

Enhancing the Representativeness of the Ethiopian Electoral System: A Case for a Mixed Member Proportional (MMP) Electoral System

Temesgen Sisay^S

Abstract

Electoral systems can be understood as a means by which popular votes can be converted into parliamentary seats on the basis of a scheme designed for this purpose by respective states. As specific contexts obviously vary, states are free to design an electoral system that best fits their particular realities. Designing an appropriate electoral system, however, essentially involves balancing its representativeness and accountability objectives. The purpose of this article is to investigate the salient features of the dominant electoral systems which are being practiced in major democracies of the world and identify a system that appropriately fits the Ethiopian context. Based on critical analysis of the majoritarian and proportional electoral systems and appraisal of the existing Ethiopia's electoral system, it is argued that a Mixed Member Proportion (MMP) electoral system, which is an aspect of a mixed electoral system, best fits the Ethiopian situation as it can ensure representativeness and accountability together.

Keywords: Electoral System, Majoritarian, Proportional, First Past the Post, Mixed Member Proportion, Plurality.

Introduction

The existence of a well designed appropriate electoral system is an important democratic tool that helps translate popular votes into parliamentary seats in an appropriate and effective manner. A well designed and structured electoral system helps address the issues of how people express their views, how electoral districts are organized and how seats are allocated in proportion to popular votes secured by political parties. In addition to translating electoral votes into parliamentary seats, it also has a profound role in shaping the democratization process of countries.¹ The concept electoral systems is used to refer to a very specific set of norms and procedures used in an election to decide how the electorate chooses those who will hold the positions either

^S LLB (Alemaya University), LLM (Central European University, Hungary); Lecturer in Law, Law School, Bahir Dar University. The author is grateful to the anonymous reviewers for their critical insights and scholarly comments on an earlier draft of this work. The author can be reached at: temesgen.sisay@yahoo.com

¹ Horowitz, D., *A Democratic South Africa? Constitutional Engineering in a Divided Society*, University of California Press, Berkeley, 1991, p. 20.

through party candidacy line or in individual based candidacy. The electoral system as a means for exercising democratic principles and as democracy means more than holding an election; the processes must be free, fair and competitive in order to give equal opportunity to all participants involved.

There are certain types of electoral systems which are predominantly implemented in different democracies of the world. These electoral systems are designed by considering the specific contexts and realities of countries. Among the major electoral systems, the *majoritarian* and proportional electoral systems are the most common. According to reports, *majoritarian* representations are higher in the number according to population size as the major implementers of this system are highly populous like India and China.² However, in a number of countries, the proportional system is dominantly implemented by the majority of countries around the world. The Federal Democratic Republic of Ethiopian Constitution (FDRE) indicates that Ethiopia has introduced a plurality³ or First Past the Post electoral system which is one component of *majoritarian* system. In this electoral system, a candidate is only required to get the highest number of votes among the candidates to be declared as winner unlike an absolute majority vote.

The purpose of this article is to explore whether the existing electoral system in Ethiopia accommodates the question of accountability and representativeness that an ideal electoral system needs. Moreover, this article forwards an alternative system that could address the limitations of the Ethiopian electoral system that have been witnessed in the past elections.

This article proceeds as follows: first, it revisits and discusses the major electoral systems that are implemented in different countries and shows their strengths and weaknesses. Next, the article explores the electoral history of Ethiopia since the introduction of the first written constitution in 1931 and continues by discussing the nature of electoral system introduced under the current Ethiopian constitution. Finally, it suggests an electoral system that would fit the existing reality of the country.

1. Overview of Electoral Systems

The choice of electoral system and building electoral institutions is the most important decision for any democracy as electoral systems play a significant

² Reynolds, A., Reilly, B. et al, *The International IDEA Handbook of Electoral System Design*, International Institute for Democracy and Electoral Assistance, Sweden, Stockholm, 2005, P.31 (here in after Reynolds).

³ The Constitution of The Federal Democratic Republic of Ethiopia, 1995, Article 54(2), Federal Negarit Gazeta, Year 1, number 1.

role in influencing the outcome of the election⁴ and shaping the nature of the democracy itself. Therefore, any given choice made about a particular electoral system will have an effect on the future political life of the country concerned, and electoral systems, once chosen, often remain fairly constant as political interests solidify around and respond to the incentives presented by them. The nature of electoral law introduced in a certain country will have an impact on the political atmosphere present in that country. As Benoit rightly pointed out, “electoral systems decide how votes are converted in to seats.”⁵ In this case, the electoral systems implemented in any political environment will shape the number and size of political parties that could win seats both in national⁶ as well as local legislatures. An electoral system is a means that converts the votes cast in an election into seats and political positions won by the contestant political parties and individuals in a given political environment.⁷ The electoral system may not always shape the nature of politics and political forces in the polity. Rather, it may also be influenced and shaped by political forces running in the country as these forces will strive to introduce an appropriate electoral system that benefits them more.⁸

That is the reason why there has been a wave of constitution-building following the explosion of new democracies in Central and Eastern Europe, Latin America, Asia, and Africa⁹. In these states, the choice of an electoral system generated heated debates, which must necessarily be resolved before

⁴ Lijphart, Arend., *The Political Consequences of Electoral laws, 1945-1985*, American Political Science Review, vol. 84, No.2, 1990, p. 485.

⁵ Kenneth, Benoit., *Electoral Laws As Political Consequences : Explaining the Origins and Change of Electoral Institutions*, *Annu. Rev. Polit. Sci.*, 2007, p. 364 online available at <http://www.annualreviews.org/journal/polisci> last accessed on 12/2/16.

⁶ A proportional representation electoral system that is being implemented in Germany, Turkey and Netherlands significantly influences the size and number of political parties that join the legislature through the introduction of the concept of minimum threshold. As there is no uniform application of the concept, in Turkey, a political party will not join the legislature unless it secures minimum of 10 % of the seats in the legislature. In Germany, minimum threshold of 5 % is required to secure seats in the legislature. However in the Netherlands, a minimum threshold of 0.67 % is required to join the legislature.

⁷ Supra note 2, Reynolds p. 31.

⁸ Supra note 5, Kenneth, p. 364.

⁹ Huntington, S., *The Third Wave: Democratization In the Late Twentieth Century*, University of Oklahoma Press, Oklahoma, 1993, p.32. available at <https://www.ou.edu/uschina/gries/articles/IntPol/Huntington.91.Demo.3rd.pdf> last accessed on 2/19/2017.

other constitutional issues could be settled. During the 1990s, dialogue about the electoral system moved from the margin to mainstream on the political agenda. This move brought growing attentiveness to the fact that electoral rules are not neutral: the way votes are changed into seats means that some political groups are ruled into the policymaking process while others are ruled out. The core agenda is concerned with whether countries should adopt *majoritarian* systems which prioritize government effectiveness and accountability, or *proportional* systems, which promote greater fairness to minority parties and more diversity in social representation. Those dissatisfied with the status quo have increasingly turned towards "constitutional engineering"¹⁰ or "institutional design"¹¹ to achieve their ends. Electoral systems are important institutions of democracy that convert voter preferences into collective choices. Moreover, in the modern sense in which legitimacy is primarily assumed to derive from democracy; it is possible to conclude that representative democracy would have been impossible without having electoral systems as an instrument.

Elections are used to choose heads of state, heads of government, and members of the legislature, as well as a variety of other offices in political democracies. Chief Executives can be elected via *direct*¹² or *indirect*¹³ means. In a direct election, voters cast ballots directly for a set of eligible candidates. In an indirect election, a group of electors are selected who then elect the President. In other countries, such as Ethiopia¹⁴ and Italy, the President is elected by parliament though he/she is not a chief executive.

¹⁰ Sartori, G., *Comparative Constitutional Engineering*. London, Macmillan, 1994, p. 95.

¹¹ Lijphart, A, and Waisman, C.H., *Institutional Design in New Democracies*, Boulder, CO, Westview Press, 1996, p. 45.

¹² Political systems that use direct elections of the president include France, Russia, and Argentina among others.

¹³ For instance, the United States employs an indirect method for electing the President, where voters (or state legislatures) select presidential electors, who then comprise an *Electoral College*. These electors then select the President. Although generally the Electoral College reflects the popular vote, this has not always been the case in the history of the United States. The most recent example of this being the highly contested 2000 election where the Democratic candidate Al Gore had more popular votes than the Republican George W. Bush, but the latter had more electoral college votes – and was subsequently elected. Even in the recent election, Hilary won popular votes but lost the presidency as well.

¹⁴ In Ethiopia, the scenario is different as the power to elect the nominal president is given to the joint Houses, the House of Peoples Representatives and the House of Federation.

2. Major Electoral Systems

There are different electoral systems that are applicable in different democracies. These electoral systems differ from country to country and are diverse in their nature. The most common mechanism through which to examine electoral systems is by looking into how they translate popular votes won into legislative seats. In other words, we need to look at both the votes-to-seats relationship and the level of wasted votes. Ever since the influential work of Maurice Duverger¹⁵ and Douglas Rae¹⁶, the literature has classified the main types of electoral systems and sought to analyze their consequences. Accordingly, the plurality/majority system, proportion representation system and the mixed system are the major and most commonly applicable electoral systems in different parts of the world; this article focuses on the first two electoral systems.

