently, Dergue as the head of state was replaced by the PDRE President. The Dergue's constitution and its national Shengo lasted only four years to be toppled in May 1995 by the EPLF-EPRDF Coalition.

[11] Aberra Jembere, supra note 8: 63
[12] The 1987 PDRE Constitution, Art. 62(1)(a)
[13] Assefa Fiseha (2007): "Federalism and the Accommodation of Diversity in Ethiopia: A comparative study". Form of Federations, Netherlands: p. 42
[14] Ibid
[15] ዘውዱ ውብእንግዳ (?) "የፌዴራላዊ መንግስት ታሪካዊ አመጣጥ እና የመንግስት ግንባታ ችግሮች በኢትዮጵያ": 239

### 1.2.3. The FDRE House of Peoples' Representatives

After the downfall of the Dergue in 1991, the EPRDF-led government was established having the name of TGE (Transitional Government of Ethiopia). The new government in its transitional period (from July 22, 1991 to August 21, 1995) was to be guided by an interim constitution, otherwise known as *Charter* which was the product of a conference of the EPRDF and others convened on July 1-5, 1991 in Addis Ababa. The conference reflected a dramatic shift of political power from the center to new politicians from hitherto marginalized regions.[16]

The Charter empowered the TGE to establish by law local and regional councils defined on the basis of nationality.[17] The Council of Representatives was established to exercise legislative functions. It was composed of the EPRDF (dominant) and some minor ethnic based parties spanned by the civil war.

One of the major tasks of the Transitional Council of Representatives was to direct the process of constitution making and facilitate for a new national election on the basis of the said constitution.[18]

The 1994 FDRE Constitution, enforced only after 1995 that declares the Ethiopian state a *parliamentarian.*[19] The Constitution also provides for a two-chamber parliament known as the federal houses. They are the House of Peoples' Representatives (HPR) and the House of Federation (HoF).[20] However, the HoF does not take part in the law making process. It is only the HPR that makes laws.

The highest authority of the federal government rests with the HPR.[21] The founding assembly of the HPR was held on Nehase 15,1987 E.C. and started its regular functioning on Mesekerem 29, 1988 E.C. The HPR has the power of legislation in all matters assigned to it by the Constitution to federal jurisdiction.[22]

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[16] Assefa Fiseha, supra note 13, pp. 47-48
[17] Art. 13 of the Charter
[18] Assefa Fiseha, supra note 13, pp. 53
[19] FDRE Constitution, Art. 45
[20] Ibid: Art. 53
[21] Ibid: Art. 50 (3)
[22] FDRE Constitution, Art. 55 (1)

The function of the HPR encompasses the legislative, financial, deliberative, informative and representative areas with respect to its power to legislate. It is provided that all matters assigned by the Constitution to federal jurisdiction fall within the competence of the HPR. Federal jurisdiction is something exclusively enumerated in 21 provisions under the title of 'Powers and Functions of the federal government'.[23]

The Ethiopian House of Peoples' Representatives (HPR) is currently dominated by the ruling party, the Ethiopian People's Revolutionary Democratic Front (EPRDF). During the 2005 national election, opposition parties made unprecedented gains both at federal and regional levels. To the contrary, no single opposition member is elected to the federal parliament during the 2015 election. As a result, the purpose of this research is to assess the quality of laws made during the 3rd and 5th terms of the House of peoples Representatives (HPR).

## 1.3. Statement of the Problem

Following the 2015 national election in Ethiopia, the EPRDF has been declared the winner with almost 100% majority. Consequently, the HPR is virtually dominated by a single party. The EPRDF is advocating for the 'Dominant Party' system although a single party system is the reality. One cannot talk of dominant party in the absence of a single opposition party in parliament. In view of the fact that there is no opposition party in the HPR, we can safely say that we are witnessing a single party system.

When a single party controls a parliament, it is natural to assume that Members of Parliament (MPs) of that party will, by and large, be representatives of a single interest where other opposing interests are excluded. The vote in parliament will be based on party loyalty. The lack of competing ideas and a heated debate, which naturally comes from the opposition parties, would result in having laws that are rushed and ratified without proper parliamentary deliberation in the House. The outcome will be passing of laws that are reflective of the sole interests of the ruling party. This will have far reaching impacts on the whole exercise of power of the HPR. As has been observed in the Ethiopian case, in recent times, the House can easily pass laws that targets those opposed to the ruling party or a certain section of the society as it

[23] They are provided under Art. 51, FDRE Constitution

wishes. This fact has been corroborated by the statement of MPs that the researcher has interviewed during the preparation of this thesis.

## 1.4 Objectives of the Study

### 1.4.1 General Objective

The general objective of this thesis is to evaluate the quality of laws made during the 3rd and 5th terms of the HPR.

### 1.4.2 Specific Objectives

The specific objectives are:

- To assess the performance of the HPR in light of its legal/constitutional power of law making;
- To assess the impact of dominant party system on the process and outcome of the law making in the HPR;
- To make a comparison between the 3rd term of the HPR (2005-2009) and the current one (September 2015 - January 2017);

## 1.5 Research Questions

Deriving from the aforementioned broad problem, the research is especially interested in answering the following key questions;

1. What is the law making performance of the HPR?
2. What was the contribution of the opposition MPs during the Third Term of the HPR (2005-2010) in the quality of the laws made by the HPR?
3. How does the total control of the HPR by a single party affect the performance of the House and the quality of laws enacted by the House?

## 1.6 Significance of the study

This research will try to explore the law making performance of the Ethiopian HPR with a special focus on the impact of the existing dominant party in the House. Having the entire seats of the HPR occupied by a single party is a new phenomenon since the downfall of the *Dergue*

regime and after the declaration of a multi-party system in the republic. As a result, it is my full-fledged hope that readers of this paper as well as the public will get some sense of understanding as to what possible changes have been made in the law making process of the HPR since the coming into existence of the dominant party system.

My research differs from other researches carried out in this area because I have chosen to conduct a comparative analysis on the law making process and on the quality of the laws issued by the HPR in its two terms. This makes the research more focused and further develop the understanding of the reader on what are the real impacts of the presence or absence of opposition parties in the HPR in the quality of the laws issued by the House.

## 1.7. Scope of the Study

The scope of the study does not cover the whole legislative performance of parliament in the history of modern Ethiopia. Although some cases may be taken from the past for comparative purposes, the main task of this paper is to assess the FDRE HPR. Even in this case, not all the past four terms can be covered in equally detailed level. The main focus will be on the current term, the fourth one (2014-2019), the second term will be stated for comparing purpose with the latest one. But, it is the law making process and the impact of dominant party system in the current HPR that will take the attention of this paper.

## 1.8. Research Methodology

### 1.8.1 Data Collection

The data required for this study are collected from primary and secondary sources. The major data is the primary data, which is gathered through in-depth interviews with selected focal persons and partially structured questionnaires with some supplementary open-ended items. Interviews were held with the Members of Parliament during the two terms as well as leaders of opposition political parties. Totally 11 interviews have been held.

A total of 30 questionnaires were distributed to be filled by MPs. However, only 15 questionnaires were returned and one out of these was not properly filled. Therefore, the responses of the 15 questionnaires have been analyzed. The attempt to include current

Chairpersons of Standing Committees in the HPR was not successful as many of them were not willing to fill the questionnaires giving several individual reasons.

The major challenge that the researcher encountered during the data collection phase was that minutes of the standing committees were inaccessible from the HPR. The circulation center of the HPR informed the researcher that the minutes are not accessible by the public indefinitely as the Expert working in the section has left his post and researchers should wait until a replacement is hired. This situation has continued for about eight months without any change.

The researcher tried to compensate the lack of access to the minutes by interviewing members of the concerned committees who were present when the minutes were signed. As such, the interviewed MPs tried to give a verbal version of what the minutes state in general. As a result, the possible negative impact as a result of the inaccessibility of the minutes has been reversed by the interviewing of key informants.

### 1.8.2 Method of Data Analysis

The data gathered during the survey have been analyzed using word descriptions, tables and graphs appropriate. The researcher has also tried to compare the current practice of the Ethiopian legislature with respect to the accepted theories and practices. The study is equally descriptive and explanatory research because the researcher endeavored to show what is going on and why it is happening in the study area in question.

## 1.9 Organization of the research

This research is organized in four (4) chapters. Chapter 1 contains the introductory part; Chapter 2 addresses the quality of law in parliamentary system in relation to political pluralism; Chapter 3 covers the actual situations in the law making process of the FDRE HPR and finally, Chapter 4 is composed of the conclusion and recommendations.

# CHAPTER TWO

## 2. THE QUALITY OF LAW IN PARLIAMENTARY SYSTEM IN RELATION TO POLITICAL PLURALISM

### 2.1. Law Making in General

Numerous definitions of law have been put forward over the centuries. The *Third New International Dictionary* from Merriam-Webster defines law as:

> *Law is a binding custom or practice of a community; a rule or mode of conduct or action that is prescribed or formally recognized as binding by a supreme controlling authority or is made obligatory by a sanction (as an edict, decree, order, ordinance, statute, resolution, rule, judicial decision, or usage) made, recognized, or enforced by the controlling authority.*[24]

American jurist Benjamin Nation Cordazo defines law as "a principle or rule of conduct so established as to justify a production with reasonable certainty that it will be enforced by the courts if its authority is challenged."[25] There have been several attempts to produce "a universally acceptable definition of law". In 1972, one source indicated that no such definition could be produced.[26] Thurman Arnold said that it is obvious that "it is impossible to define the word "law" and that it is also equally obvious that the struggle to define that word should not ever be abandoned.[27]"

Law provides a rich source of scholarly inquiry into legal history, philosophy, economic analysis and sociology. Law also raises important and complex issues concerning equality, fairness, and justice. There is an old saying that 'all are equal before the law', although Jonathan Swift argued that 'Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.' In 1894, the author Anatole France said that, "In its majestic equality, the law forbids

[24] Third New International Dictionary, Merriam-Webster, Inc., Springfield, Massachusetts.
[25] Panton, G. W, A text book of jurisprudence, 4th edition 1976
[26] Mc Coubrey, Hilaire and White, Nigel D. Textbook on Jurisprudence. Second Edition. Blackstone Press Limited. 1996. ISBN 1-85431-582-X. Page 2.
[27] Arnold, Thurman. The Symbols of Government. 1935. Page 36.

rich and poor alike to sleep under bridges, beg in the streets, and steal loaves of bread." [28] Writing in 350 BC, the Greek philosopher Aristotle declared, "The rule of law is better than the rule of any individual." [29] Salmond definitions of law "The body of principles recognized and applied by the state in the administration of justice".[30]

Legislation can have many purposes: to regulate, to authorize, to outlaw, to provide (funds), to sanction, to grant, to declare or to restrict. According to Rosco Pound, there are four purposes of law to maintain law within the society, to maintain the statues-quo in society, to enable individuals to have the maximum freedom and the maximum satisfaction of the needs of people.[31]

Obeying the law is a general moral obligation. Usually, laws are written from societal ethical codes; therefore, the law can embody morality. Obeying the law usually implies the greatest good for the greatest number of people and therefore complies with Mill's utilitarianism.[32] As law is a crucial system that allows human society to function in a matter that is as safe, fair and profitable for as many people as possible. Obeying the law is not only beneficial to society as a whole, but it allows individuals to reap the protections of living in an orderly environment. Rule of law designed to bond members of a society together and serve as a protection for their collective and individual right.[33] Moreover, the reason why law should be obeyed can be viewed from different perspectives like: social, economic, political, cultural and environmental, etc... as follows: 1. Civilization would decay and possibly crumble if we all do whatever we want. 2. Resource could be depleted to the point of zero if people took them and used them at will with no regards to conservation. 3. Animal life could go extinct if people could hunt game animals at will with no regard to the conservation of the species. 4. The economy would be stagnant because who would do business if there were no set framework to make sure people who make and provide things get paid for their work? 5. A civilization with no laws could be vulnerable to attack from enemies who have a functioning government. How can you fight a war if no one is in

[28] Christof Dugari: The Red Lily, Chapter VII, published on 1996, pp. 65.
[29] Aristotle. Politics, Book 3#3:16. NB. This translation reads, "it is more proper that law should govern than any one of the citizens"
[30] John Salmond: Jurisprudence or the Theory of the Law (2 ed, Stevens & Haynes, London, 1907) 9 Jurisprudence 2 ed; John Salmond Jurisprudence: or the Theory of the Law (7 ed, Sweet & Maxwell, London, 1924) 39 Jurisprudence 7 ed.
[31] http://www.studylecturenotes.com/social-sciences/law/123-what-is-law what is law definition, purpose and sense of law 08/13/2011- Umar Farooq
[32] https://www.megaessays.com/viewpaper/200095.html, accessed on 08/07/2016 @9:30 am
[33] https://www.reference.com/government-poilitics/important-obey-law-ca89e9b1f7f04eaz#, accessed on 08/07/2016 @9:30 am

charge or no one will follow the person who claims to be in charge? 6. The weak would be at the mercy of the strong. What if the strong have no mercy? 7. The collective good would be expunged and the focus on self-preservation would rule. Gains by one person would probably come at the expense of other people. 8. You only survive and prosper if you are smart enough or strong enough or cunning enough to work with in a lawless system.[34]

According to Austin, a person is obliged by the command of the sovereign to obey the law. In other way, Bentham said that law should be about promoting the greatest good for the greatest number and that subjugation of individuals by law was for the good of the majority and could be justified and understood/analyzed that way.[35]

In relation to the functions of organs of government, the principle of separation of power has been introduced. John Locke, in his *Two Treatises of Government*, and Baron de Montesquieu in *The Spirit of the Laws*, advocated for a separation of powers.[36]The justification for the principle of separation of power is in order to avoid abuse of power by one organ of government. Montesquieu expressed the justification:

> *When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty….there is no liberty if the powers of judging is not separated from the legislative and executive…there would be an end to everything, if the same man or the same body… were to exercise those three powers.* [37]

The application of separation of power is clearly provided under the constitutions of democratic states. Following the emergence of the principle of separation of power, the application of division of power came to existence. The executive, legislative and judiciary start to function within the limit given under the constitution of their country.