2.1. Majoritarian Electoral Systems

A worldwide survey found that 96 (35.56%) out of 270 countries use *majoritarian/plurality* systems of election.¹⁷ This is the oldest electoral system, dating back at least to the 12th Century; it is also the simplest system of election. In this system, after votes have been cast and totaled, those parties or candidates with the higher votes are declared the winners. Moreover, this electoral system is commonly used in *single-member district*.¹⁸ In the case of First Past the Post (FPTP), sometimes referred as a plurality single member district, the winner is the candidate with the most votes, but not necessarily an absolute majority of the votes. When the FPTP system is implemented in a multi-member district¹⁹, it is referred as a Block Vote.²⁰ In this system,

¹⁵ Duverger, Maurice., What is the Best Electoral System? " in Lijphart and Bernard, (eds.) *Choosing an Electoral System: Issues and Alternatives*, New York : Praeger, 1984.

¹⁶ Rae, D., *The Political Consequences of Electoral Laws* New Haven, Yale University Press, 1971, p. 35.

¹⁷ [http://www.ipu.org/parline-e/ElectoralSystem.asp?REGION=All&typesearch=1&LANG=ENG](http://www.ipu.org/parline/e/ElectoralSystem.asp?REGION=All&typesearch=1&LANG=ENG), last accessed on 11/20/16.

¹⁸ Single-member district is an electoral system from which only one member is elected to a legislature or elected body.

¹⁹ Multi-member district is a district from which more than one representative is elected to a legislature or elected body.

²⁰ Block Vote is a plurality majority system used in multi-member district in which electors have as many voter as there are candidates to be elected and voting is candidate centered.

candidates are declared as winners regardless of the numbers and percentage of votes they received from voters.

A *majoritarian* system, such as the alternative vote and the two-round system, try to ensure that the winning candidate receives an absolute majority. Each system in essence makes use of voters' second preference to produce a winner with an absolute majority if one does not emerge from the first round of voting. This category can be subdivided into those requiring candidates to win a plurality, or an absolute majority (50+ percent) of votes to be elected and these are the most commonly applicable *majoritarian* systems as briefly discussed below.

2.1.1. Plurality Elections/First Past the Post

Among the *majoritarian* electoral systems, a plurality election system (also referred as First Past the Post system), is the simplest form of election system that uses single-member district and candidate-centered voting. The aim of the First Past the Post systems is to create a 'manufactured majority', that is to exaggerate the share of seats for the leading party in order to produce an effective working parliamentary majority for the government, while simultaneously penalizing minor parties, especially those whose support is spatially dispersed. This system focuses on the creation of effective government through dominant and majority party in the parliament and does not pay attention to representation of voters in the legislature. Voters will select only one among the names of the nominated candidates from a list and the winner will simply be the person who receives most votes; in theory she could be elected with two votes, if every other candidate only secured a single vote. As a result, the leading party boosts its legislative base, while the struggling parties gain meager rewards. The focus is effective governance, not representation of all minority views. The basic system of simple plurality voting in parliamentary general elections is widely familiar: countries are divided into territorial single-member constituencies; voters within each constituency cast a single ballot (marked by a X) for one candidate; the candidate with the largest share of the vote in each seat wins the office; and in turn the party with an overall majority of seats forms the government.

In this system, candidates usually do not need to pass a minimum threshold of votes, nor do they require an absolute majority to be elected, instead all they need is a simple plurality i.e. one vote more than their closest rivals. Hence, in seats where the vote splits almost equally five ways, the winning candidate may have only 25% of the vote, while the other contestants get 20%, 20%, 20% and 15% respectively. Although two-thirds of voters supported other candidates, the plurality of votes is decisive. In this system, the party's share of

parliamentary seats, not its share of the popular vote, counts for the formation of government. A government may also be elected without a plurality of votes so long as they have a parliamentary majority. Due to this, research conducted by Lijphart shows that this system is less representative than PR systems.²¹ In addition, it will create a constitutional authoritarian government that secures government position without adequate popular representation.

The plurality system is used for election to the lower chamber in different countries including the United Kingdom, Ethiopia, Canada, India, the United States, and many Commonwealth states. In Africa, 15 countries²², mostly former British colonies, use FPTP systems. David Farrell, in his study of electoral systems, notes that although the trend has moved away from FPTP, it still remains the most commonly used system in population terms.²³ In terms of the number, the countries using plurality systems are fewer, though in terms of population size, these systems represent more people as the most populous countries including China and Russia are using plurality systems.

The plurality election system is praised by its proponents on the following grounds. The primary reason for the preference of this system over other systems is its simplicity. Due to its simplicity nature, the plurality electoral system provides a clear-cut choice for voters between different parties and voters will have the chance to simply elect among the contestants. Moreover, in plurality systems there will be clarity of responsibility and democratic accountability by giving voters in each constituency the chance to hold their representative responsible.²⁴ In addition, this system is believed to enhance constituency service, in that the electorate can call upon individual representatives to directly address their concerns. This alone will help the system produce winners who are representatives indebted to defined geographic areas.

²¹ Lijphart, A., *Patterns of Democracy: Government Forms and Performance in Thirty six countries*, Yale University, USA, 1999, p. 162.

²² Among 28 countries that are using majority systems in Africa, 15 countries are using First Past the Post system, available at <http://www.ipu.org/parlinee/ElectoralSystem.asp?LANG=ENG®ION SUB REGION> last accessed on 11/20/16.

²³ Farrell, D., *Electoral Systems: A Comparative Introduction*, London, Macmillan, 1998, p. 13.

²⁴ Supra note 15, Duverger.

The plurality system, among other *majoritarian* systems, is also preferred for its contribution to establishing a single party government. Due to the formation of single party government, coalition governments will become exceptions rather than the rule. This will help to establish cabinets which are not shackled by the restraints of having to bargain with a minority coalition partner. Moreover, plurality systems are also preferred over the other systems because they create links between constituents and representatives.²⁵ In this context, candidates to be elected clearly represent defined areas of the cities, towns or regions rather than party labels. The geographical accountability implemented in plurality system is more important and sensible in those developing countries which have predominantly agrarian and nomadic societies who value candidates who belong to their tribe.

On the other hand, plurality election systems are criticized on different grounds. The plurality election system is criticized in that it does not ensure fair representation for smaller political parties as they are generally dominated by the largest ones. This happens when, for example, a political party or an individual candidate that wins a maximum of, say, 15 percent of the votes, should win a maximum 15 percent of the legislative seats in both the national and regional legislatures, at least in principle. However, the plurality election system can totally prevent smaller political parties from having seats in the legislature and deny them from having a fair representation comparative to their votes in the legislative offices.²⁶ The system gives overall votes to a single winner by rejecting smaller political parties who should deserve fair representation in both the national as well as local legislatures. This system is believed to be intentionally designed to represent only one part of the public, those who vote for the winning candidate in an election. Everyone else, who may make up 20%, 30% or, in some circumstances, even the majority of voters in a district, gets no representation. Based on this

Plurality elections are also criticized for excluding women from representation especially in the male-dominated party structures. This system affects women's ability to be elected to the legislative offices in both the national as well as local legislatures. Recent studies show that the number of women parliamentarians has increased from over time due to the move from

²⁵ Supra note 7, Reynolds p. 36.

²⁶ In the 1993 federal election in Canada, the Progressive Conservative won 16% of the votes but only 0.7% of the seats in the Parliament. Moreover, in the 1998 general election in Lesotho, the Basotho national Party won 24% of the votes but only 1% of the seats in the parliament.

majoritarian to proportional representation systems.²⁷ According to the study, the result from low to high participation of women in the parliament is shaped by the use of an open-list proportional electoral system, a method requiring voters to choose a single candidate on a party list.²⁸

Moreover, the plurality system is criticized for its contribution for the proliferation of ethnic or clan based political parties who base their electoral campaigns and policy platforms on conceptions that are attractive to the majority of people in their region but exclude or are hostile to others who do not belong to their ethnic group or clan.²⁹ This has been an ongoing problem in African countries like Malawi, Kenya and Ethiopia³⁰ where large communal groups tend to be regionally concentrated. These countries will thus become divided into geographically separate party strongholds, with little incentive for parties to access voters outside their home region and cultural-political base. In this context, other political parties that are established outside the specific ethnic group will have no place whatever their policy and program seems sound. This is strongly noted by Douglas J. Amy in his writing about the American plurality system as an unrepresentative system. He said:

If you are a Republican in a predominantly Democratic district (or vice versa), an African-American in a white district, or a minor party supporter in any district, then you are usually shut out by our current election system. Your candidate is unlikely to win and you will have no one to speak for you in the legislature. The motto of the MTV get-out-the-vote campaign has been "Choose or Lose". But in winner-take-all elections, many voters choose and still lose - it's inevitable.³¹

Vote wastage is also another limitation of plurality systems as it leaves a large number of votes unaccounted for and the wasted votes do not go towards the

²⁷ Inter Parliamentary Union Study of Women in Parliament: 20 years in review.
<http://www.ipu.org/english/home.htm> last accessed on 11/12/2016.

²⁸ *Ibid.*

²⁹ Supra note 25, Reynolds p. 39.

³⁰ In Ethiopia, there are nearly seventy nine political parties that are registered by the National Electoral Board of Ethiopia and the majority of these political parties are ethnic based. Moreover, in the past 2010 Ethiopian election, all most all these political parties have been registered and involved in the election, available at <http://www.electionethiopia.org/en/political-parties/active-political-parties.html> last accessed on 11/12/2016.

³¹ Douglas, Amy., The Case for a Better Election System, Crescent Street Press, 1997, p. 13.

election of any candidate or political party. It has been proven by researchers that approximately 33% of votes were wasted; cast for candidates that lost in the 2002 elections for the United States House of Representatives and also above 24 million voters came away from the voting booth with no one to represent them in the House.³² This is even more dangerous when it is coupled with regional fiefdoms as minority parties; supporters in such a region may begin to feel that they have no realistic hope of ever electing a candidate of their choice. This wastage of votes alone may create a distorted representation in politics as some political groups get more representation than they deserve and others get less.

Moreover, plurality election systems may create regional fiefdoms in a certain polity when one party wins all the seats in a province or area. If a party has strong support in a particular part of a country, winning a plurality of votes, it will win all, or nearly all, of the seats in the legislature for that area. This both excludes minorities in that area from representation and reinforces the perception that politics is a battle ground defined by who you are and where you live rather than what you believe in.

2.1.2. Absolute Majority/ The Two Round System

This is another form of *majoritarian* representation system implemented by different countries which is also referred as a “run-off” or “double-ballot” system. In this system, the first round is conducted in the same way as a normal First Past the Post (FPTP) election and if there is a candidate that receives an absolute majority of the vote (50 +1 of the total voters), then he/she will be automatically elected without waiting until the next round. However, if there is no candidate that receives the required absolute majority result, all but the leading candidates will be eliminated and a second round of voting will take place.

There is no uniform rule or standard regarding how the second round should be implemented and it differs from country to country. In France, for example, elections to the legislature are conducted using a two-round voting system and the first stage is similar to FPTP in the USA and Ethiopia in that the voter casts one vote for their favored candidate. However, if a candidate receives an overall majority of the votes then they are elected.³³ In due course, if no candidate reaches this threshold then a second round of voting takes place a week later. To participate in the second round election, the candidate should secure at least 12.5 percent of registered voters. What makes the

³² *Ibid.*

³³ Constitution of the Republic of France, October 4, 1958, Article 7.

second round so unique is that, to be declared a winner, simple plurality is sufficient for a candidate. At the same time, a two round system of election is also applicable to elect the President in France.³⁴ This electoral system has the advantage of establishing a legitimate government which is acceptable by the majority. This happens when the competition is between two candidates. When the competition occurs between two candidates, there is a possibility of forming a government which is legitimized and backed by majority of electorates.

Moreover, the absolute majority electoral system helps to exclude extremists and minority parties in the political forum and finally it reduces the risk of vote splitting. Even if it promotes a coalition government, this coalition may not be formed among minority political parties. On the other hand, the absolute majority electoral system is difficult to manage and costly to use. The management of the second round election creates an additional administration burden on the electoral officers as well as the electorates. To handle the administration of the second round run-of, resources are needed and it is doubled compared to the FPTP.

2.2. Proportional Representation System

Proportional representation is an electoral system that decides the composition of a parliament/ legislature by allocating seats on the basis of the number of votes each party receives. Rather than the winner-take all approach of the *majoritarian* systems, proportional representation ensures that votes carry equal weight and in order to do this, multi-member constituencies are used. Therefore, each party gets the same proportion of seats as the proportion of votes it receives in the election. If Party X receives 40% of the popular vote, it would get 40% of the seats. If Party Z acquires 25% of the popular vote, it would get 25% of the seats. If Party Y gets 30% of the popular vote, it would receive 30% of the seats. It is possible to understand from the above point, that proportional representation is a common term for all the systems of election which seek to relate seats to votes cast by the electorate in accordance with party or candidate preference.

In this electoral system, a single electoral province will have the chance to elect more than one representative. The size of this area can vary according to the system, ranging from the size of the whole country to county or local vicinity.

³⁴ *Id*, Article 42.

This means proportional representation is a voting system whereby successful parties gain seats in a country's legislature in direct proportion to the number of votes they accrue at an election.³⁵

There are different types of proportional representation systems in which the seat distribution system is allocated. In some of the systems, like Israel and Netherlands, seats are determined based on considering the overall votes casted in the nation³⁶. On the other hand, in Germany, Finland and Switzerland, seats are allocated within regionally-based multi-member districts.³⁷ The unique nature of this electoral system is that electors usually (not always) do not choose among individual candidates. Rather, they are more likely to just vote for the party.

The main issue to be considered in proportional representation system is threshold of representation as it is required to secure the minimum level of support to join the legislature. The issue of managing threshold differs from system to system. In some countries, like Germany, New Zealand, and Russia, a minimum threshold of 5% is required for a political party to join the legislature. In Germany alone, the minimum threshold applicable for the national legislature and the European parliament is not the same. The 5% minimum threshold applicable for the national legislature has been reduced to 3% to the European Parliament in 2013.³⁸ The German Constitutional Court declared the previous 5% electoral threshold unconstitutional justifying that, "the functions of the EP and in particular the fact that it does not need to sustain an EU government by means of stable majorities – do not justify the restriction of the principles of equal suffrage and of equal opportunities for political parties."³⁹ On the other hand, in Netherlands and Turkey, a minimum threshold of 0.67% and 10% is required to join the winners list respectively. This indicates that parties which gain less than this percentage of the vote are excluded from the count and their vote is distributed to other winning political parties based on the formula provided.

³⁵ Supra note 29, Reynolds p. 57.

³⁶ Report on Proportional Representation by Elections Prince Edward Island, 2002 available at, <http://www.gov.pe.ca/election> last accessed on 11/25/16.

³⁷ *Ibid*.

³⁸ European Parliamentary Research Service, Electoral thresholds in European elections Developments in Germany. available at, <http://www.eprs.ep.parl.union.eu> last accessed on 11/25/16.

³⁹ *Ibid*.

Though there are many types of proportional representation systems, the most applicable ones are list proportional representation and single transferable vote systems.

2.2.1. List Proportional Representation

List proportional representation systems are the most applicable and the simplest types of proportional representation systems. In this system, each political party presents a list of candidates based on their order to the electors. The electors actually vote for a party rather than an individual candidate. The number of seats each party receives is proportional to the share of the national vote it receives. The winning candidates are taken from the list in the order that their names appear on the list. The list provided in this electoral system could be either an open or closed list. In a closed list system, the order of candidates elected by that list is fixed by the party itself, and voters are not able to express a preference for a particular candidate.⁴⁰ Voters do not have a choice among individual candidates and the choice of individual candidates is pre-determined by the political party whom candidates are representing. In the closed list system, parties have the chance to be represented by the minority groups. On the other hand, voters can indicate preferential candidate within that party in an open list proportion representation system. In this system, the vote for a candidate as well as a party is optional. Voters are entitled to mark their ballots for both the parties and candidates.

In this system, the entire country may be considered as one constituency or, if the country has a federal system, different constituencies may be established in the same country. For example, Israel and the Netherlands are two countries which use the present form of list proportional representation as the entire country forms one district or constituency.⁴¹ In these countries, the first name on the party list is usually the leader of the party and will be the first member of that party to be elected. In Germany however, regionally-based, multi-member districts are established rather than considering the whole country as one constituency or electoral district.⁴²

⁴⁰ The South African electoral system is a closed-list proportional representation system, and a general election is held every 5 years. At the general election, voters elect the national and provincial legislatures simultaneously. Please see, <http://hsf.org.za/resource-centre/hsf-briefs/the-south-african-electoral-system> last accessed on 11/25/16.

⁴¹ *Supra* note 36.

⁴² *Ibid*

A list proportional representation (List PR) system has advantages over the other types of proportional representation systems. This system helps to have a diversified legislature that includes minority groups.⁴³ This is because parties can be encouraged by the system to prepare balanced candidate lists which appeal to a whole spectrum of voters' interests. This system also creates a more friendly environment for women than other electoral systems.⁴⁴ In this system, political parties are entitled to provide list of women candidates still basing their choice on other policy matters than gender. According to Inter Parliamentary Union report, in 2016 there were 10502 (22.95%) women and 35256 (77.05%) of men in all parliamentary structures in the world.⁴⁵ Among women legislatures, the majority of them are elected through proportional representation system using a List PR. Rwanda is among those emerging democracies with the highest number of women parliamentarians in the world. According to the report of Inter Parliamentary Union, Women are majority in the Rwandan lower Chamber which consists of 51 seats (63.75%) out of overall 80 legislative seats.⁴⁶ The number of women has increased in Rwandan parliament as the nature of electoral system is proportional.⁴⁷ In Sweden also, the number of women legislatures has been increased due to the change in the nature of the electoral system. Recently, Sweden introduced List PR system and the proportion of women legislatures reached 43.6% of the total legislatures.⁴⁸ This shows that, proportional representation system is more accommodative and friendly for women legislatures than any other electoral system.

On the other hand, the List PR system is criticized by its opponents as it may create a weak link between elected legislators and their districts. Moreover, the problem may worsen if the list is closed rather than open. Where the lists are

⁴³ Lardeyret, G., The problem with proportional Representation, *Journal of Democracy*, Volume 2, Number 3 (30-35), The John Hopkins University Press, 1991, p. 90.

⁴⁴ Krook,, M. L. , *Quotas for Women in Politics*. New York: Oxford University Press, 2009, p. 100.