The parliament is one of the three organs of government which is entrusted in law making role. It is obvious because of the presence of separation of power under the constitution of a certain state that the parliament would have law making power. This presupposes the democratic nature of the

[34] https://answers.yahoo.com/question/index?qid=20091028164237AAz1ipc&pages=z
[35] Andreas Matheiu: Legal philosophy and jurisprudence Sydney University. "why obey the law ? "
[36] Baron de Montesquieu, The Spirit of Laws, trans. Thomas Nugent, 2 Vols. New York :The colonial press,1899) 1:151
[37] Montesquieu: The spirit of laws (c.1948). Translated and edited by Anne Cohler,Basia Miller, Harold Stone. (New York : Cambridge University Press,1989

constitution of a certain country with regard to separation of power. However, the fact that there exists a democratic constitution does not presuppose the existence of a democratic parliament. This point will be clear when we understand the principle of constitutionalism. To make it clear, there are instances in which there would not be constitutionalism if a government abuses its power beyond the limit provided under its constitution in the presence of best constitution/ democratic constitution. The same is true if there is no consecutive measure taken by different laws based on the constitution of a certain country to ensure practical application of separation of power and the existence of a democratic parliament.

In order for the law to be enacted by the parliament, the draft is initiated by different bodies like members of parliament, the executive and other bodies which are empowered to do so. The need to give the power to such bodies to initiate draft for the parliament is because of their being representatives of the people i.e. members of the parliament they would have awareness as to the problem of the society, some organs who are given the power of initiation of the draft have awareness as to the subject matter of the draft than anyone due to the fact that they are exercising as their day to day activity. After the draft is being initiated by different bodies, then it will pass different stages like discussion in the parliament (an organ which is empowered in making of law under the constitutions of a certain country), referral to the committee, and commented by the committee, the committee would return back the modified draft to the house etc… The importance of the linkage between the parliament and the law is a matter of application of separation of power in the ground. That is why the task of law making is entrusted to the parliament.[38] As members of parliament are the representatives of the people, the law enacted by the parliament is presumed to be a kind of law which can satisfy the interest of the people. The linkage between the law and the parliament would be clear when we consider the interference of other organs of government in the law making task of the parliament.

At the end, such kind of practice deny the law making power of the parliament provided under the constitution of a certain state and it would have an impact in the process of law making and the people may not be satisfied by the law enacted as it does not reflect the actual representatives of the people. Similarly, even if the law is made by the parliament, if the process of law making fails to be in accordance with the constitution and parliamentary procedure of a certain country,

[38] Baron de Montesquieu, The spirit of Laws, trans. Thomas Nugent, 2 Vols. New York :The colonial press,1899) 1:151

it will affect the quality of the law making process. That is why the law enacted in contravention with the constitution and parliamentary procedures may not satisfy the interest of the people and it may not be a solution to the problem of the people that the law was supposed to address.

## 2.2 Political Pluralism

Political pluralism is an arrangement of multi-party political (government and other political party) dispensation at all levels of that society. Previously, Jean Jacques Rousseau was arguing in support of the idea of "common will" in that human beings are able to function with one common agenda shared amongst the people and their ruling class.[39] Latter, democracy stands opposed to the idea of common will by all citizens in a state. In a certain state, the society has various interests, views and beliefs. However, it is impossible for the government to satisfy the interests of all society in a certain state.[40]

In order for political pluralism to exist, there must be different parties in the parliament of a certain state. Political parties are social organizations with a representative function; they embody particular interests, aggregate and communicate them to political and government institutions. When we say political parties, it includes the ruling party and other political parties which are organized within a certain country.

Opposition political parties are institutions which play a great role for the existence of political pluralism within the political system of a certain state in order to oversee the day to day governmental activities of the ruling party. Political opposition is an essential feature of modern democracy and of contemporary parliamentary systems. Different scholars expressed political oppositions in a similar fashion. For instance, Robert Dahl said that, "political opposition with legally existing political parties are not only modern, but also one of the greatest social discoveries." [41] Similarly, Von Beyme said that, "opposition can develop only in a constitutional state where decisions are taken on the basis of majority vote and certain rights are granted to the members of representative bodies." [42] In the meantime, political parties are indispensable to the

[39] http://www.african-di.org/the-role-of-opposition-parties-in-africa/The Role of Opposition Parties in Africa, accessed on 08/07/2017 @9:30 am

[40] Ibid
[41] Dahl 1969, 17.
[42] Beyme 1973, 157.

working of a democratic parliament.[43] Therefore, in the absence of opposition political parties, we cannot talk about democracy.[44] The role of opposition is crucial to democracy and speaks directly about the future of a country. Among other things, opposition plays varying roles in parliament like policy development and accounting for project implementation, to promote and stimulate debates in parliament. [45]

The importance of pluralism in the law making process is that those representatives of different political parties and from the different parts of the society can have the opportunity to present the voice, need and problems of the people in the parliament by means of draft law. This idea is expressed well by the writing of Abera Degeffa, "It is the parliament that reflects the interest of the sovereign people and at the end that changes this interest of the people in the form of law."[46] In such situation, there will be a direct relationship between the problem of the people and the law enacted to solve the problem of the people. The other importance of political pluralism in relation to the law making process is that it increases freedom of the law making body in its relation with the executive. Abera Degeffa continues: "In parliamentary states, the presence of many political parties in the parliament would increase the freedom of the law making body in its relation with the executive organ. Whereas, the presence of only one party in the parliament would increase a *de facto* dominance of the executive over the legislature"[47] However, the actual interest of the people can be heard and changed in the form of law if and only if there are real representatives of the people. In this point, Abera wrote that

> *In order to the law enacted to be the one which can reflect the actual interest of the people , the law making body should be real representatives of the people. The reality of this can be applicable only in a democratic state where the constitution clearly defines the people as the owner of the power.* [48]

Moreover, the participation of opposition in the political affairs of a certain country is recognized as a right in the international human right instruments. We can understand this from article 25 of the International Covenant on Civil and Political Right: "Every citizen shall have the right and

[43] Beetham, David (2006): supra note 53: pp.6
[44] Zajc, Drago, The Role of Opposition in Contemporary Parliamentary Democracies - the Case of Slovenia
[45] http://www.african-di.org/the-role-of-opposition-parties-in-africa/The Role of Opposition Parties in Africa.
[46] Abera Degeffa (2010): "በኢፌዲሪ የሕግ አወጣጥ ሒደት", Ethiopian Bar Review, Vol. 4, No.1, pp.71-72
[47] Ibid
[48] Ibid, p. 24

the opportunity (b) to take part in the conduct of public affairs, directly or through freely chosen representatives" [49]

## 2.3. A Framework for Democratic Parliament

In order to consider a certain parliament as democratic, it should fulfill the following key characteristics: representativeness, transparency, accessibility, accountability, and effectiveness. When we say representative, it means that the parliament should be socially and politically representative of the diversity of the people, and ensure equal opportunities and protections for all its members. In the same way, transparent means being open to the nation through different media, and being transparent in the conduct of its business. Accessibility means involving the public, including the associations and movements of civil society, in the work of parliament. Accountability involves members of parliament being accountable to the electorate for their performance in office and integrity of conduct. Finally, effective means the effective organization of business in accordance with these democratic values, and the performance of parliament's legislative and oversight functions in a manner that serves the needs of the whole population.[50]

## 2.4. Parameters to assess the quality of law in relation to political pluralism in parliamentary government

Unless the opposition political parties have place in the parliament, the community which did not support the government would be left without a representative and the existence of political pluralism would be questionable. In such situation, the question of the society that did not support the government would remain unanswered. The quality of law can be determined based on the solution that the enacted law contributes in solving problems of the society. Sometimes when more laws are enacted, it increases the size, complexity and cost of the body of laws and adds more restrictions to human activities. If the law fails to address the problem of the community, it is considered as purposeless. Among other things, the following points can be factors which affect the quality of law.

[49] ICCPR Article 25
[50] Beetham, David (2006) supra note 53: pp. 7:

### 2.4.1. Democratization of the election process and inclusiveness for Parties

In the view of the Inter-American Court of Human Rights, there is an inseparable bond between the principle of legality, democratic institutions and the rule of law.[51] Most of the work of a parliament is carried out in committees, whether legislative or oversight committees, or a combination of the two. It is an accepted practice in almost all parliaments that the membership of such committees is proportionate to the strength of the different parties or groups in the chamber as a whole.[52]

### 2.4.2. The Existence of Fair Parliamentary Procedures

The presence of fair parliamentary procedures is the one of determining factors of the quality of law making process. It requires that its procedures and mode of working are inclusive. When we say fair parliamentary procedure, it does not mean that it would equally satisfy the interest of all political parties in the parliament. However, it means that the procedure should make the representation of most of political parties meaningful in a way they can exercise the purpose for what they are represented. The procedure should not be symbolic which is simply enacted to satisfy the interest of one party only. The measurement for the existence of fair parliamentary procedure is that: it sets up a specific set of rules for the easy and orderly conduct of meetings, allowing every person within the organization to be heard and helping members make decisions. The law making role of the parliament is directly affected by the activity of each member of the parliament, members of the ruling party, opposition political parties, the presence of strong political parties, the procedure governing party discipline, the time specified for each party for speech.[53]

### 2.4.3. The Existence of Lower Parliamentary Representation Threshold

The law making process is one of the democratic processes that are undertaken in the parliament of a certain state. In order to ensure the realization of democracy, states must ensure the

[51] Inter-American Court of Human Rights, The Word 'Laws' in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86, 9 May 1986, Series A Nº 6, para. 32; also Judicial Guarantees in States of Emergency (Articles 27(2), 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87, 6 October 1987, Series A Nº 9, para. 24.

[52] Ibid. P. 28

[53] Beetham, David (2006): "Parliament and Democracy in the Twenty –First Century: A Guide to Good Practice" Geneva, Inter Parliamentary Union): pp. 26

existence of a reasonable representation in the political system of their country. In order for reasonable representation to exist in the parliament, states must provide lower threshold for this matter in order for the rights of all citizens and all political views and interests to be represented in the parliament. The existence of lower threshold is that states under their constitution as well as in their election law should provide lower minimum requirement in which many political parties can have opportunity to hold seat in the parliament. In such circumstance, the seats of the parliament, which the wining party cannot hold beyond the limit of the seats specified under the law, would be reserved for the parties which have a better vote in comparison with the others. The Venice Commission is of the opinion that ensuring the reasonable representation of opposition in parliament is in itself of great importance for fostering stable and legitimate democracy, as pointed out by the rapporteurs to the Council of Europe Forum for the Future of Democracy in 2007:

> *The lack of a strong opposition in parliament may lead to a form of extra parliamentary opposition in which protests may be expressed in violent forms on the streets, thus diminishing the quality and relevance of the parliamentary debate and affecting the decision-making process as a whole. One means of avoiding situations in which opposition is essentially extra-parliamentary is to lower the thresholds for parliamentary representation. In a developed democracy, thresholds should be low, in order for the rights of all citizens and all political views and interests to be represented in parliament*.[54]

Therefore, the presence of reasonable representation in the parliament would have direct impact in the quality of law of a certain state.