⁴⁵ Please see <http://www.ipu.org/parline-e/WomenInParliament.asp?REGION=All&typesearch=1&LANG=ENG> last accessed on 11/26/16.

⁴⁶ IPU (2016), available at, <http://www.ipu.org/parlinee/WomenInParliament.asp?REGION> last accessed on 11/26/16

⁴⁷ The Constitution of the Republic of Rwanda, 26 May 2003, Article 77. (...the members of the Chamber of Deputies shall be elected for a five-year (5) term by direct universal suffrage through a secret ballot using a system of proportional representation.)

⁴⁸ Women in National Parliaments, situations as of November 2016, available at, <http://www.ipu.org/wmn-e/classif.htm> last accessed on 11/26/16.

closed, voters have no chance of deciding the identity of persons who will stand for them and no exclusive representative for their electoral constituency, nor can they easily reject an individual candidate if they feel that he or she may not efficiently represent them.

2.2.2. Single Transferable Vote (STV)

This electoral system is used in multi-member districts and the voters are entitled to rank the candidates in order of preference in the same manner as is done in the alternative system. In fact, the single transferable vote is not purely a proportional system but it does produce a more diverse legislature.

In this system, each ballot has a value of one vote and it moves among candidates as determined by the elector's preferences and electors vote for candidates and not the party. Since electors only vote for individual candidates, rather than political parties, it allows for individual candidates to run in the election. To implement a single transferable vote electoral system, voters are given a ballot listing all the candidates for the district in which the elector casts his or her vote. The voter then ranks the listed candidates in order of preference by placing a ranking number (1, 2, 3, 4...etc) beside their favorite candidate. This system therefore allows voters to cast among individual candidates instead of the party list or one party. In most cases, this preference marking is optional, and voters are given discretion to rank all in an order or to mark only one candidate. The choices indicated on the ballot are then counted and the winners are elected by use of a mathematical formula. These days, single transferable vote is only being used in a few territories where there has been British rule and the counting of the votes casted under this system is extremely complicated and the result is determined through a series of counts.⁴⁹

3. Mixed Systems

Mixed electoral systems, as the name indicates, combine both the positive sides of plurality and proportional electoral systems. It combines single member and party list constituencies from the *majoritarian* and proportional electoral systems respectively. This electoral system is the result of a long time debate over the issue whether an electoral system should meet the objective of

⁴⁹ Supra note 36. Single Transferable Vote has been used in the Republic of Ireland since 1921 and was established to protect the country's religious denominations. It has also been used in Malta since 1947 and is used in Tasmania for its House of Assembly.

strong and accountable government or inclusion of minority voices to ensure representation.⁵⁰ Mixed systems differ in terms of whether they are independent or dependent. An independent mixed system, often referred to as a parallel system, is one in which the *majoritarian* and proportional components of the electoral system are implemented independently of one another. On the other hand, a dependent mixed system, often referred to as a mixed member proportional system, is one in which the application of the proportional formula is dependent on the distribution of seats or votes produced by the *majoritarian* formula.⁵¹ These two types of mixed systems, MMP and Parallel systems are discussed below.

3.1. Mixed Member Proportional (MMP)

As its name indicates, a mixed member proportional (MMP) electoral system combines various elements of plurality or majority systems and proportionality systems. Voters in a single-member electoral district cast two votes: one to directly elect a member to represent their constituency according to the FPTP system, and a second for a party, according to a previously established list of candidates, similar to the List PR system.⁵² This system takes the strong sides of both FPTP and proportional systems. In doing this, MMP system keeps the proportionality benefits of proportional representation systems and it keeps the benefits of the FPTP system in that electors have their own members. The MMP system also gives electors more choice as each elector has two votes, one for his or her local member and one for the party. In this system, some of the members of the legislature are elected by the FPTP system, and the remainders of the members are elected by the PR List system. Under this system, both the PR and FPTP election systems have their own objective why they are chosen and the reason is that the PR seats are awarded to compensate for any unproportionality produced by the district seat results.

This can be a simple calculation— a national list divided among the parties according to their second-ballot vote shares – or a complex allocation of local seats. The number of plurality representation seats won is subtracted from its total entitlement of the party. If the party has fewer seats than its rightful

⁵⁰ Pippa ,N., For *Contrasting Political Institutions* special issue of the *International Political Science Review*, Harvard University Vol 18(3) July 1997: pp. 297-312.

⁵¹ Massicotte, L. &, Blais, A., Mixed electoral systems: a conceptual and empirical survey. *Electoral Studies* 18, Pergamon, 1999, pp. 341–366.

⁵² Erin, Virgint. , Electoral Systems and Women's Representation, Publication No. 2016-30-E, 5 July 2016, available at, <http://www.lop.parl.gc.ca/Content/LOP/ResearchPublications/2016-30-e.html#a6> last accessed on 11/26/16.

share, it is awarded enough List-PR seats to make up the difference. However, if the political party has more district seats than its mathematical share, which can simply happen, where one party is particularly strong in a given area or across the country, it is allowed to keep them; but it does not receive any list seats.⁵³

In this system, the proportion of seats allocated according to the two elements of the system varies from country to country. The system was put in place first in West Germany by the occupied powers in 1949 and was unique to the world till recently, and variations of it have been adopted by many countries since then.⁵⁴ It is basically the same system as has been adopted by New Zealand⁵⁵, Italy, Scotland and Wales in just the last few years.

In Germany, the parliament (Bundestag) has nearly 598⁵⁶ seats and 299 members are directly elected in their districts and the other 299 members enter parliament via party lists through proportional representation.⁵⁷ It is possible for the candidate to run in single-member districts as well as simultaneously for the party list. The candidates who achieve a plurality in the FPTP are elected though the second vote determines the number of seats each party will have in the Bundestag.

The system in Germany allows electors to elect with two ballots, one for the local district (or constituency) in which they live and the other for their state

⁵³ Heather, MacIvor., Proportional and Semi-Proportional Electoral Systems: Their Potential Effects on Canadian Politics.,A paper Presented to the Advisory Committee of Registered Political Parties Elections, Canada, 1999.

⁵⁴ Supra note 49.

⁵⁵ Elisabeth, Carter and David, M. Farrell. , Electoral Systems and Election Management , Larry LeDuc, Dick Niemi and Pippa Norris (eds), *Comparing Democracies* 3, London: Sage . New Zealand switched to MMP system by conducting a popular referendum process in the mid-1990s, 2009.

⁵⁶ The peculiar nature of Germany lower house is that, the number varies from election to election and its seats are decided after the election. This is because of “overhang” and “compensation” parliamentary seats. Overhang seats are created if a party wins more directly elected seats in one of the 16 federal states than it would get under the proportional share-out from the second ballots cast by voters. Compensation seats are meant to ensure party proportion in the chamber. Right now (the 18th electoral term), the Bundestag has 630 seats, available at <https://www.bundestag.de/en/> last accessed on 11/26/16.

⁵⁷ Bloomberg, How Germany's Election System Works: What to Watch for Today (2013), available at, <http://www.bloomberg.com/news/articles/2013-09-21/how-germany-s-election-system-works-what-to-watch-for-today> last accessed on 11/26/16.

or *Land*. Election of the local district is used in a plurality contest to elect a constituency representative; election of their *Land* is a party list ballot. Based on this calculation, half the *Bundestag* seats are occupied by local district representatives, and the other half by representatives selected from the party list.

Germany has designed this method just to correct proportionality imbalances resulting from the List PR result, and to ensure that the larger parties are not unduly rewarded by their ability to win more district seats.⁵⁸ Therefore, countries who are using MMP like Germany have exploited the advantages of both FPTP and PR electoral systems. This system allows representation of the various political parties which represent various opinions of the electorate and helps to establish stable coalition government. The system also will help to shape parties' behaviors in softening their ideologies to come up to negotiation to form a coalition government in case where there is no single party that could establish a government. To avoid vote splitting and extremists, the system has designed a minimum threshold concept as a barrier.

The MMP electoral system shares the advantages of both PR and FPTP systems. In translating votes into seats, MMP can be as proportional as pure list PR, and therefore share the advantages and disadvantages of both. The advantages are its proportionality, inclusiveness and geographic representation. On the other hand, it is criticized on the basis of some complications in the processes of its implementation. Moreover, its requirement of boundary delimitation and the possibility of creating two classes of representation could be mentioned as its disadvantages.⁵⁹

3.2. Parallel Systems

Like MMP, plural systems also use both PR and plurality components to identify winners in the election. In this system, the seats are allocated to the same chamber using two systems; the FPTP and also PR system. Unlike the MMP system, under the Parallel System there is no direct correlation or any linkage between the two sects in allocation of the seats. This means both PR and plurality components are used independently as the PR component of the system does not compensate for any proportionality that occurs. That is the reason why parallel systems are referred as independent systems as the combined formulas are used and results are calculated without considering

⁵⁸ Benoit, Kenneth., 'Hungary: Holding Back the Tiers', in Michael Gallagher and Paul Mitchell, eds, *The Politics of Electoral Systems*, Oxford: Oxford University Press, Oxford, 2005, p. 34.