### 2.4.4. The Existence of Committee Submission and Public Hearings

An extract from a handbook of the New Zealand's system of parliament explaining the significance of committee submissions and public hearings for democracy of direct citizen participation in legislation:

> *New Zealand's system of parliamentary democracy not only provides for citizens to elect their representatives but also allows citizens to have a say in shaping the*

[54] Strasbourg, (15 November 2010) study no. 497/2008 cdl-ad (2010)025engl. European commission for democracy through law (venice commission) report on the role of the Opposition in a democratic parliament adopted by the Venice commission. Page 8

*laws that affect them. This involvement is achieved by the select committees of the House of Representatives receiving submissions from the public. The system of public input in to legislative proposals is an important element in the parliamentary process and in the democratic life of the country. Submissions are also received on parliamentary inquiries and other matters before a select committee. This provides the public with the opportunity to put forward its views on issues and may ultimately result in new law."* [55]

### 2.4.5 Accessibility of the Parliament

Much of the work of parliament is now carried out by committees, and many parliaments are now opening them up to the public and media personnel. [56] Opposition or minority parties have a key role to play in holding the government to account, and in providing alternative policy options for public consideration. In parliamentary systems, where the government can exercise the initiative over debate and legislation through its parliamentary majority, it is important that there be guaranteed rights for an official opposition to place items for legislation and policy debate on the parliamentary agenda, as well as guaranteed time for such debate.[57]

## 2.5. The Experience of Different Countries

### 2.5.1. Opposition or minority rights in most European parliamentary systems:

The main principle in any parliamentary democracy is that decisions are taken by majority vote. However, the minority should always be allowed to participate. Most rules on parliamentary opposition and minorities are therefore of a procedural nature. Sometimes, however, minorities are given more than just rights of participation, and may even have the competence to adopt or at least influence substantive decisions.

In political theory, a distinction is sometimes drawn between positive and negative power. Positive power to adopt decisions should in a democracy rest with the elected majority. But the minority (opposition) may enjoy some degree of negative power – to scrutinize, supervise, delay

[55] Inter Parliamentary Union (2006): Parliament and Democracy in the Twenty –First Century Geneva, Switzerland pp 80.

[56] Ibid. p. 44

[57] Inter Parliamentary Union (2006): cited above at supra note 20, p.8

or even block the exercise of majority rule. The concept of "negative power" is a useful instrument for understanding how opposition and minority interests should be regulated.[58]

The proper balance between democratic majority rule and legitimate opposition and minority rights and interests – and between positive and negative power – is not an easy one, and depends to a large extent on the national political and constitutional culture. There is no single general formula, much less any clear common European standard. But there are still common elements of interest. On closer analysis, there appears to be some main substantive categories where special opposition or minority rights are to be found in some or most European parliamentary systems: Rules guaranteeing minority participation in parliamentary procedures, Rules giving a minority special rights to supervise and scrutinize government policy, Rules giving a minority the right to block or delay majority decisions, Rules giving a minority the right to demand constitutional review of laws. These are rules giving the parliamentary opposition and minorities rights and competences. In addition, rules protecting opposition parties and MPs against prosecution and abuse (5.6).[59]

A succinct way of putting this is that "The principle underlying parliamentary procedure is that the minority should have its say and the majority should have its way". The minority should have its say, in the sense that it should have the right to participate in the procedures, the committee work, and the debates. And then at the end of the day there is a vote, which the minority loses. The debate may still have improved the outcome, and even if it has not, still the participation of the opposition will have added openness and transparency to the political processes, increasing transparency, accountability and legitimacy.[60]

It is also important that the minority should have a say in setting the agenda – deciding which cases should be debated, the dates of the debate, the timeframe, and etc. It is not conductive to effective and legitimate parliamentary democracy if the majority is able to decide the agenda alone, allowing only those debates with which they are comfortable and delaying or blocking others.[61]

[58] Michael KoB and Radoslaw Zubek (2012): Minority Rights and Majority Rule in European Legislatures
[59] Inter Parliamentary Union (2006): cited above at supranote 20, p.22
[60] Ibid
[61] Beetham, David (2006): cited above at supra note 20, p.23

In most national parliaments there are numerous provisions in the Rules of Procedure that ensure procedural participation, whether regulated in relation to the individual MP, the party groups, qualified minorities or the "opposition" as such.

A basic principle of parliamentary procedure, which is seldom explicitly stated in the national constitutions, but which is nevertheless often to be found by way of interpretation, is that of equality of the representatives. As stated, a parliament is an institution consisting of the elected representatives, with the representative as a main legal entity, based on the idea that they should in principle all have the same rights and obligation, whether belonging to the governing party or the opposition.[62]

This principle of equality is stated in Resolution 1601 (2008) of the Parliamentary Assembly: "equal treatment of Members of Parliaments, both as individual members and as members of a political group, has to be ensured in every aspect of the exercise of their mandate and of the operations of parliament". The Venice Commission, for its part has also in its Code of Good Practice in the field of Political Parties recalled the necessity to respect the principle of equality. Under EU law, the principle of equality of the Members of the European Parliament (MEPs) has been judicially recognized by the Court of First Instance, which in 2001 held that "the conditions under which Members who have been democratically vested with a parliamentary mandate must exercise that mandate cannot be affected by their not belonging to CDL-AD(2010)02524, a political group to an extent which exceeds what is necessary for the attainment of the legitimate objectives pursued by the Parliament through its organization in political groups"[63]

To the extent that the principle of equality of MPs is limited, then that is normally for the sake of efficiency, since it would in many cases be impossible to get decisions adopted in an assembly with equal rights of procedural participation for all members. The principle of equality of MPs is therefore normally supplemented by a principle of proportional representation and participation by party groups.[64]

[62] Ibid
[63] Ibid
[64] Beetham, David (2006): cited above at supra note 20, p.23 and 24

As for the more concrete and detailed rights of procedural participation, there are large number of issues that merit attention, corresponding to the many functions and procedures of a modern parliament. This is reflected in Resolution 1601 (2008), where the Parliamentary Assembly has laid down an extensive and detailed list of procedural rights that should be guaranteed for opposition members. The main categories include: Participation in the "supervision, scrutiny and control" function, through a number of specified procedural rights: Participation in the organization of legislative work, Participation in the legislative procedures, Participation in parliamentary committees' work, Participation in political decisions and Participation in the constitutional review of laws.[65]

### 2.5.2. The Experience of England

The committee stage is probably the most thorough examination of the bill. This examination is done by a standing committee that is made up of 18 to 25 MPs. The number per political party is determined by each party's strength in the House of Commons. The Minister responsible for the bill is on the committee along with junior ministers. There are two whips on the committee –one from the government and one that represents the opposition. The other places in the committee are made up of MPs from both sides of the House. They are considered to have an expertise in the matter being discussed and can bring such expertise for discussion at the committee stage. The number of times a standing committee meets is determined by the importance of a bill. A Major government bill may require a number of meetings (between 10 and 12 is usual) over a six week period. However, controversial bills have taken up more time than this. A standing Committee is charged by a senior backbencher from either side of the House. His /her task is to remain impartial throughout the committee stage. Bills that are likely to take time due to their controversial nature may have two chairs appointed- one from the government and one from the opposition. In the UK parliaments, there is a rule or convention that certain positions should be reserved for opposition members.[66]

[65] ibid
[66] How laws are made in Great Britain, http://www.historylearningsite.co.uk/british-politics/the-house-of-commons/how-laws-are-made-in-great-britain/ accessed on 08/08/2016 @11:00 am

### 2.5.3. The Experience of Denmark and Turkey

For opposition party groups, a particularly important principle is that of proportional representation in the parliamentary committees, the allocation of positions, speaking time, distribution of administrative and financial resources, and etc. This is a principle that can be found in most parliaments, although of varying strictness. Some parliaments apply proportionality to all the important allocations, while others only reserve it to some. There is also great variety as to how the principle of proportional representation is formally recognized. In a few countries, it is explicitly regulated in the constitution. This includes Article 52 of the Constitution of Denmark, which states that

> *The election by the Folketing of members to sit on committees and of members to perform special duties shall be according to proportional representation", and Article 95 of the Constitution of Turkey that "The provisions of the Rules of Procedure shall be drawn up in such a way as to ensure the participation of each political party group in all the activities of the Assembly in proportion to its number of members..*

The new PACE guidelines on the rights of the opposition laid down in Resolution 1601(2008) have several points on proportional representation, including: speaking time in plenary sittings shall be allotted at least according to the respective weight of political groups, the presidency of standing/permanent committees shall be allocated among parliamentary groups on the basis of proportional representation, any committee, permanent or not, shall be composed on the basis of proportional representation.[67]

### 2.5.4. The Experience of Cote d'Ivoire

Except few circumstances, the house of representatives of the republic of Cyprus now allows media personnel to attend committee meetings. Similarly, the Assemblée Nationale of the Cote d'Ivoire, which used to permit summaries of its committee meetings to be published, has since 2001 allowed the press to attend and report on all committee proceedings. In the same way, in

[67] Supra note 35 p.15

South Africa, committees are open to the public and the media, and can only be closed after open discussion and with approval of the Speaker.[68]

Since achieving independence in 1960, Côte d'Ivoire was ruled by Félix Houphouët-Boigny as a one-party state until 1990 when multiparty was formally legalized. Houphouët-Boigny's death in December 1993 was followed by a peaceful transfer of power to then-President of the National Assembly, Henri Konan Bédié, according to Article 11 of the Ivorian Constitution which provides for the order of presidential succession. Political developments during late 1994 and early 1995 centered on preparations for presidential and legislative elections scheduled for late 1995. The adoption in December 1994 of a new electoral code, some provisions of which proved controversial, galvanized the major opposition parties. The Front Populaire Ivoirien (FPI) and the Rassemblement Des Républicains (RDR), a breakaway party from the ruling party, the Parti Démocratique de la Côte d'Ivoire (PDCI), joined forces with a grouping of six other opposition parties to call for the revision of the electoral code and the establishment of an independent election commission. These and other complaints regarding the organization of the elections eventually led to an opposition boycott of the October 22, 1995 presidential election. After political tensions sparked widespread protests and some violence, the government set up a commission to verify the voter lists and opposition parties agreed to participate in the November 26 legislative elections.[69]

The current composition of the National Assembly is as follows: PDCI -- 149 deputies; FPI -- 13; and RDR -- 13. Approximately 65 percent of the deputies elected are newcomers who are relatively unfamiliar with the workings of the legislative branch of government and their roles and responsibilities as elected representatives.

The administrative framework within the legislative branch in Côte d'Ivoire is highly centralized under a leadership that is heavily weighted in favor of the ruling party. The leadership comprises a president, 12 vice presidents, 24 secretaries, and two questeurs. 1 of these 39 people, two vice presidents and three secretaries belong to opposition parties.