⁵⁹ Supra note 35, Reynolds, p. 120.

the number of votes that candidates scored both in PR and plurality systems. On the other hand, in MMP, the application of the proportional formula is dependent on the distribution of seats or votes produced by the *majoritarian* formula. In this system, voters may receive either one ballot paper (like in South Korea) or two (as in Japan and Thailand) which is used to cast a vote both for a candidate and for a party.⁶⁰

This electoral system shares some advantages with the MMP like retaining the proportionality benefits of PR systems while, at the same time, ensuring that elected representatives are linked to geographical districts. Moreover, like MMP, the parallel system is preferred for being inclusive of different societies within the country. In addition, the parallel system helps guarantee representation of minorities, especially when there are adequate PR seats and the threshold is low. Like other electoral systems, this system has also limitations such as it may be complicated for average electorate to understand and also may create two classes of representatives as one sect is elected through directly by voters while others are through party lists.

4. Overview of Ethiopian Electoral History

The concept of election is a recent experience for Ethiopia and its roots are traced back to the 20th Century when its first written constitution was introduced in 1931. This first written constitution provided the concept of parliamentary chambers and election for the first time in Ethiopian political history. The nature of the parliament introduced by this constitution was, at least structurally, bicameral which included the Chamber of Deputies and the Senate.⁶¹ The members of the senate were appointed by the Emperor among the dignitaries and the local chiefs who served the empire as princes, ministers, judges and army leaders.⁶² However, members of the Chamber of Deputies were indirectly elected by dignitaries and local chiefs until the people were capable of electing their representatives by themselves.⁶³ The people did not have the right to elect their representatives. Though the constitution brought the concept of election, the Ethiopian people were not allowed to participate and elect their representatives directly by themselves.

⁶⁰ *Id*, p. 104.

⁶¹ The Constitution of The Empire of Ethiopia, 1931, Article 30.

⁶² *Id*, Article 31.

⁶³ *Id*, Article 32. In fact this indirect representation system is workable in the US as the president is finally elected by the Electoral Colleges.

In the electoral history of Ethiopia, the 1955 revised constitution brought significant development in the political participation of the Ethiopian people, though the ultimate power rested on the Emperor. One of these changes that had significance to the political development of the country was the election of the members of the Chamber of Deputies by the direct participation of the people. In order to elect the Chamber of Deputies, the entire territory of the empire was divided into electoral districts that contain two hundred thousand inhabitants.⁶⁴ On the other hand, towns were allowed to have one Deputy so long as they had thirty thousand inhabitants and one additional Deputy was given for every fifty thousand people in excess of thirty thousand.⁶⁵ Moreover, the constitution also guaranteed that:

All Ethiopian subjects by birth of twenty-one years of age or more who are regularly domiciled or habitually present in any electoral district and who possess the qualifications required by the electoral districts for candidates from the district as members of the Chamber of Deputies May vote. The system of voting shall be secret and direct.....⁶⁶

Of course, members to the Chamber of Deputies were mostly from the highly paid segments of the civil service, feudal lords, and rich merchants as the constitution requires property ownership in the electoral district as a prerequisite to be considered as a candidate for the Chamber of Deputies.⁶⁷ There were five elections from 1955 to 1974 and in all these elections it is hardly possible to see adequate democratic principles in the processes. This is due to several factors: the lack of willingness within the ruling elite, the low level of awareness of the public to participate, the traditional seizure of power through kinship, the widespread poverty and illiteracy could be mentioned among others. On the other hand, nothing changed for election of the Senate as the Emperor was responsible to elect members from the princes, other dignitaries, former high government officials, and other persons generally esteemed for his character, judgment and public service.

After the overthrow of the monarchy by the military junta known as *Dergue* (meaning, *Hibret* in Amharic), the 1955 Revised Constitution was suspended and the regime ruled the country without a constitution for almost 13 years. The 1955 constitution was replaced with series of decrees and proclamations.

⁶⁴ The Revised Constitution of The Empire of Ethiopia, 1955, Article 93.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, Article 95.

⁶⁷ *Id.*, Article 96(b).

After 13 years of rule without a constitution, a constitutional draft commission was organized in 1986 and the commission wrote the 120 article draft constitution. After conducting serious debates and discussions⁶⁸ on the draft articles with several associations, like the women's association, youth associations, the public were called to decide over the draft constitution through a direct referendum. In fact, this referendum is the first and the last until now in the constitutional history of Ethiopia, though the people were not free to express what they felt due to the repressive nature of the regime. The referendum was held on February 1, 1987 and the result was announced three weeks after. According to the results, 96% of the 14 million people eligible to participate actually voted. 81% of the voters approved the constitution, while only 18% opposed it. Finally, the Constitution of the Peoples Democratic Republic of Ethiopia was approved on 12 September, 1987.⁶⁹ Regarding the electoral rules, the people were entitled to elect members of the unicameral legislature or the National *Shengo* through universal, equal, direct and by a secret ballot.⁷⁰ However, candidates to the National *Shengo* were nominated by the organs of the Workers Party of Ethiopia (WPE), mass organizations, military units and other bodies.⁷¹ Though the people were entitled to elect members of the National *Shengo*, election was held without alternatives and rather the role of people was only to bless what the government nominated. Under this regime, people could vote only for candidates of the regime's Marxist-Leninist single party veiled as the Workers Party of Ethiopia (WEP) and activities of democracy were simply labeled as traitors and enemies of the people and the country as the constitution officially endorsed single party system in the country. Moreover, the repressive and undemocratic nature of the government, coupled with absence of freedom made the election more of a game than a real democratic participation of the people. However, due to the short life span of the 1987 Constitution (as it is the shortest-lived constitution in the constitutional

⁶⁸ Basically, the regime used this discussion to legitimize the constitution-making process and create a forum for testing the public's reaction on the Constitution. By far, the most controversial draft provision was the one that outlawed polygamy, which caused serious furor among Muslims. Few questions were raised about the document's failure to address the outstanding nationalities problem and the right to self-determination.

⁶⁹ The Constitution of The Peoples Democratic Republic of Ethiopia, 1987, *Negarit Gazetta*, Vol.47, No.1, Addis Ababa.

⁷⁰ *Id*, Article 65(1).

⁷¹ *Id*, Article 64.

history of Ethiopia) it is difficult to judge from the validity perspective. Yet, it is possible to deduce that the repressive nature of the regime that lasted for about seventeen years with bloodshed would not have brought a different result.

In May of 1991, the PDRE constitution was suspended immediately after the overthrow of the regime by an armed struggle groups led by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF)⁷² and a peace conference was held in Addis Ababa to form a Transitional Government. Following the establishment of the Transitional Government, many political parties flourished in the political field, though many of the political parties were ethnic based and too poorly organized, to seize political power.

5. The Nature of Ethiopian Election

Here, the nature of Ethiopian electoral laws will be discussed in two parts. The first part covers the post 1991 electoral laws and practices of Ethiopia until the enactment of the 1995 constitution. While the second part of the discussion covers the post 1995 electoral experiences and laws that are being used in Ethiopia.

5.1. Electoral Experiences from 1991-1995

After the suspension of the PDRE constitution, a Transitional Government (TG) was established via a Transitional Charter and historical measures have been taken in the political history of Ethiopia including the introduction of multi-party system. The TG allowed the "right to engage in unrestricted political activity and to organize political parties, provided the exercise of such right does not infringe upon the rights of others"⁷³ The Transitional Government Charter paved the way for the formation of political parties and recognized the right of citizens to establish political parties for the first time; thereby, resulting in the proliferation of political groups with varying orientations and programs. In addition to the formation of political parties,

⁷²The EPRDF was established in 1989 by the Tigray Liberation Front (TPLF) in its quest to lend a multinational image emphasizing the former's national role. Initially, the EPDRF was composed of the TPLF and the Ethiopian Peoples' Democratic Movement (EPDM). The latter was later renamed the "Amhara National Democratic Movement" (ANDM). The Oromo People's Democratic Organization (OPDO) and the Southern Ethiopian Peoples' Democratic Front (SEPDF) joined the EPRDF at a later stage.

⁷³ The Transitional Period Charter of Ethiopia, Charter No.1 of 1991, *Negarit Gazetta*, 50th Year,. This conference was held immediately two months after the down fall of the regime on the agenda of Peaceful and Democratic Transitional Conference of Ethiopia.

civil society organizations⁷⁴ were formed taking advantage of the introduced liberal reforms. Both during the transition period and after, the assumption of public office in the leading bodies of the Ethiopian political system at all levels were legally regulated to be based in the outcomes of periodic competitive elections. Beyond a multi party system and thereby the formation of political parties, the charter took a number of reform measures such as introducing a charter as an interim constitution that guaranteed freedom of speech, assembly and association among others.

The Transitional Government Charter allowed for the enactment of a law which would establish local and regional councils for local administrative purposes delimited on the basis of nationality. Based on that, National/Regional Proclamation No. 7/1992 was enacted "with a view to giving effect to the right of nations, nationalities and peoples to self-determination." ⁷⁵ Later, the first multi-party elections for regional and local councils in the history of Ethiopia were held in June 1992. The EPRDF's move to use elections as important instruments of representative politics by itself could be considered as a positive development in a country whose history was dominated by the absence of competitive electoral exercises. However, the EPRDF's repression against the opposition and opposition's strategy to boycott elections left the overwhelming majority of Ethiopian voters without a meaningful choice.⁷⁶ The major opposition parties, including the Oromo Liberation Front (OLF), threatened to leave the transitional government and finally, on the eve of the polling day for the elections of regional and local councils in 1992, the Oromo Liberation Front (OLF) withdrew from the transitional government.⁷⁷ In this election, the EPRDF won and controlled 1,108 of 1,147 regional assembly seats which consist of

⁷⁴ During this time, one of the prominent and influential civil society organizations, Human Rights Council (HRCO) Ethiopia was formed in 1991. HRCO is a non-profit, non-governmental organization that works towards building a democratic system, promotes rule of law and due process, and encourages and conducts human rights monitoring, available at, <https://ehrc.org/about-hrco/> last accessed on 11/28/16.