[68] Id. p. 45
[69] National Democratic Institute for International Affairs (1997): "Role of the Legislature in consolidating democracy"; p. 2

The Ivorian Assembly is divided into four committees comprising: general institutional affairs (with jurisdiction over the ministers of interior, information, national defense and justice); economic and financial affairs (public works, transportation, agriculture, fish and forests); social and cultural affairs (education, youth, sports, public health and population); and external relations (international relations, foreign affairs and international conferences). Although the committees represent the doorway through which bills reach the parliament, the committees have not played a significant role in the formation of policy, nor have they accumulated expertise on policy issues. As laid out in the parliament's rules of procedure, bills originate from the executive branch and are introduced by a member of parliament, then referred to the appropriate committee for study and review. Amendments are submitted for debate in committees before re-submission to the full Assembly for a vote in plenary session. In practice, however, the overwhelming majority held by the PDCI in the Assembly has meant that amendments proposed during committee meetings by opposition deputies have seldom, if ever, been submitted for debate in plenary session. No opposition-sponsored amendment or bill has ever been adopted by the Assembly, with the exception of one that proposed raising salaries for deputies.[70]

[70] Cited at supra note 39

# CHAPTER THREE

## 3. THE FACTUAL SITUATIONS IN THE LAW MAKING PROCESS OF THE FDRE HPR

### 3.1. Brief overview of the FDRE HPR

The current parliament of Ethiopia has been established based on the 1995 Ethiopian Constitution. It replaced the *Shengo* which was a legislative body under the 1987 Peoples Democratic Republic of Ethiopia (PDRE) Constitution. The FDRE parliament is made up of two chambers: the House of the Federation and the House of People's Representatives. The first popular election for the Federal parliament and regional legislatures was held in Ethiopia in 1995. The parliament had 108 seats in the House of Federation and 547 seats in the House of People's Representatives. Members of the House of People's Representatives are chosen through direct election for a term of five years and these members in turn elect the President.[71]

The Federal Democratic Republic of Ethiopia (FDRE) has parliamentary form of government.[72] The House of People's Representatives is the highest authority of the Federal Government.[73] According to Article 54 of the FDRE Constitution, members of the House of Peoples' Representatives should fulfill the following criteria: members of the House should be elected by the people for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot.[74]. Members of the House should be elected from candidates in each electoral district by a plurality of the votes cast and provisions be made by law for special representation for minority nationalities and peoples. Members of the House shall not exceed 550. Of these, minority Nationalities and peoples shall have at least 20 seats.[75]

[71]Ethiopian parliament, www.ethiopar.net/ accessed on 08/08/2016 @11:30 am
[72] Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1st Year, No. 1, Neg. Gaz. 21st August 1995, Article 45
[73] The FDRE Constitution, Article 50(2)
[74] Article 54(1) of the FDRE Constitution
[75] The FDRE Constitution, Article 54

Among the three branches of government in Ethiopia, the executive dominates and has very high power of influence over the legislature due to the following reasons: First, executives are from the ruling party and its affiliates; second, in Ethiopia, the party which forms the executive has a majority in the legislature.[76]

Although the FDRE Constitution establishes a two-house parliament, the Ethiopian Parliament is not bicameral in the strict sense of the term. The highest legislative authority is vested in the House of Peoples' Representatives (HPR), which is comparable to the first or lower chamber of a legislature, normally serving the interests of the people in the federation as a whole. The members of the HPR are elected by a plurality of the votes cast in general elections every five years.[77] The HPR has 546 members, and at least 20 seats are reserved for minority nationalities and peoples in order to ensure their representation. However, the FDRE Constitution does not define these groups, save that it declares that particulars shall be determined by law.[78] The Ethiopian system is essentially parliamentarian, where the political party or parties with the greatest number of seats in the HPR shall form and lead the executive and approve the appointment of members for the Council of Ministers and the Prime Minister.[79] The HPR shall also nominate the candidate for the President, who will be accepted by a two-thirds majority of both chambers of the legislature.[80] Members of the HPR are popularly elected for a five-year term in a "first-past-the-post" electoral system. The most important function of the HPR is to enact laws on matters assigned to federal jurisdiction and ratify national policy standards.[81] The HPR also performs other important functions including the appointment of federal judges, the ratification of international agreements and the investigation of the conduct of members of the executive.

### 3.1.1. Standing Committees of the HPR

The House of People's Representative has 16 standing committees. Each standing committee has members whose number vary, including the Chairman and Vice Chairperson.

[76] Addis Press Newspaper (2010): Formation of a government, Vol. 2, No. 28
[77] FDRE Constitution, Article 54(1).
[78] FDRE Constitution, Article 54(3).
[79] FDRE Constitution, Article 56.
[80] FDRE Constitution, Article 70.
[81] FDRE Constitution, Article 55. See Article 51 of the FDRE Constitution for the federal jurisdiction.

The standing committees of the HPR and the number of public departments overseen by the committees:

**Table 1: List of the the Standing Committes in the HPR**

| No. | Name of the committee | No. of committee members | No. of Public departments overseen by the committees |
|---|---|---|---|
| 1 | Human resource Development Affairs Standing Committee | 20 | 9 |
| 2 | Trade Affairs Standing Committee | 15 | 5 |
| 3 | Industry Affairs Standing Committee | 20 | 8 |
| 4 | Agriculture Affairs Standing Committee | 20 | 10 |
| 5 | Natural Resource and Environmental Affairs Standing Committee | 20 | 12 |
| 6 | Transport Affairs Standing Committee | 20 | 9 |
| 7 | Urban Development and Construction Affairs Standing Committee | 15 | 4 |
| 8 | Science, Communication and Technology Affairs Standing Committee | 20 | 5 |
| 9 | Budget and Finance Affairs Standing Committee | 20 | 9 |
| 10 | Legal, Justice and Administrative Affairs Standing Committee | 18 | 14 |
| 11 | Foreign, Defense and Security Affairs Standing Committee | 15 | 4 |
| 12 | Women, Children and Youth Affairs Standing Committee | 19 | 3 |
| 13 | Culture, Tourism and Mass media Affairs Standing Committee | 20 | 10 |
| 14 | Social Affairs Standing Committee | 20 | 9 |
| 15 | Pastoralists Affairs Standing Committee | 19 | 1 |
| 16 | Public Accounts Affairs Standing Committee | 15 | 1 |
| | **Total** | **296** | **113** |

**Source:** *HPR–Resolution No. 2/2010 of the House for the establishment of standing committees, appointment of members and chairs of committees, Addis Ababa*

### 3.1.2. The Business Advisory Committee in the House

The other committee in the HPR is the Business Advisory Committee. "This committee consists of the Speaker and Deputy Speaker, the party whips, representatives of the groups of the House delegated in proportion to their seats. According to Article 36 of the Proclamation 470/2005[82], party whips that have seat in the house shall be organized in the following way (a) One government chief whip and not more than four assistant whips. (b) One chief whip of the main

[82] Proclamation No. 470/2005: Proclamation for the House of Peoples' Representatives Working Procedure and Members' Code of Conduct (Amendment) Proclamation, 11th Year, No. 60, Neg. Gaz. 6th October 2005. Article 36

opposition party and assistant whips (c) one chief whip of the second opposition party and one assistant whips (d) other parties that have seat in the house shall have one whip each.[83]

The function of the Business Advisory Committee is to formulate business to be discussed by the House, allocate the debate time for each agenda, follow up and supervise the administration of man power, finance and property."[84]

Issues are dealt in two different ways in the house for submission to the Business Advisory Committee. The first one is, issues originating from the executive and parliamentary groups. The second one is issues originating from the Speaker, the parliamentary committee and members of the house. The former is submitted through the whips concerned while the speaker submits the latter.[85]

Once the submission process is over, the Business Advisory Committee will carry out the decision process. The decision is made based on Consensus. The speaker to the general regular session of the house will conduct presentation. Priority for presentation of respective parties will be given to party or parliamentary group leaders or party whips or representatives

## 3.2 The Law Making process in the HPR and factors affecting the quality of the laws

It is known that the HPR has the authority to initiate as well as adopt laws as reported by the FDRE Constitution (1995), and the Rules of Procedure and Members' Code of Conduct Regulation (RPMCR). The committees and the parliamentary groups have the authority to initiate draft bills according to RPMCR (2006 Article 50). They do not have authority over the financial bill which is the mandate of the government only.

The outcomes of assessment and MPs interview revealed that the executive body has initiated 99% of bills. However, this is not to imply that the legislature does not have any contribution in the process of the preparation of the bills. It has an indirect contribution by pushing the executive to prepare bills that would ease problems.[86] The bill presented to the legislature has to be signed by the initiator of the bill and forwarded to the speaker. The bill must then be ratified as an

[83] The House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia Rules of Procedures and Members' Code of Conduct Regulation 3/1998, Article 141, Ch. 19
[84] Ibid
[85] Ibid
[86] Atsbeha Aregawi (2012): The Practice of Policy making Process in Ethiopia: The Case of HPR (unpublished thesis), p. 34

agenda item by the business advisory committee and presented to the general meeting under the patronage of the speaker. Prior to holding discussion, the initiator's representative has to brief to the house on the contents and usefulness of the bill. Following the briefing, the first reading will take place focusing on general points. At the end of the first reading, the bill either will be forwarded to the appropriate standing committee for further critical observation or if motion is moved, it will directly be passed to the second reading and enacted as a law. Nevertheless, direct adoption of bills is uncommon except for financial bills.[87]

There are certain stages that the referred bill has to go through before the House approves it. These are:-

1) Careful Examination of the bill by the Committee members
2) Identification of issues and questions for clarification by the initiator.
3) Invitation of the Heads of the initiator governmental department and professional for purpose and importance explanation of the bill.
4) Response of questions raised by the respective standing committee.[88]

In this testimonial forum, MPs other than the committee members can take part and pose questions and opinions over the agenda. The representative(s) of the initiator government department give(s) clarifications over the vague issues and give(s) answers to the questions from the standing committee and participants of the forum. If the bill under question is deemed to affect public interest, the focal committee will organize a public hearing. Different stakeholders who may include Mass Organizations, Professional Associations, Civil Society Organizations (CSOs) and Higher Education and Research Institutions, Chambers of Commerce, Public Institutions, Interested Groups and Individuals represent the public forum. These stakeholders are invited through broadcast media publicly and through letters individually along with the copy of the agenda to make necessary preparations in advance.[89]

Invited stakeholders unable to take part in person will be able to express their opinion through other possible means. In the public hearing, the committee has the role of mediator. They make sure that that the discussions are well noted. They also evaluate the public hearing and decide the

[87] Ibid p.35
[88] ibid
[89] Ibid

way forward. The experts of the initiator department have a role of responding questions forwarded by the participants. If the evaluation indicates more hearing is needed, it will be arranged again in a similar pattern.[90]

The committee conducts identification of the amendment areas and discussion of public opinions. It will also prepare a report and a resolution proposal. The proposal contains the process of examination, amendments and the resolution. Submission of the report to the Speaker will be followed by the approval of the Business Advisory Committee as an agenda in the following session of the House.[91]

The Ethiopian legislation has procedures. The report of the Committee will decide the second hearing. The debate will decide whether it will be passed as a law or if it has to return for more inspection to the Committee. A report will be presented in a similar manner as mentioned above once the inspection is done. Finally, the bill will be voted to be a law.[92]

So far, we have seen the general procedure of law making process of the legislature. This procedure is only applied in examining and approving draft bills only. As noted above, around 99% of the draft bills are initiated by the executive departments, which is common in all countries that follow parliamentary system of government.[93] Although the research has found this case as a shortcoming of the legislature, it is a familiar procedure with other countries.

Nevertheless, the general policy guidelines of the government departments are not only initiated by the executive but also adopted there. These general policies are the basis for the draft bills, which are scrutinized and adopted by the legislature. The perspective of the legislature in scrutinizing the bills is based on these broad policy guidelines. Even though the MPs are abided by these policies, they do not have the opportunity to have their voices heard. The FDRE Constitution (1995) Article 55(10) stipulates that the general policies and strategies of the country shall be approved by the legislature, while Article 77(6) states that economic social and development policies shall be formulated and implemented by the executive. Most of the target MPs (respondents) considers the adoption of general policies as a sole mandate of

[90] Ibid. p.36
[91] Ibid
[92] Ibid
[93] Moran, Michael et al (2006): The Oxford Handbook of Public Policy, Oxford University Press, Oxford

the executive. However, like the PASDEP and GTP plans, the general policies and strategies of the country must be discussed and approved by the legislature. Though the adoption of regulations is vested in the legislature, the mandate is delegated to the Council of Ministers based on the constitutional provision. Directives are initiated and approved within the executive departments.

There are limitations in the regarding the quality of scrutiny of bills in the parliament. Some of them mentioned by the participants are:-

1) Time shortage
2) Lack of competence and commitment of committee members(current principal problems)
3) The ruling party's tendency to use its majority vote regardless of the concerns of the opposition parties(tendency of selecting candidates who are not important to the states and local administrations)
4) Limited stakeholders' participation
5) Referring a lot of bills to be approved urgently
6) Pressure to approve bills by the executive
7) Absence of annual legislative plan,
8) The negligence of public media in reporting the business of the legislature and so on.[94]

In some regions, some politicians even conclude to the extent of considering it as a place of demotion. Some MPs are not also happy with the privileges and benefits that they receive in the parliament. The MPs who have relative competence tend to search for jobs outside the legislature to get better salaries and other benefits. The executive also appoints many MPs who are considered as capable to the duties of executive departments and this in turn erodes the capability of the legislature. The absence of logistical support and office facilities are also demotivating factors for MPs. Committee Chairs, members and other MPs do not have clear status that would allow them deserving privileges and benefits. Regardless of these privileges, MPs are supposed to show strong spirit of responsibility, but the reality is different. [95]

[94] Nigussie Meshesha (2014): **Media and Politics in Ethiopia: A Critical Analysis; p. 8**
[95] Atsbeha Aregawi (2012): The Practice of Policy making Process in Ethiopia: The Case of HPR (unpublished thesis), p. 38

The next factor to the low quality of scrutiny of bills is the problems that emanate from the executive departments. Some bills, like the land lease bill and bill for the establishment of the Federal Police Commission, are adopted directly by motion within three hours deliberation. Bills, which are included in the president's annual opening speech and the government's legislative plan, are not submitted to the legislature timely as intended. This caused the lack of annual legislative plan in the legislature. As a result, backlogs of dozens of bills are submitted at the end of fiscal year among which some are to be approved urgently. On the other hand, the end of the fiscal year is full of too much rush season to scrutinize these amount of bills. This situation forces the legislature to hasty approval of bills without sufficient deliberations. Furthermore, according to the opinion of the respondents, the executive departments are reluctant to accommodate the opinions of legislators and stakeholders during the time of scrutiny. They assume that they are perfect in every issue of the bill and they consider fully the public interest. This kind of rigidity discourages the rigorous scrutiny of bills induces the feeling of "why do we waste our time and effort", given the limitations of MPs to convince the people from the executive departments".[96]

The other factor for the poor scrutiny of bills is the inadequate participation of stakeholders. Of course, there have been some bills known for their stakeholders' participation. For example, the amendment of the Criminal Code, whose scrutiny lasted for more than a year and involved multiple sections of the society, the CSO Law, the Press and Freedom to Information Law, and the Electoral Law are well consulted with concerned stakeholders. Nevertheless, these bills are very few compared to the bills approved so far. Still, the great majority of bills lack participation of the public.[97]

According the collected primary data, this problem is justified by the following shortcomings: One of the causes is lack of due attention and institutional arrangement to make the participation possible. The existing Committees do not give proper weight to the issue. Most of the time, they invite stakeholders in the last minute and the stakeholders do not have enough time to prepare to the public hearings. The secretariat is also very weak in facilitating these preparations. The stakeholders also do not give emphasis to the importance of their participation

[96] Ibid, pp. 39
[97] Atsbeha Aregawi (2012): cited above at supra note 57, p.40

in these hearings. They lack proper understanding the stake they have in policy making. Furthermore, stakeholders tend to ignore participating in public hearings if their opinions are not included as amendments in the bills under scrutiny. Moreover, they perceive as everything is predetermined and amendment is impossible. Hence, they tend to conclude that taking part in these types of hearing is not important.[98] Since they had enough experience that their opinions, including in writing, had been repeatedly ignored by the concerned standing committee, stakeholders become less interested to appear.

The public hearing participation is limited to metropolitan area residents. Nevertheless, the laws are applied all over the country. The outreach can be improved by using technologies but it would not a significant effect because the legislature does not harness it.[99]

## 3.3 Political pluralism and the role of opposition political parties in the third term of HPR of the FDRE (2005-2010)

The Third General Election was conducted in May 15/2005. It was the most contested election in the history of the country. The opposition political parties appeared better organized and united. There was also a heightened interest in the public to participate in the election. There were strong pre-election debates among political parties (including live transmissions) which attracted the public for active participation in casting their votes.

**Table 2: Summary of the 15 May 2005 Ethiopian HPR election results**

| Summary of the 15 May 2005 Ethiopian House of People's Representatives election results | | | |
|---|---|---|---|
| **Coalitions and parties** | **Votes** | **%** | **Seats** |
| Ethiopian People's Revolutionary Democratic Front<br>Tigray People's Liberation Front<br>Oromo Peoples' Democratic Organization<br>Amhara National Democratic Movement<br>Southern Ethiopian People's Democratic Movement | | 59.8% | 327 |
| Coalition for Unity and Democracy<br>Ethiopian Democratic League<br>All Ethiopian Unity Party | | 19.9% | 109 |

[98] Id. p.41
[99] Ibid pp. 46

| | | | |
|---|---|---|---|
| United Ethiopian Democratic Party-Medhin Party<br>Rainbow Ethiopia: Movement for Democracy and Social Justice | | | |
| United Ethiopian Democratic Forces<br>Oromo National Congress<br>Ethiopian Social Democratic Federal Party<br>Southern Ethiopia People's Democratic Coalition<br>All-Amhara People's Organization<br>Ethiopian Democratic Unity Party | | 9.5% | 52 |
| Somali People's Democratic Party | | 4.3% | 24 |
| Oromo Federalist Democratic Movement | | 2.0% | 11 |
| Benishangul-Gumuz People's Democratic Unity Front | | 1.4% | 8 |
| Afar National Democratic Party | | 1.4% | 8 |
| Gambela People's Democratic Movement | | *negligible* | 3 |
| Sheko and Mezenger People's Democratic Unity Organization | | *negligible* | 1 |
| Hareri National League | | *negligible* | 1 |
| Argoba Nationality Democratic Organization | | *negligible* | 1 |
| Independent | | *negligible* | 1 |
| **Total** | | **100%** | **546** |

*Source: The Carter Center*[100]

In the 2005 General Election, even if there were many opposition political parties, two very strong coalitions of opposition parties emerged as major threats to the power of the ruling party. These were The United Ethiopian Democratic Forces (UEDF) and The Coalition for Unity and Democracy (CUD). The UEDF was composed of different opposition political parties, including the Oromo National Congress (ONC) and the Southern Coalition. The CUD, on the other hand, was composed of four opposition parties namely the All Ethiopians Unity Party (AEUP, Ethiopian Democratic Party (EDP), Ethiopian Democratic League (EDL) and Rainbow Movemnent for Democracy and Social Justice (Rainbow). In addition, there were individual opposition parties outside the two opposition coalitions, including the Oromo Federalist Democratic Movement (OFDM).

The election passed peacefully where many people casted their votes waiting for many hours patiently. Immediately after the election, both the opposition and the ruling party claimed victory to assume government power. In Addis Ababa, the opposition political party (CUD) has

[100] Available at: https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/ethiopia-2005-finalrpt.pdf accessed on 17/10/2016 @ 6:00 pm

won total victory for both the Federal Parliament and the City's Council. The EPRDF accepted that the opposition's victory in Addis Ababa and claimed that it has got victory in the four regional states, i.e. Tigray, Amhara, Oromia and SNNPR. On the other hand, the opposition encouraged by their victory in Addis Ababa claimed that they have won a victory in other regional states too. The official result released by the NEBE, however, indicated that the ruling party has got victory in the four regional states. When we see the results, the EPRDF has got 327 seats, CUD has got 109 seats, UEDF has got 52 seats, SPDP has 24 seats, and OFDM has won 11 seats. The rest were held by other parties. For the third time, the ruling party has won majority of seats to form government at Federal and in four regional states.

The pre-electoral activities were carried out peacefully with very few complaints. The campaigning was peaceful but very tough as both the ruling party and the opposition tried to win the support of the public. However, as the Election Day approached, there were unnecessary accusations and blames. As described by the Carter Center:

> *While the campaign started out at a high level, focusing on issues rather than personalities, it degenerated in the final week into charges and countercharges of engaging in "hate speech." The EPRDF's likening the opposition to Rwanda's interhamwe is as, or more, regrettable as are some opposition slurs against the Tigrayans in the ruling party.*[101]

After the election, there was a political turmoil. The Prime Minister declared a state of emergency especially in Addis Ababa prohibiting peaceful demonstrations and outdoor gatherings. According to Hon. Endalkachew, "Addis Ababa witnessed the killing of young protesters in different corners of the city. Live ammunition was used by the government security forces to disband the protesters. The same was true in other big cities of the country. Official report submitted by the inquiry commission to the HPR claimed that close to 200 persons lost their lives as a result of such bloody and violent reaction by the government". This was followed by protests in Addis Ababa where some students of Addis Ababa University were arrested. The unrest has been a little bit culminated until it again started after some opposition groups denounced the official result notified by NEBE and refused to take their seats

[101] Carter Center Post- Election Statement May 16, 2005. (Cited in the Carter Center Final Report of the 2005 Ethiopian Election, p.52

in the HPR. Of course, there were divisions among the opposition political parties themselves whether to take parliament seats or not. The protest took the lives of many people. Finally, the protest ended with detention of some opposition political party leaders in to jail accused of treason.

The National Electoral Board of Ethiopia was blamed for the maladministration of the post-election period. Independent election observers have declared that the NEBE failed to carry out its activities properly. For example, the Carter Center Observers have made the following observation:

> *The NEBE greatly suffered in the conduct of the 2005 elections as it demonstrated an inability to administer effectively key parts of the election, particularly the tabulation and election dispute phases of the process, and resisted comprehensive scrutiny and observation of all phases of the election process by domestic observers and political party agents.*[102]

In a similar manner, the EU election observers rated the counting and tabulation process as very slow (nearly at 22%). In addition The EU Election Observation Mission expressed that it regrets the way in which the counting of the votes at the constituency level is being conducted as well as the way in which the release of results is being handled by the electoral authorities, the government and the political parties, especially the EPRDF.[103] The Carter Center made a conclusion that:

> *In spite of the positive pre-election developments, therefore, the Center's observation mission concludes that the 2005 electoral process did not fulfill Ethiopia's obligations to ensure political rights and freedoms necessary for genuinely democratic elections.*[104]

The independence of the NEBE has always been a subject of an outcry and blames from the opposition, the private media and international bodies. Hon. Endalkachew Molla (interviewed on May 15/2017, Addis Ababa) and Hon. Erchafo Erdilo (interviewed on December 21/2017, Addis Ababa) agree that the NEBE is serving EPRDF as a gatekeeper to the HPR. With regard to the May 2005 election, the opposition MPs believe that the preliminary results came as a shock both

[102] Carter Center Final Report on Ethiopian General Election of 2005. P. 39
[103] EU Observer Mission Statement, May 24, 2005
[104] Carter Center Final Report on Ethiopian General Election of 2005. P.38

to the NEBE and the EPRDF. However, CUD and UEDF were not happy with the official results made by the NEBE and accused the EPRDF of fraud and vote rigging. As a result, CUD and UEDF submitted their complaint to the NEBE, the EPRDF being the respondent.

Complaint Investigation Panels (CIPs) were established where the EPRDF, the complainant party and the electoral body are represented. Ironically, EPRDF has also complained against CUD of rigging the votes in some areas. The statement of the EU Election Observer Mission reads:

> *"The complaints investigation process took place in the context of serious violations of human rights and freedoms, namely of opposition leaders and suspected supporters. This undermined the opposition's ability to participate effectively in the process, independently of their competence to argue their case: material evidence was unobtainable because detained or fearful witnesses were unable to testify and, in one case, an important witness was killed. The climate of threats and intimidation was maintained throughout the complaints investigation process".*[105]

With regard to the impartiality of the CIPs, the EU Preliminary Statement indicated that the composition of the CIPs seemed adequate (one member of the election administration, one of the complainant party and one of the defendant party), *de facto* there was no level- playing field: the ruling party was generally represented on the panels by important members of the local society, including state officials, such as judges. This increased confusion between the roles of the state and EPRDF and exacerbated the atmosphere of intimidation, including of members of the election administration, often called as witnesses by all parties (for EPRDF in 42% of the cases observed by the EU EOM). Although the CIPs worked in general in accordance with the Terms of Reference, the trend emerged of a 2:1 majority for the ruling party.[106]

The role of the judiciary is quite important in handling post-election disputes which could not be settled by the organs established by the NEBE. Honorable Mohammed Ali (the then CUD MP) strongly believes that the Ethiopian courts are very dependent on the executive and do not usually rule in favor of the opposition parties in cases where the EPRDF is a respondent. He remembers the case of the state of emergency declared by the former Prime Minister Meles

[105] EU-EOM Preliminary Statement on the election appeal's process, the re-run of elections, August 25/2005, Addis Ababa, Ethiopia. pp.18
[106] ibid

Zenawi, which was considered unconstitutional. The case was brought before the Federal High Court which refereed the case to the Constitutional Inquiry Commission at the HoF just to avoid a possible confrontation with the leader of the executive. As a result, most opposition MPs do not seriously believe that they can get their appeals upheld once the NEBE ruled against them.