⁷⁵ Proclamation to Provide for the Establishment of National/ Regional Self-Governments, Proclamation No.7/1992, *Negarit Gazeta*, 51st Year, Preamble, para. 3.

⁷⁶ Terrence, Lyous., *Ethiopian Elections: Past and Future*, *International Journal of Ethiopian Studies*, Vol.5. No.1 Spring/Summer 2010, p. 107.

⁷⁷ Hashim, Tewfik. , *Transition to Federalism: The Ethiopian Experience*, *Forum of Federations* 700- 325 Dalhousie Ottawa, Ontario, Canada, 2010, p. 13.

96.6% of the total seats.⁷⁸ Though the country exercised the first multi-party election in 1992 to elect members of regional and local councils, the legitimacy of the electoral process and the result remained highly controversial.

During the transitional period, Ethiopia again conducted the second election in June of 1994. This election was held to elect members of the Constituent Assembly who were responsible for considering, modifying, and ratifying a draft constitution prepared by the Constitutional Commission.⁷⁹ As in the June 1992 election, the main opposition parties again left the election, leaving the EPRDF unconstrained except by an assortment of generally weak independent candidates. In this election, EPRDF candidates won 484 seats of 547 Constituent Assembly, a result which was described during that time as 'neither a significant nor an unexpected victory'.⁸⁰ This election again ended up with domination of the EPRDF in the constituent Assembly that was empowered to approve the constitution of the Federal Democratic Republic of Ethiopia (FDRE).

5.2. Post 1995 Electoral Laws and Experiences

After four years of transition, the constitution of the Federal Democratic Republic of Ethiopia (hereafter FDRE constitution) was approved by the Constituent Assembly in December of 1994 and it came into full force and effect as of the 21st day of August, 1995. Sovereignty of the Ethiopia Nations, Nationality and representation exercised through democratic participation in the country's socio-economic and political process directly and/or through elected representatives became the cornerstone of the principles outlined in this constitution which heralded the establishment of a federal form of government for the first time in the history of Ethiopia⁸¹.

The FDRE constitution introduced an electoral system based on the principle where a candidate who polls more votes than any other candidate is elected.⁸² Then, the constitution has clearly indicated that the *majoritarian* system of representation is preferred. Among the *majoritarian* representation systems, the constitution qualifies plurality/ simple majority system as the Ethiopian

⁷⁸ National Democratic Institute, An Evaluation of the June 21, 1992 Elections in Ethiopia (Washington, DC, 1992), p. 3

⁷⁹ Terrence Lyons, Closing the Transition: The May 1995 Elections in Ethiopia Author(s): Journal of Modern African Studies, Vol. 34, No. 1 (Mar., 1996), pp. 130.

⁸⁰ *Ibid.*

⁸¹ Please see Article 1 of the FDRE constitution.

⁸² *Id.*, Article 54(2)

choice. The framers of the Ethiopian constitution were attracted by the simple majority system, referred to as First Past the Post (FPTP) System. In this system, the party or candidate winning more than 50 percent of the votes in a constituency is awarded the contested seat. In this system, a candidate receiving more votes than any others wins and all other votes count for nothing.

In addition to the FDRE constitution, there are several laws that are enacted to regulate the Ethiopian election. Among the legal regimes, Amended Election Law of Ethiopia No. 532/2007, the Revised Criminal Code Articles 466-476, the Revised Political Parties' Registration Proclamation No. 573/2008, the Electoral Code of Conduct for Political Parties, Proclamation No. 662/2009, Directive No. 1/2009: on the Registration of candidates; Directive No 2/2009: on the registration of voters; Directive No. 6/2010: on Election Reporting Code of conduct of the Media and Journalists could be mentioned among others.

The Ethiopian electoral legal regime set prerequisites for those to participate as electors and candidates in national or local elections. The law sets a standard for a person to qualify for voting, he/she should be an Ethiopian citizen, with sound mental health, minimum of 18 years of age at the day of registration⁸³. The Ethiopian electoral law sets requirements that should be met by candidates including attaining 21 years of age, being a resident for two years in the constituency, and versed in the working language of the regional state or the area of his/her intended candidature among other things⁸⁴. In addition to the above standards, a private candidate is required to secure 1000 endorsement signatures for a candidature as well. Concerning limiting the number of candidates in a single electoral district, the number of candidates running for election to the House of Peoples' Representatives shall not exceed twelve.⁸⁵ However, if the nominees exceed twelve, priority will be given for political party nominees and private candidates will be removed. Yet, if the numbers of political party nominees exceed twelve, the law gives priority to maximum of six parties that received the highest votes in the previous election and for the remaining six political parties, lots will be drawn.

⁸³ Please see Article 18 of Directive No 2/2009: on the registration of voters.

⁸⁴ Please see Article 12 of Directive No. 1/2009: on the Registration of candidates.

⁸⁵ Please see Article 18 of Directive No. 1/2009: on the Registration of candidates.

Since the introduction of the FDRE constitution, the May 1995, the May 2000 and the May 2005, the May 2010 and the May 2015 National, Regional and Local Elections have been held. The May 1995 regional and national election was the first held under the new Constitution. This election was held after a long campaign and promise by the EPRDF to transform the country from a highly centralized, dictatorial state, plagued by civil wars, to a federal republic in which a vast range of powers were devolved to the newly established regional states under the new constitution. Compared to other political parties, the EPRDF was better institutionalized and financially strong enough to handle the election. In this election, the number of candidates and political organizations registered to run for both the national and regional elections were 1881 and 58 respectively.⁸⁶ On the other hand, there were also 960 independent candidates whom did not represent any political parties over the 548 electoral constituencies established in the country.⁸⁷ This election ended up with a landslide victory of the EPRDF that won 493 seats of 548 national seats to the House of Peoples Representatives (HPR) which is more than 90% of the seats in the Federal Parliament.⁸⁸ Whereas, the remaining seats went to independent candidates and other political parties with a share of 8 and 45 respectively.

The National Electoral Board of Ethiopia (NEBE) reported that the election was free and fair and EPRDF won these more than 90% seats of the Federal Parliament in a free competition. However, the NEBE's report and conclusion on the outcome of the election was bluffed and rejected by the opposition and international election observers concluded that the 1995 elections could not be termed as free, fair, and impartial. A report from Norwegian based election observer indicated that, "Conducting elections as a mere formality and claiming democracy without having any democratic public debate is a futile exercise."⁸⁹

The second general election was also held in May of 2000 and in this election, 49 political parties contested with the registration of 700 candidates for the federal parliament and 2,052 candidates for the regional councils. In this

⁸⁶ Supra note 76, p. 132.

⁸⁷ *Ibid.*

⁸⁸ http://www.ipu.org/parline-e/reports/arc/2107_95.htm last accessed on 11/29/2016. For this election, voters registered as of 15 April and polling day, which included election of State Councils, was monitored by foreign observers and generally peaceful. Final results gave the EPRDF a landslide victory. Later, on 24 August, Prime Minister Zenawi announced the make-up of the new Council of Ministers.

⁸⁹ Merera, Gudina., Elections and democratization in Ethiopia, 1991–2010, *Journal of Eastern African Studies*, Vol 5, No.4, 2011, pp. 664-680.

election, the opposition political parties won only 13 seats while independent candidates won more seats than the opposing political parties. The overall result shows that the EPRDF with its allies controlled the Federal parliament with 487 seats.⁹⁰

The Third general election which was held in May of 2005 was the most contested election in the Electoral history of Ethiopia and, in fact, it gave meaningful choice to the Ethiopian people.⁹¹

In this election, the opposition political parties appeared better organized and united compared to the previous elections. Heightened interest in the public to participate in the election coupled with strong and live pre-election debates among political parties made the election more attractive and sensible compared to the preceding elections. In this election, pre-electoral activities including electoral campaigns were carried out peacefully until political parties blamed each other at the end. In this election, the official reports showed that, as usual, the ruling party declared victory in the four regional states. Based on that, the NEBE reported that, 327, 109, 52, 24 and 11 seats were won by the EPRDF, CUD, UEDF, SPDP and OFDM respectively for the national legislature. In the context of nationwide popular vote however, the EPRDF and CUD got 10,260,413 and 4,594,668 respectively out of 20,487,218 valid votes.⁹² When popular vote is converted into parliamentary seats, EPRDF and CUD would have 274 and 123 Parliamentary seats respectively had the electoral system been proportional. This shows that the parliamentary seat of the EPRDF would have decreased by 53 votes and the seats of CUD would have increased by 14.

However, the opposing group rejected the blessing of the NEBE over the victory of the EPRDF and claimed a victory in Addis Ababa and other

⁹⁰ National Electoral Board of Ethiopia, Election 2010 Special Edition. Addis Ababa, May 2010.

⁹¹ Terrence Lyous, Ethiopian Elections: Past and Future, International Journal of Ethiopian Studies, Vol.5. No.1 Spring/Summer 2010, p. 107.