With regard to the role of courts in times of appeals lodged by opposition parties against the NEBE, there have been cases where the Chairperson of the NEBE and the President of the Federal Supreme Court was the same person and causing a possible conflict of interest.

The opposition may appeal NEBE decisions on the CIPs conclusions to the Courts. Nevertheless, the chairman of the National Election Board, Ato Kemal Bedri, is the same person who chairs the Supreme Court. Despite his efforts to uphold an independent and legally grounded arbitration within the NEBE, that coincidence of offices does not encourage public trust in an independent review by the NEBE or, actually, the Courts. The opposition parties and other observers, who charged since the electoral campaign that NEBE was not independent, perceived it worsening at the appeals stage, also pointing out that there is no clear separation of power between the Judiciary and the Executive.[107]

Now that the CUD and UEDF lost most of their complaints against EPRDF, and the NEBE's CIPs were apparently ruling in favor of the EPRDF, the CUD lost significant number of parliamentary seats due to the complaints lodged by the ruling party. The opposition groups were blamed for committing such blunder of the above stated modality with the ruling party and NEBE combined in one. It seems that independent observers hold the opinion of avoiding confrontation with the EPRDF without due preparation on the part of the opposition. However, not all members of the opposition MPs took their seat as most have decided to boycott the new parliament. Honorable Endalkachew Molla[108] is one of those MPs who took his seat in the HPR representing the Coalition for Unity and Democracy. The researcher had a thorough interview with this MP and other MPs who represented the EPRDF and also the opposition parties. According to Hon. Endalkachew (interviewed on May 15/2017, Addis Ababa), members of the CUD who took up their seat in the parliament used to be considered as betraying their party for

[107] EU-EOM Preliminary Statement on the election appeal's process (2005); cited above at supra note 76

[108] Ex- CUD MP representing the CUD during the 3rd term of the HPR.

deciding to join the parliament against the wish of some elected individuals including the jailed leaders. He also said that 63 elected MPs from CUD joined the parliament not to deliberately violate their party's recent decision to boycott parliament but out of constant harassment and threats by government security personnel in plain clothes.

After joining the parliament, we started witnessing some extraordinary actions taken by the EPRDF dominated House. The House's first task was to amend the House of Peoples Representatives Legislative Procedure, Committees Structure and Working Proclamation No. 271/2002[109]. The Peoples' Representatives Working Procedure and Members' Code of Conduct Proclamation No. 470/2005 amended this proclamation. This proclamation was again repealed and amended by the House of Peoples' Representatives Working Procedure and Members' Code of Conduct Proclamation No. 503/2006. All these proclamations and amendments were made in response to the large number of opposition MPs. The proclamations as well as the regulations were aimed at curtailing the role of opposition MPs." he said.

Honorable Getachew Bayafers[110] is also another MP elected representing CUD during the May 2005 national election. He was asked if the newly amended proclamation and regulation did have an impact on the active role of the opposition MPs. He is particularly critical of the time limit imposed on each opposition MPs for speaking. "It is a well-accepted fact that each MP represents 100,000 people in his constituency. Ironically, only 2 minutes was allowed for an MP to express his/her opinion." Hon. Endalkachew Molla, another MP representing CUD shares this criticism. "Had there been enough time, there would have been an opportunity to expose the content of that bill or agenda, although at the end EPRDF gets what it wants. Particularly, time limitation was one of the backward performance and the laughable act that had been exercised by Speakers of the ruling party. Frequently, opposition MPs were compelled to cut short what they had prepared to deliver, including cutting short of statements." he stated. This was also observed in the general session that has been televised live where the Speaker of the HPR orders any opposition MP to stop before completing his statement.

[109] Proclamation No. 271/2002: a House of Peoples Representatives Legislative Procedure, Committees Structure and Working Proclamation, 8th Year, No. 18, Neg. Gaz. 23 April 2002.
[110] Ex-CUD MP representing the CUD during the 3rd term of the HPR.

Moreover, the amended proclamation requires that at least 20 MPs should support a motion to be set as an agenda. This requirement has never been successfully attained by the opposition block as they were apparently split within themselves. For instance, the CUD MPs were split into three when joining parliament. The one group was led by Ato Lidetu Ayalew and his mother party, Ethiopian Democratic Party (EDP) left the CUD coalition and decided to continue as a party. The other group was led by Hon. Temesgen Zewudie and this group kept the name of CUD throughout the term of the parliament and the third group was composed of splinters from CUD, and they were collectively referred as "Parliamentary Group". Such weaknesses of the opposition bloc had been wisely exploited by the dominant party in the House.

Hon. Mohamed Habib was a member of the 3rd term parliament representing EPRDF. He agrees with the opposition MPs that the time limit set for each MP was not enough to fully express his view. "Despite the time limit, opposition MPs had the chance to regroup together and elect their whip so that he/she can forward their opinion within the allocated time." He said. With regard to the role of opposition parties in the parliament during the 3rd term, he said "Opposition MPs had active role during the meeting of the House."[111] Similarly, he responded that opposition MPs were serving as members of standing committees according to the ratio of the seats they held in the House." The 2015 parliament is also the most remarkable parliament in the history of the FDRE in which opposition political parties failed to find a single seat in the FDRE parliament. The law making process in the 2005 parliament may seem better than the 2010 and 2015 parliaments in that the law enacted in the 2005 parliament after series of debates. Moreover, there was an amendment of a bill based on the feedback of opposition political party. For instance, according to the response of one anonymous respondent of opposition political party who was a member in the 3rd term of the Federal parliament "there was an instance where the committee I was serving made an amendment to a bill."[112]

The FDRE parliament is one of the parliaments in which the members have a discipline of loyalty to the party. In the 2010 and 2015 parliament, political pluralism became questionable in that the parliament is totally monopolized by a single party i.e. EPRDF. It means that the law

[111] An interview with an Hon. Mohamed Habib representing EPRDF who wishes to remain anonymous; interview conducted on 17/08/2016 at 9:30 am
[112] Ibid.

making process of the parliament of the 2015 monopolized by the members of ruling party in contradiction to political pluralism.

Some opposition MPs however, are critical of the way the EPRDF has been using its majority to pass resolutions regardless of objections from the opposition block and its refusal to include their comment at least as a compromise. Hon. Endalkachew Molla says the following: "Most of the bills were made laws without a heated debate among different parties and with no significant change from the one sent by the executive. If the ruling party seriously wanted that bill to be law as it is, it will be. After all, the necessary vote is there. All EPRDF MPs vote for what they are told to. No dissent!"

However, another opposition MP, Erchafo Erdlo, is of the opinion that there are times when a standing committee sent back a draft bill from the executive. While he was serving as a member of the Capacity Building Standing Committee, a draft bill initiated by the Ministry of Education was referred to further review to his committee. He said that the committee made several amendments to the bill and sent it back to the ministry. Interestingly, the chairperson of the committee was an MP representing EPRDF who agreed with opposition members of the committee on the referral of the bill.

For his criticism, Hon. Endalkachew cites the process of the drafting, deliberation and ratification stage of the controversial proclamations passed during his term; namely the Charities and Societies Proclamation No. 621/2009 and the Anti-Terrorism Proclamation No. 652/2009. As a demonstration of the ruling party's preference to use its majority in parliament without any regard to the outcry from the opposition bloc, we will firstly see the process during the ratification of the Charities and Societies Proclamation No. 621/2009.

My investigation reveals that the draft proclamation was first submitted to the HPR in June 2008. It was later on revised and submitted again in August 2008. From the outset, the Ethiopian government was under criticism from opposition parties within the HPR, who were more than 150 at the time, for drafting this law which they believe is inconsistent and incompatible with Ethiopia's national and international human rights obligations and that, if it is passed into law, it will have an extensive and damaging effect on the human rights situation in Ethiopia. Opposition MPs were very much displeased with the fact that restrictive provisions contained in the first

draft of the bill have not been altered, including the exclusion of foreign NGOs from human rights and other activities in Ethiopia; the prohibition of Ethiopian charities receiving more than 10% of their funding from outside Ethiopia; the unduly burdensome requirements that must be fulfilled in order for organizations to obtain and keep a license and therefore operate legally; intrusive and unwarranted levels of state surveillance of charities and NGOs through a newly created Charities and Societies Agency. As a result of revisions to the draft, penalties for noncompliance with the Proclamation are less specific, but there are still disproportionate and criminal penalties for even minor administrative breaches.[113]

"The provisions of the Draft Proclamation violate international and regional human rights treaties, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights to which Ethiopia is a party. Amnesty International is seriously concerned that if this proclamation is passed, it would lead to an increase in human rights violations in particular violations of the rights to freedom of expression, association and assembly. The Draft Proclamation also violates provisions of the Ethiopian Constitution, especially Article 31, which provides that "Everyone shall have the right to form associations for whatever purpose."[114]

The opposition bloc submitted its objection and possible recommendations during the first and second discussions on the draft. The EPRDF whip in the HPR defended the proclamation as a tool to "ensure the realization of citizens' right to association enshrined in the Constitution" and to "aid and facilitate the role of charities and societies in the overall development of Ethiopian people.[115]

After several hours of discussion, deliberation and public hearing, the draft proclamation came back to the HPR for the third time. The researcher confirms from my investigation of the minutes and resolution that the only changes made from the previous draft proclamations are on punctuation, typing errors and alphabetical errors.[116]

[113] My interview with CUD MPs Hon. Endalkachew Molla and Hon. Getachew Bayafers
[114] Ibid
[115] A review of the minutes of the Proclamation No. 621/2009: Proclamation to provide for the registration and regulation of Charities and Societies, 15th Year, No. 25, Neg. Gaz. 13th February 2009.
[116] Id

Such tactics of the ruling EPRDF seem to be well recognized by the opposition MPs. "Sometimes, opposition MPs think that EPRDF will seriously consider their comments and use them as inputs for further review. This has never happened because the ruling party believes that it has such an irreconcilable policy difference with the opposition bloc and accepting their views will amount to defeating its own policy standing. As a result, opposition MPs didn't have any other choice than to use our vote to object or abstain knowing that any law would be passed whether we like it or not, and this is frustrating." Anonymous MP said in an interview with the researcher.[117] The bill was passed on January 6/2009 during an ordinary session of the House with 327 votes in favor and 79 against.[118]

The second manifestation of the ruling party's tendency to use its majority despite objections from the opposition parties is the Anti-Terrorism Proclamation No. 652/2009. Hon. Mohammed Ali[119], a veteran politician who served the 3rd term of the HPR representing CUD, was asked to elaborate on the process through which the Anti-Terrorism Proclamation was passed by the House.

According to Hon. Mohammed Ali, the Anti-Terrorism Proclamation came at a time when Ethiopia was under a real threat from terrorist attack and the importance of the laws was unquestionable, at least, in principle. "At the time of deliberating on the draft law, several opposition members questioned the real motive behind the draft law as it is composed of vague and unclear provisions which were intended to silence dissent and provide the executive with great power, threatening the principle of check and balance." He added. His argument on the real motive of the proclamation starts from the uncertainty on the definition of terrorism. "The definition of terrorism in the proclamation is both vague that lacks clarity and broad that includes acts which are not inherently terrorism acts. This makes the law to be non-compatible with the principle of legality. One of the controversial provisions on which we had a heated debate with the drafters and resource persons of the proclamation is Article 3".

[117] Interview with opposition MP who wanted to remain anonymous for fear of security, conducted on interview conducted on 17/08/2016 at 9:30 am

[118] Minutes of the Proclamation No. 621/2009: cited above at supra note 86

[119] Interview with Mohammed Ali, Vice President of the UDJ and ex-MP, conducted on interview conducted on 20/08/2016 at 10:45 am

According to Hon. Endalkachew, "*coercing the government''* which is incorporated in the definition of terrorism under this provision lacks certainty regarding its magnitude to be easily determinable by the public at large. It is possible to raise different questions based on this particular phrase of the law. For instance, does it mean that all acts to express the dissatisfactions against the government considered as terrorist acts? The term lacks clarity as to what level of coercion of the government is considered as a terrorist act and what coercions are not under the definition of terrorism. It fails to put a clear demarcation between terrorism and other forms of violence either politically or religious.

Thus, the term lacks clarity as *to what level of coercion of the government* is considered as a terrorist act and what coercions are not under the definition of terrorism. It fails to put a clear demarcation between terrorism and other forms of violence either politically or religious. This may lead judges to interpret that the phrase that "*coercing the government''* which is incorporated in the definition of terrorism under this provision lacks certainty regarding its magnitude to be easily determinable by the public at large. It is possible to raise different questions based on this particular phrase of the law.

Major Mekonnen Geleta, an MP representing the United Ethiopia Democratic Front (UEDF) also remembers the time when the Anti-Terrorism Proclamation was in the process of ratification. "The opposition bloc didn't have any problem with the drafting of the proclamation as it includes criminal acts that couldn't be entertained by the regular criminal laws of the country. But, the problem comes when each provision of the proclamation was carefully scrutinized. I remember a very interesting argument from the UEDF Whip, Hon. Gebru Gebremariam. His question was related to the disproportionality of punishments provided in the proclamation."

The researcher was able to find the minutes and resolutions of Anti-Terrorism Proclamation No. 652/2009 and the argument and objection raised by UEDF Whip Gebru Gebremariam was on the disproportionality of punishments in the proclamation and more specifically on the imposition of similar punishments for consummated and non-consummated offences. Following is the literal translation of his statement "It is stipulated under Article 4 of the proclamation as follows;

*Whosoever plans, prepares, conspires, incites or attempts to commit any of the terrorist acts stipulated under sub-articles (1) to (6) of Article 3 of this Proclamation is punishable in accordance with the penalty provided for under the same Article.*

This specific provision vividly manifests that these all inchoate crimes are equally punishable with other consummated offences of terrorism. However, due to the requirement of harm, fairness and pragmatic concerns the criminalization of plans, preparations and conspiracy of terrorism is not justified and acceptable, the punishment of these acts of terrorism would be unacceptable too. Since, the criminalization of attempt of terrorism among the inchoate crimes is acceptable, talking about the extent and kind of punishment of attempt of terrorism would be justifiable in the Ethiopian anti-terrorism proclamation. But still punishing attempts of terrorism equal with the fully consummated terrorist offences is not acceptable as it is provided under the above provision. Imposing similar punishment for inchoate and complete terrorist offences in the proclamation depicts its unfairness. The proclamation disregards the effects of remoteness and equivocal nature of the inchoate conducts as factors that determine the extent of punishment and prescribes for similar punishment to all criminalized inchoate conducts and consummated terrorist act. Subjecting one who has planned, taken preparatory steps or conspired with others to commit a terrorist act to the same punishment as one who has committed a terrorist act makes the law unfair. The imposition of similar punishments for inchoate terrorist offences and completed offences in this proclamation would transfer a negative massage to the public that these offences are equally harmful and the perpetrators of both offences are equally blameworthy. In other words, these similar punishments cause the confusion of the public and bring the contempt of the law itself.

Similarly, the equally punishment of both inchoate crimes and completed crimes has another negative effect on the offenders of the crime. If individuals or groups understand that the punishments of inchoate offences of terrorism are punishable equal with the consummated terrorist offences, they will not renounce from the commission of grave crimes of terrorism.[120]

[120] Minutes of Proclamation No. 652/2009, Anti-Terrorism Proclamation, 15th Year, No. 57, Neg. Gaz. 28 August 2009.

The minutes also include a defensive statement from Hon. Asmelash W/Selassie, Chairperson of the Legal Affairs Standing Committee. While it is not the concern of the research paper to report what the argument of the ruling party was, the Chairperson said that the bill was prepared in line with the binding principles of the constitution and would prevent and control terrorist acts to safeguard the nation from threats it has endured in the past and promised to take the comments of the opposition MPs into consideration during the finalization of the draft. Ironically though, the proclamation came back without any meaningful amendments as per the comments from the opposition parties. Finally, the Anti-Terrorism Proclamation No. 652/2009 was passed on July 7/2009 with 286 votes in favor, 91 against and 1 abstention.[121]

## 3.4 Political pluralism and the role of opposition political parties in the fifth term of HPR of FDRE (2015-2019)

Parliamentary elections were held in Ethiopia on May 24/2015. The result was a victory for the ruling Ethiopian People's Revolutionary Democratic Front (EPRDF), which won 500 of the 547 seats. Allies of the EPRDF won the remaining seats.

Official results released by the National Electoral Board of Ethiopia indicate that the FDRE HPR, for the first time will be without opposition MPs. In a democratic system, winning 100 percent of the seats is indeed an extreme rarity. Many contend that there cannot be a healthy and stable democracy if there is no parliamentary opposition. History testifies that even the known one party system of the Soviet Union allowed some independent individuals to join the CPSU (Communist Party of the Soviet Union) in the Duma (parliament). It is arguably shocking to hear and see that a ruling party takes all in a constitutionally multi-party system like Ethiopia. Some warn that if the views of those who oppose the incumbent cannot be heard in parliament, then they will find an outlet in other less peaceful and constructive forms. That may explain the tendency of many commentators in relating the protests in different parts of the country to the election results.

[121] Ibid.

**Table: 3 Official results of the 2015 General Election for the HPR**

| No | Winner Party | Results obtained |
|---|---|---|
| 1 | The Ethiopian Peoples' Revolutionary Democratic front (EPRDF) | **500** |
| 2 | The Somali People's Democratic Party (SPDP) | **24** |
| 3 | The Bensishangul Gumuz Peoples Democratic party( BGPDP) | **9** |
| 4 | The Afar National Democratic Party (ANDP) | **8** |
| 5 | The Gambela People's Unity Democratic Movement (GPUDM) | **3** |
| 6 | The Harari National League (HNL) | **1** |
| 7 | The Argoba People Democratic Organization (APDO) | **1** |
| **Total number of seats in the House of people's Representative** | | **546** |

Source: NEBE[122]

The 5th term of the House of Peoples' Representatives was different from the 4th term (2010-1015). The only difference between election 2010 and election 2015 is the presence and absence of one opposition member, Hon. Girma Seifu who represented Medrek coalition. Of course, ex-MPs of CUD that I spoke to are of the views that the cumulative effect of the past decade is rather the main factor that gave rise to such widespread protests. According to them, the political space and the democratization process in the country has been regressing since the promising election of 2005.

Obviously, unlike previous times, the 2015 general election results were enough to debate on the electoral system strongly. The results show that the ruling party, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), and its affiliates won all federal and regional states. The results have ignited a debate on the contributions of the electoral system towards the 100 percent victory of the incumbent.

Some argue that given the overwhelming and sweeping victory of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) in the 2010 as well as the 2015 elections, which has precluded the emergence of a meaningful parliamentary opposition in Ethiopia, perhaps the country needs to switch to a Proportional Representation (PR) electoral system.

[122] NEBE: Official results of the 24 May 2015 General Elections; http://www.electionethiopia.org/en/ accessed on 10/10/2016 at 10:00 am

According to the election report of the National Electoral Board of Ethiopia, the representatives of EPRDF and its affiliates dominated all the seats of the 5th term parliament.[123] So long as there is no any single opposition political party in the 5th term of HPR of FDRE, opposition political parties would not have any role in the law making process of the parliament. In such situation, the effect of absence of political pluralism and fair opportunity for opposition political party is that some part of political group or party members will be affected by different laws which are enacted by the parliament that is absolutely dominated by the ruling party. For instance, the anti –terrorism proclamation is clear implication of a kind of law which is enacted to target a certain political group and members of political group.[124] Such kind of law clearly affect different rights of individuals guaranteed under the constitution of the country like the right of freedom of expression, right to association.[125] Even if the law of anti-terrorism is enacted under the Federal parliament, it should not affect fundamental rights of citizens guaranteed under international human right instruments and constitution of a certain country. Some members of the parliament representing EPRDF believe the mass enactment of all draft laws as a weakness of the ruling party. For instance, according to an anonymous respondent MP representing EPRDF, "… the ruling party has a majority seat and there is no much difference among the party members on basic party principles. However, amendments have been suggested and made by the MPs representing the ruling party. Democracy is a process and there may be weaknesses here and there. The weakness here may be that as a bill is ratified unanimously, there was no case of a unanimous rejection of a bill."[126] The ruling party seems to have understood the consequences of excluding opposition party members from the parliament. The President of the FDRE, Mulatu Teshome (PhD) made the following unprecedented remark in his State of the Union address in October 2017:

> *"In the last two elections, the ruling party, and its allies, won 99.9% and 100% of the seats in the House of Peoples' Representatives. Although, all those seats were won through free and fair, periodic elections, the result left the substantial number of votes given to opposition parties unrepresented in the House of Peoples' Representatives. The electoral system in effect*

[123] NEBE: Official results of the 24 May 2015 General Elections; cited above at supra note 93
[124] Minutes of Proclamation No. 652/2009: Cited above at supra note 91.
[125] Ibid
[126] Anonymous respondent of member of Federal parliament from first term up to third term representing EPRDF; interview conducted on 18/08/2016 at 10:30 am

*left out demands that might have been represented by parties other than the ruling party. Before the next election, we need to widen the political and democratic platforms and provide a legal framework, so the House of Peoples' Representatives can best represent a variety of voices and provide for diverse political interests. A model will be set up to reform the country's electoral law to place proportional representation and a majority system on an equal and balanced footing, after detailed negotiations between political parties, to reflect the spirit of compromise, guided by the principles of transparency and national interest. This will allow the voices of all walks of life to be heard in the House of Peoples' Representatives and in the House of Federation."*[127]

The 5th term of the HPR has so far passed several proclamations on wide range of issues. For the purpose of comparison, I have chosen the Computer Crimes Proclamation No. 958/2016 initiated by the Ministry of Science and Technology in April 2016. Unlike previous times, resource persons from the Ministry were not challenged in the EPRDF dominated house.[128]

This MP further explained to this researcher that party discipline is a very important factor for members of the EPRDF. The internal debate that takes place among legislators is the main factor to the good quality of bill scrutiny in any legislature. In HPR, however, this kind of debate is usually faint and is not fully realized. This weakness can be partly caused by the incompetence and lack of commitment of MPs as indicated in the previous section. Nevertheless, in the legislative process, there have been dilemmas that most of the EPRDF MPs are facing during parliamentary debate. The MPs, on the one hand, have to be governed by the constitution, by the will of people and by their conscience; on the other hand, since they are members of political party, they must be governed by their party policy.

If issues are raised that entail choosing one among the alternatives, the dilemma is inevitable. Most of the time, EPRDF MPs are abided by their party discipline whether the issue is concerned with policy or not. They are always bound to give precedence to the party discipline even if they have significant reservations. Among the EPRDF MPs who took part in the research, 75% of them have been confronted with contentious issues during

[127] The English Weekly "The Reporter", "Electoral Reform on the Horizon" available at www.ethiopianreporter.com/electoralreformonthehorizon, accessed on 14/11/2016 at 5:00 pm
[128] Interview with EPRDF MP currently serving the HPR and who wants to remain anonymous; interview conducted on 18/08/2016 at 10:30 am

their stay in the legislature and the rest have not. Out of the 75%, only one person in a single time has voted contrary to the party position but in later time he took self-criticism in his caucus for violating party discipline.[129]

With regard to the need for enacting the Computer Crime Proclamation No. 958/2016, Chairperson of the Legal, Justice and Administration Affairs Standing Committee of the HPR, with the House, Hon. Gebregziabher Araya said, information and communication technology plays a vital role in the economic, social and political development of the country if properly utilized. He also said that the new proclamation is needed to fill the gap of the existing criminal law and criminal procedures law in addressing the complex cyber-crimes.[130]

On the other hand, Woubeshet Senegiorgis (PhD)[131], a veteran Federal High Court Judge and private attorney-at-law, doesn't agree with the version of the ruling party. According to Woubeshet, this proclamation shares the shortcomings that the Anti-Terrorism Proclamation is criticized for: vagueness and uncertainty. "What remains controversial is the way the draft proclamation treats online expressions. Under Article 14, it states, "whosoever intentionally disseminates through a computer system any written, video, audio or any other picture that incites fear, violence, chaos or conflict among people shall be punishable with rigorous imprisonment not exceeding three years" he said. During the ordinary session of the HPR on June 07/2016, the Computer Crimes Proclamation No. 958/2016 was ratified with a unanimous vote.