⁹² Abraha, K., Alternative Mechanisms of Electoral systems for Vibrant Democracy and All Inclusive Representation in Ethiopia, Master's Thesis, Addis Ababa University. 2008, p. 92, available at

https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewi_oPH15YTRAhWp5IMKHtU-DrgQFggdMAA&url=http%3A%2F%2Fetd.aau.edu.et%2Fbitstream%2F123456789%2F5073%2F1%2F8.%2520Abraha%2520Kahsay.pdf&usg=AFQjCNFiKpy-kxwBK-hvV_Cjwmcx_8DGg&bvm=bv.142059868,d.d2s last accessed on 12/21/16

regional states. Reports showed that the NEBE failed to discharge its responsibility specifically in vote counting and realizing electoral results.⁹³ Unfortunately, this election ended up with bloodshed and was taken as a political curve in which the active participation of the opposing political parties and the public to politics became severely hampered.

After five years of the controversial 2005 election, Ethiopia conducted the fourth general election in May of 2010. Compared to the 2005 election, the 2010 election experienced weaker campaigning and competition among the opposing political parties. As indicated by the EU electoral observer's team, the administration of the election had limitations that they indicated in the following way:

“While several positive improvements have been introduced, the electoral process fell short of certain international commitments, notably regarding the transparency of the process and the lack of a level playing field for all contesting parties..... The separation between the ruling party and the public administration was blurred at the local level in many constituencies. The EU EOM directly observed some cases of use of state resources for ruling party campaign activities”.⁹⁴

In this election, the EPRDF and its affiliates took 99.6% of the seats in the Federal legislature and it is only a single seat that was ‘suddenly’ taken by the fortunate candidate from the side of the opposing political parties. Moreover, another single seat also won by an independent candidate who did not, in fact, have a different policy agenda from the governing party, but a different implementation strategy.⁹⁵ This election is ended up by the EPRDF's vowing to establish a single major and dominant party in the country that would lead the country for the coming few decades. This election also gave the insight that the Ethiopian political atmosphere is devoid of a multi-party system and there will not be diversity of voices and agendas that could be heard in the federal as well as the regional legislatures.

After the death of its long-time leader, Meles Zenawi, Ethiopia conducted the fifth national election in May of 2015. The NEBE reported that there was

⁹³ European Union _ Election Observation Mission (EU-EOM), Ethiopia Legislative Elections 2005, Final Report. Brussels: EU-EOM, 2005.

⁹⁴ EU-EOM (2010). Ethiopia's 2010 House of Peoples' Representatives and State Council Elections. Preliminary Statement. June 25, 2010. Addis Ababa www.eueom-ethiopia.org last accessed on 11/29/16.

⁹⁵ Kjetil, Tronvoll., Briefing the Ethiopian 2010 Federal and Regional Elections: Re Establishing the One Party State African Affairs Advance Access published November 26, 2010. p. 1.

high voter turnout in this election compared to previous elections.⁹⁶ However, the process and result of the election was complained about by the opposition as rigged, though the NEBE concluded that elections were credible, free and fair.⁹⁷ In this election, the EPRDF and its allies controlled all the 547 parliamentary seats without sharing a single seat to the opposition or private candidates.⁹⁸ The results of this election show and confirm that a kind of authoritarian rule will continue in Ethiopia for the next years. The result of the election also indicates that participation in political life will be completely restricted to members of the EPRDF and its allies. Moreover, this election was historical in that there was no political party or independent candidate that could share a single parliamentary seat since the EPRDF came to power in 1991.

The legislature formed next to the 2015 national election lacked an opposition that could play a means of check and balance against the activity of the ruling party at least by serving as the voice of the people. This election, by eliminating both the opposition and private candidates, has created a situation by devaluing the activity of politics which is hostile to parliamentary democracy. Parliament needs a hot debate and discussion to vow the electorate's agenda both in private and public. As Ralph Heintzman pointed out, the nature of the Canadian parliament as follows:

In addition to its practical value, the daily confrontation of government and opposition in the House of Commons symbolizes the inner dialogue, the continual sequence of question and answer, which distinguishes the truly civilized mind and is reflected in the social and public life of a civil community. Just as a genuinely sound mind does not suppress either of its two fundamental impulses but listens instead to both, and tries unceasingly to achieve a synthesis in which their opposition will be reconciled, so too the good society recognizes that opposing tendencies are not each other's enemies but each other's partners instead, and their indispensable complement.⁹⁹

⁹⁶ <http://www.bbc.com/news/world-africa-33228207> last accessed on 11/29/16.

⁹⁷ <http://www.bbc.com/news/world-africa-33228207> last accessed on 11/29/16.

⁹⁸ <http://www.electionethiopia.org/en/> last accessed on 11/29/16.

⁹⁹ Ralph Heintzman, "The Educational Contract," editorial introduction to the *Journal of Canadian Studies*, special issue on "Responsible Government Reconsidered," Vol. 14, No. 2, summer 1979, p. 143.

As indicated above, parliamentary democracy cannot properly work without an active parliament that does not conduct active debate and discussion. This has occurred due to the nature of the electoral system and this has been rightly expressed by Lewis as follows:

The surest way to kill the idea of democracy in a plural society is to adopt the Anglo-American system of FPTP. This is because the one that commands most votes becomes sure to win and the other parts of the homogenous society resign as, whatever they do, they can feel they are likely to lose power or representation through such an electoral system.¹⁰⁰

Months after of the 100% landslide electoral win of the EPRDF and its allies in the May 2015 election, popular uprising and protests against the government occurred in Oromiya, Amhara and some parts of the Southern regions. In this uprising, several people were killed and property was destroyed. The situation became beyond the control of the regular law enforcement and the government was obliged to declare a state of emergency throughout the country.¹⁰¹ Amid the ongoing political crises in the country, the government promised to bring reforms in the country including electoral reforms.

A promise to bring electoral reforms was heard for the first time from the country's President. The FDRE President while addressing a joint session of the House of Peoples Representatives and the House of Federation indicated that

The Government is ready 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 with a view to make the voices of the people heard in both chambers of the Parliament.¹⁰²

This inaugural speech of the President was also confirmed by the Prime Minister who is the chief executive of the federal government and he retreated that, "... the government wants to reform the electoral system so the voices of those who are not represented can also be heard in the Parliament."¹⁰³

¹⁰⁰ Lewis, W.A., *Politics in West Africa*, George Allen and Unwin, London, 1965, p. 71.

¹⁰¹ CNN news, Ethiopia declares state of emergency after months of protests, <http://www.cnn.com/2016/10/09/africa/ethiopia-oromo-state-emergency/> last accessed on 11/30/16.

¹⁰² Federal Democratic Republic of Ethiopia Ministry of Foreign Affairs, available at, <http://www.mfa.gov.et/web/guest/news/-/asset> last accessed on 11/30/2016.

¹⁰³ IHS Jane's Intelligence Weekly, Ethiopia's proposed electoral reforms and limited amendments to environment, land, and labour laws unlikely to satisfy protesters, available

As reported, the main reason for electoral reform in the country is to have a more representative government than the existing one. In this context, the government has promised to make reform on the *majoritarian* type of First Past the Post electoral system to a more representative system without indicating what type of specific representative electoral system to introduce. When an electoral reform is made in a country like Ethiopia where electoral rules are entrenched in the constitution, constitutional amendment will be the first task of the reformers as they cannot reform electoral rules without amending the constitution. Now the main question is: What type of electoral rules would be more representative to have a representative government and to make the voice of the majority heard in the Ethiopian parliament? The next section evaluates this very question and proposes an electoral system that best addresses the question of representative government. Moreover, leaving the political controversy of whether the existing political turmoil will only be solved by reforming electoral rules or not behind, I will focus on showing which electoral system is better to make the electoral reform successful.

6. Enhancing the Representativeness of the Ethiopian Electoral System

The electoral system design is a serious issue that needs extreme precaution by the constitutional framers. Since the system of election employed in a certain country has the power of determining the fate of political parties, system designers must give acute attention to this task. Most of the time, electoral system designers are faced with the task of balancing representativeness, on the one hand, and accountability, on the other hand. This representativeness and accountability dilemma forces reformers to choose the plurality and proportional representation systems.¹⁰⁴ Plurality representation systems are mostly known by their character of establishing accountable, elected representatives as the system promotes the election of individual candidates in each electoral constituency. In plurality electoral systems, the assignment of an individual candidate in each and every electoral constituency will help to make the elected individual directly accountable to the electorate. On the other hand, proportional representations promote and focus on representativeness than accountability. The system promotes the election of

at, <http://www.janes.com/article/64562/ethiopia-s-proposed-electoral-reforms-and-limited-amendments-to-environment-land-and-labour-laws-unlikely-to-satisfy-protesters> last accessed on 11/30/2016.

¹⁰⁴ Carey, J.M, and Hix, S., The electoral sweet spot: Low-magnitude proportional electoral systems, *American Journal of Political Science*, Vol.55, No.2, 2011, p. 385.

political parties through providing party lists rather than individual party candidates. In this case, there is no individual who is directly represented for a certain electoral district and this may not create accountability of party representatives for a specific constituency.

In their choice of electoral systems, designers must also balance the issue of representativeness and accountability as there is no a perfect electoral system that best fits the context of all countries in the world. In this case, framers are required to consider what the reality looks like in a certain country that needs an electoral system design.