## 3.5. The Role of the Media in Supplementing the law making process

In today's politics, the study of mass media cannot be seen independent of the democratic process of countries. Media, particularly free media, is characterized from its "being more participative, more oriented toward the popular, more event centered and timely, and more objective and less partisan".[132] So, the media, as the means to political deliberation, should become public forum and should be geared towards performing these salient functions by

[129] Supra note 99
[130] Examination of the minutes and resolution of the Proclamation No. 958/2016: A proclamation to Provide for the Computer Crime, 22nd Yea, No. 83, Neg. Gaz. 7th July 2016
[131] Interview with Woubeshet Senegiorgis (PhD), a veteran Federal high court judge and private attorney-at-law; interview conducted on 28/08/2016 at 4:00 pm

[132] Grossbary, L., E. Wartella., and D. C. Whitney (1998) *Media Making: Mass Media in Popular Culture*. Thousand Oaks, London and New Delhi: Sage Publications.

providing accurate information.[133] The media is one of the most important actors involved in helping the public enjoy its 'right to know.' Along with parliament, the media shares a responsibility to contribute to political, economic and social development in ways consistent with democratic principles by pursuing fact-based, fully substantiated reporting. Ultimately, economic development is best achieved and sustained in societies that are democratic and well informed.[134]

A good working relationship between parliamentarians and journalists is essential if both are to fulfill their duties. The key is to build a strong professional relationship between both groups that is based on mutual respect and recognition that both are essential actors in a working democracy. Parliament and parliamentarians, as representatives of the people, possess ultimate legitimacy. However, it is the media that assists the community in deciding whether to support a candidate in the first place and whether to renew their representative's mandate at the following election. The media assists the community in its decision about whether to give their continued support to parliamentarians by providing the public with information about the actions and opinions of parliamentarians.[135]

The community does not benefit from an adversarial relationship between parliamentarians and the press gallery. If the parliamentarians and the press are antagonistic towards each other parliamentarians may be less willing to disclose relevant information, and journalists' reports on parliament may be tainted. Both these outcomes do not help the free flow of accurate information. However, parliamentarians need to recognize that one of the purposes of the media in a democracy is to keep parliament accountable and should not confuse reporting tainted by an adversarial relationship with the media providing alternate opinions on issues that are sometimes critical of parliament and parliamentarians. On the flip side, parliamentarians and the press should not become too close either. When this occurs, journalists may become less willing to be critical of government, thereby undermining the important contribution they make to democratic governance and the flow of information.

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[133] Jarvis, Sharon E. & Soo-Hye Han (2009). "Political Communication" (P.749-758) *21st Century Communication A Reference Handbook.* William F. Eadie (ed.): California; Sage Publications, Inc.
[134] Nigussie Meshesha (2014) : "Media and Politics in Ethiopia: A Critical Analysis, (unpublished thesis) (p.71).

One way in which a parliament can build a strong professional relationship with the media is by involving the media and through them the public, in policy deliberations. Likewise, parliament should assist society in participating in its deliberations by opening up the decision-making process and enabling the media to report on its business. The media also provides a conduit through which public opinion is communicated to members of parliament. This creates a two-way flow of information. Parliamentarians should recognize this as valuable. Fair and accurate reporting is a channel for public feedback that assists them to legislate and scrutinize government performance. Therefore, political leaders must not seek to stifle the airing of opposition views and should, rather, pay attention to diverse opinions as expressed through the media actors in a working democracy. Parliament and parliamentarians, as representatives of the people, possess ultimate legitimacy. However, it is the media that assists the community in deciding whether to support a candidate in the first place and whether to renew their representative's mandate at the following election. The media assists the community with their decision about whether to give their continued support to parliamentarians by providing the public with information about the actions and opinions of parliamentarians.[136]

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In the Ethiopian case, the researcher personally observed that the media, both state owned and privately owned, are interested in reporting parliamentary news only when the Prime Minister

[136] Nigussie Meshesha (2014) : "Media and Politics in Ethiopia: cited above at supra note 105
[137] Id. p.78

submits his quarterly report and when a controversial bill is proposed. It can be said that only a handful of private owned newspapers are operating in the country and not any of them have assigned a reporter dedicated to report on the meetings of the HPR. State owned media such as EBC, the Ethiopian Herald and Addis Zemen have a reporter at the HPR. On the other hand, the privately owned electronic media, Sheger FM 102.1 is known to be the only radio station to have a reporter assigned to report on the meetings of the HPR though selectively. The researcher spoke to one of the journalists operating in the print media and the journalist attributed the lack of interest by the media on reporting the parliamentary issues is that it is known by the wider public that the HPR has a tradition of passing laws without a debate and the passing of a law is inevitable once it is drafted and submitted to the HPR. Especially after the 2010 and 2015 elections, the ruling party has occupied the entire seats in the HPR, making the chance of any meaningful debate with the opposition MPs virtually absent.

The lack of media attention on laws drafted and submitted to the HPR will definitely affect the quality of the laws in that the public is not made aware of the content of the draft, has not expressed its views through the media and the public hearings. As a result, the reflection and desire of the wider public will not be included in the final version of the law. On the other hand, the private media are operating in a state of intimidation and fear. There is a "growing politicization of the Ethiopian state media". Further, it shies to criticize government. "But the test of democracy lies on the freedom of criticism".[138] Ross says: "while Ethiopia gains respect in the political scene, the government struggles to justify its draconian control over the media". Buckley et al[139] further criticize the government's controlled licensing system of media outlets, the restrictions on access to information held by public authorities, broadcasting and publication content restrictions, and the establishment of a government-controlled Press Council. However, the government claims it uses the media as heralder of development and democracy.

[138] Ross, T. (2010). " A Test of Democracy: Ethiopia's Mass Media and Freedom of Information Proclamation" *Penn State Law Review*: Vol. 114:3; 1047-1066)
[139] Buckley, S. et al (2008). *Broadcasting, Voice, and Accountability: A Public Interest Approach to Policy, Law, and Regulation*. Washington, DC: The World Bank Group.

# CHAPTER FOUR

## 4. CONCLUSION AND RECOMMENDATION

So far the researcher has tried to give the readers a vivid image as to the general law making process in Ethiopia with a special focus on the 2005 (3rd term) and 2015 (5th term) HPR. More or less, all the core problems have been addressed and the causes of the problems are also reflected. In this chapter, the researcher has endeavored to identify the major issues that need further attention and to suggest possible remedies.

In a democratic parliamentary system, winning 100 percent of the seats is indeed an extreme rarity. Parliamentary system and one party rule are incompatible, particularly in a diverse/multiethnic society like Ethiopia. Many contend that there cannot be a healthy and stable democracy if there is no parliamentary opposition. Some warn that if the views of those who oppose the incumbent cannot be heard in parliament, then they will find an outlet in other less peaceful and constructive forms. That may explain the tendency of many commentators in relating the protests in different parts of the country to the election results.

## 4.1 CONCLUSION

**4.1.1** The presence of opposition MPs in the 3rd term of the HPR is indispensable for the betterment of the quality of laws made in the house. Despite losing the majority vote, opposition MPs have tried to reflect the view of their constituency and forced the executives to reframe their draft laws according to the law.

**4.1.2** NEBE has been serving as a tool for the ruling party to prevent the realization of a fair, free and transparent general election. Though the NEBE is one of the bodies established by the HPR, its independence and reliability remains questionable and it technically serves as a tool for the executive branch of the government. The bureaucratic hurdles put on opposition parties considered to be potentially challengers to the ruling party along with the continued harassment and arrest of opposition members is the primary evil to blame for the absence of opposition MPs in the HPR.

**4.1.3** The FDRE House of People's Representatives does not have fair parliamentary procedures that allow its members to express their view because the procedure in the

HPR is symbolic which is simply enacted to satisfy the interest of one party only. Opposition MPs during the 2005-2010 HPR were not allowed to voice their concern and the immunity of most elected opposition MPs was lifted to pave the way for prosecution.

**4.1.4** There is no lower threshold in the FDRE HPR in order for the rights of all citizens and all political views and interests to be represented in the parliament. As a result, the HPR doesn't enjoy the benefits of having a reasonable representation of opposition in parliament which in itself is of great importance for fostering stable and legitimate democracy.

**4.1.5** The institutional arrangement for public hearings is not enough to promote a sense of awareness about policy initiatives amongst the public; and the knowledge of the public about the legislative institution itself is limited. The systems that are used by the House to help the public participate are limited.

**4.1.6** Both the state owned and private media have not fulfilled their professional duty of educating the public about parliamentary businesses and to incite heated debate among the public on the laws drafted and passed by the HPR.

**4.1.7** As a result, it is the concluding remark of this researcher that the presence of large number of opposition MPs in the 3rd term of the HPR was vital in holding the executive accountable and in ensuring the check and balance system on the ruling party. To the contrary, the absolute disappearance of opposition MPs in the 5th term is already having a negative effect on the overall democracy and parliamentary system of the country. The heated debates and vibrant discussions we used to see in the 3rd term of the HPR are now greatly missed.

## 4.2 RECOMMENDATIONS

**4.2.1** The NEBE should maintain its independence and neutrality in conducting elections. The interference and undue pressure from the ruling party should always be avoided so that the NEBE can hold free, fair and transparent elections.

**4.2.2** The HPR's Rules of Procedures and Members Code of Conduct proclamation should be revised to enable elected MPs have sufficient time to express their views and the feedback from their constituency

**4.2.3** The government should fulfill its commitment made during the State of the Union address by the President to revise the current electoral system and replace it by the one that allows a minimum threshold for opposition MPs.

**4.2.4** The House of Peoples Representatives need to have the adequate institutional arrangement for public hearings so that the public could have a sense of belongingness on the laws made by the House.

**4.2.5** The media should play a role in educating the public about parliamentary discussions, about the motive and implications of the drafted laws. The government and the HPR should also encourage the media to have access to the HPR meetings and provide them with appropriate resources and support.

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Interview with opposition MP who wanted to remain anonymous for fear of security, conducted on interview conducted on 17/08/2016 at 9:30 am

Interview with Mohammed Ali, Vice President of the UDJ and ex-MP, conducted on interview conducted on 17/08/2016 at 9:30 am

Anonymous respondent of member of Federal parliament from first term up to third term representing EPRDF; interview conducted on 18/08/2016 at 10:30 am

Interview with EPRDF MP currently serving the HPR and who wants to remain anonymous; interview conducted on 18/08/2016 at 10:30 am

Interview with Woubeshet Senegiorgis (PhD), a veteran Federal high court judge and private attorney-at-law; interview conducted on 28/08/2016 at 4:00 pm

# APPENDIX

## A.A.U. CONSTITUTIONAL AND PUBLIC LAW STREAM MASTERS PROGRAM THESIS

### Questionnaire to be filled by former/current members of the FDRE HPR

1. Please state your name (if you wish) _____
2. During which terms of the HPR have you served as MP? _____
3. Which party do you represent? _____
4. Were/are you a member of a standing committee? _____

   If you answer "Yes", what was your position? (Chairperson, Vice Chairperson or member)
5. It is known that the executive initiates most of the bills; could you tell us any other means by which a bill can be initiated? _____
6. Which phase of the four readings take longer time? Why?

   _____
7. The number of opposition MPs was large during the 3rd terms of the HPR (22005-2009). How was this parliament different from the others?

   a. In ratifying bills _____
   b. In the passing of decisions _____
   c. In the strength of the standing committees _____
   d. Other (please describe) _____
8. During your service as a member of a standing committee, has there been any chance of sending back a draft bill forwarded by the executive?

   If you answer "Yes",

   8.1 What was the draft bill about? And who initiated it?

   8.2 Which standing committee sent back the draft bill?

- How many opposition MPs were serving in this committee and which parties do they represent?
- What was the ultimate fate of this specific draft bill? Was it ratified or rejected?
- If it was ratified, how did the committee contribute in the amendment?

9. It is alleged that a draft bill initiated by the executive is usually ratified by the House without a meaningful review or amendment apart from making minor correction on punctuation. Do you agree with this assertion?

   a. Yes, I agree  b. No, I disagree.

   9.1. If you agree, please put your comments below:_____

10. In general, please explain in your view how the law making procedure can be developed or improved _____