In the Ethiopian context, the electoral system as plurality/FPTP system has been indicated under the constitution by qualifying that, “members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast”.¹⁰⁵ In this context, an individual candidate from the private or political parties will be declared as a winner as long as he/she scores the highest number of votes among the contenders. It seems that the Ethiopian electoral system designers were more in favor of accountability in a single-party government rather than representativeness.

The electoral system design made for Ethiopia seems to have not taken the attention of the framers of the constitution as a serious issue. Addisalem Balema, in his PhD thesis, exposes the fact that, “during the drafting and the ratification process of the constitution, the electoral system was not a contentious issue.”¹⁰⁶ However, he did not conceal the fact that there were some political parties like the Council of Alternative Forces for Peace and Democracy in Ethiopia (CAFPDE) that challenged the plurality electoral system as an intentional design of EPRDF as it fits more for the larger political party than the smaller ones.¹⁰⁷

As speculated by the opposing political parties in the beginning, the electoral system in Ethiopia benefits only the larger political party than the smaller parties. The existing electoral system failed to provide to the Ethiopian people a representative parliament and government. The larger ruling party, the EPRDF, has controlled all parliamentary and government positions with its allies. It has been proven by the government that the electoral system that we have right now is not representative and it has committed to make the system

¹⁰⁵ Supra note 78, Article 54(2) of the FDRE constitution.

¹⁰⁶ Addisalem Balema. *Economic Development and Democracy in Ethiopia*, PhD dissertation, Rotterdam: Erasmus University, 2003, p. 178.

¹⁰⁷ Id, p.1 78.

more representative. Now, it is the time for Ethiopia to design an electoral system that could balance representativeness and accountability.

An electoral system that could address Ethiopia's question of a representative government and that will make the 'unheard voices' to be heard is a Mixed Member Proportional (MMP) system which is one type of mixed systems. The MMP electoral system can unite the positive attributes of both the plurality and the PR electoral systems and will help to establish a stable government in the country. As taking the positive sides of both plurality and PR systems, in this electoral system, half of the members will be elected based on the plurality of the votes casted and the remaining half seats will be filled by the PR electoral system to reimburse for any disproportionality and unfairness produced by the district seat results.

In this electoral system, voters will have two choices: one for the district seat and another for the national seat. By making the electorate to elect district or constituency representatives, it will help to make these elected representatives accountable to their constituency and have an accountable government. This candidate-constituency linkage is very important for a pluralistic country like Ethiopia that has many ethnic groups who would like to be represented by candidates from their ethnic origin. On the other hand, by conducting a PR system, it is possible to have a more representative government as there will not be wastage of votes. This more representative government will be created because of the fact that the vote is counted in aggregate throughout the country than only taking the majority winners. In preferring a MMP electoral system for Ethiopia, there is an important issue to be addressed first. When half of the seats are filled with the proportional system, there has to be an introduction of the concept of minimum threshold to avoid a divided government in the country. As discussed in the earlier part of this article, there are different experiences in addressing the issue of minimum threshold and there is no uniform rule.

In addressing the issue of minimum threshold, the Germany experience of 5% would be suggested as more preferable for the Ethiopian context. In Germany, a political party that scores less than 5% of the national vote may not allowed to join the parliament and it will be automatically knocked out from the system. However, this rule may not work when the political party that scores less than 5% from the proportional vote has scored at least three

seats from the constituencies vote.¹⁰⁸ Such kind of design will help to protect the interest of minority political parties that may not able to constitute 5% vote from the electorate.

7. Conclusion

The central issue in electoral system design is identifying the appropriate electoral system that best fits the existing realities of the country that designs the system. In doing so, designers have the choice of either to prefer a system that ensures representation or accountability or a system that combines both. In this context, proportional representations are known for guarantying and ensuring representation in the system by making every single vote usable. On the other hand, the *majoritarian* representation system focuses more on establishing candidate-constituency linkage and ensuring accountable system in the election. Both electoral systems, when they are used unilaterally, have limitations. A representative government may not have an effect without insuring accountability and creating a linkage between the electorate and the elected. In this context, a Mixed Member Proportion, which is a type of mixed system will solve the problem of representativeness-accountability trade-off by having the strong sides of both *majoritarian* and proportionality electoral systems.

The writer of this article believes that a MMP electoral system will address the existing problems in the Ethiopian electoral law by enhancing the issue of representation which the FPTP system lacks in the government. This system, if chosen, would accommodate the question of candidate-constituency linkage that the Ethiopian situation strictly needs due to the existence of diversity in the country with the appropriate representation question in the parliament.

¹⁰⁸ Chronicle of Parliamentary Elections. 1-January-31 December 2002, Volume 36. Geneva: Inter-Parliamentary Union. pp. 97.

በመጀመሪያ ደረጃ የክፍያውን አፈፃፀም መሠረት በማድረግ ብቻ የወር ተከፋይ በሆኑን እና የወር ተከፋይ ባልሆኑት መካከል ምክንያታዊ ያልሆነ ልዩነት በመፍጠር የወር ተከፋይ ያልሆኑት ለበዓል ቀን ክፍያ እንደማይፈጸሟቸው በማድረግ ከወር ተከፋዮች ጋር በዕኩልነት የመታየት ህገ-መንግሥታዊ መብታቸውን የሚጥስ ይሆናል። በሁለተኛ ደረጃ በሃምሳት የዕረፍት ቀናት እና በህዝብ የበዓል ቀናት ክፍያ እንዲፈጸማቸው በህጉ ላይ የተቀመጠበት ዋና ምክንያት ሠራተኛው ህይወቱን ተገቢ በሆነው መንገድ (decent life) እንዲመራ ለማስቻል ነው። መሠረታዊ ዓላማው ይህ ከሆነ ምክንያቱ ለወር ተከፋዩ ብቻ ሳይሆን በተመሳሳይ ሁኔታ ለቀን ተከፋዩም ተፈፃሚ የማይሆንበት ምክንያት የለም። ይህ ብቻም አይደለም። በሶሻሎ ኢኮኖሚክ ኮቬናንት በአንቀጽ 7 ላይ ሠራተኞች በበዓል ቀናትን ክፍያ የማግኘት መብት እንዳላቸው የተደነገገ እና ኢትዮጵያም የዚህ ኮቬናንት ፈራሚ አገር በመሆኗ በስምምነቱ ተገዳጅ ነች። ስለሆነም ህገ-መንግሥቱን፣ የአሠሪና ሠራተኛ ህጉን እና ኮቬናንቱን በማገናዘብ አስተሳሰብን ስንመለከተው ህግ አውጪው ከዚህ ስሜት በመራቅ የወር ተከፋይ ያልሆኑ ሠራተኞች በስራ ውሳቸው ወይም በህብረት ስምምነት ክፍያ እንዲፈጸማቸው የሚፈቅድ ድንጋጌ ከሌለ በቀር ለበዓል ቀን ክፍያ አይፈጸማቸውም ብሎ አቀዋም እንደወሰደ ማሰብ አይቻልም። እንዲያውም ድንጋጌው ብዙ ጊዜ ከሠራተኞቻቸው ጋር በድርድር የኅብረት ስምምነት ለመፈጸም የማይፈልጉ አሠሪዎችን የህብረት ስምምነት እንዲኖራቸው የሚያተጋ መሣሪያ ተድርጎ የሚወሰድ ነው። ከዚህ ያለፈ ትርጉም ሊሰጠው አይችልም። ስለሆነም የወር ተከፋይ ያልሆኑ ሠራተኞች ከአሠሪያቸው ጋር በሥራ ውል ወይም በህብረት ስምምነት የሚወስኑት ከፍ ሲል በተጠቀሱት ምክንያቶች የክፍያውን መጠን ብቻ ነው። በህብረት ስምምነት ወይም በሥራ ውል የተወሰነ የክፍያ መጠን ከሌለ ግን ማንኛውንም ሠራተኛ በቀን ስምንት ሰዓት እንደሚሰራ ታስቦ በመርህ ደረጃ የተጠበቀለትን ክፍያ የማግኘት መብት ተግባራዊ ሊሆንለት ይገባል። ስለሆነም የሥር ፍርድ ቤት ተጠሪዎች ለበዓል ቀናት ክፍያ ይገባቸዋል በማለት የሰጠው ፍርድ የሚነቀፍበት ምክንያት አላገኘንም። ስለሆነም የሚከተለውን ውሳኔ ሰጥተናል።

ውሳኔ

አመልካቾች ለሳምንት የዕረፍት እና ለበዓል ቀናትን ክፍያ ሊፈጸማቸው ይገባል በማለት የሰጠው ፍርድ መሠረታዊ የሆነ ህግ ስህተት ያልተፈጸመበት ስለሆነ አጽንኦቱን ያሳያል።

ኢሣራና ወጪ ይቻቻሉ።

ትዕዛዝ

የባህር-ዳር ከተማ ወረዳ ፍርድ ቤት ውሳኔው የጸና መሆኑን አውቆ በጸናው ውሳኔ መሠረት እንዲያስፈጽም ታዟል። ግልባጩ ይተላለፍለት። ይጻፍ።

የተሰጠ ዕግድ ካለ ተነስቷል። ይፃፍ።

መዝገቡ ተዘግቷል። ወደመዝገብ ቤት ይመለስ።