

CHAPTER ONE

DEMOCRACY AND ELECTION

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1.1 INTRODUCTION

An election is a decision-making process by which a certain population chooses an individual to hold formal office. This is the usual mechanism by which modern representative democracy fills offices in the legislature. Electoral systems refer to the detailed constitutional arrangements and voting systems which convert the vote into a determination of which individuals and political parties are elected to positions of power. A country's electoral system is the method used to calculate the number of elected positions in government; that individuals and parties are awarded after elections. In other words, it is the way that votes are translated into seats in parliament or in other areas of government (such as the presidency). There are many different types of electoral systems in use around the world, and even within individual countries, different electoral systems may be found in different regions and at different levels of government. This unit supplies a review of the most common types of electoral systems along with their advantages and disadvantages.

1.2 UNIT OBJECTIVES

Having read this chapter, students will be able to:

- analyze the defining features of democracy
- discuss the importance of electoral law to the rule of law
- define the meaning of electoral democracy
- identify the purpose of electoral democracy
- explain the different types of electoral system and their consequences

1.3 A BRIEF HISTORY OF DEMOCRACY AND ITS DIFFERENT FORMS

The concept of "democracy" is contestable. Democracy is understood by many people as a form of government in which a significant portion of the governed society has a franchise to elect members of the governing body. Other observers would argue that a "true" democracy is a system of government that embraces a universal adult franchise. While we may not agree on one uniform definition there are certain universal attributes of a democratic society namely:

- equality of all citizens before the law without regard for race, ethnicity, religion, gender, or any other social or biological differences;
- the supremacy of the rule of law;
- full participation of people in how they are governed;
- the principle of separation of powers between the executive, legislature and judiciary;
- freedom of expression, association, conscience and affiliated family of rights; and
- periodic elections as a means of choosing alternative ideas for public policy.

Any society that claims to be democratic must have all of these elements. Those that aspire to build a democratic society must have most of these elementary things in place or they must be taking genuine steps towards their achievement. The popular understanding of the term "democracy" is that there are three basic forms: direct, representative and constitutional. A brief outline of the historical development of each will provide a solid foundation of knowledge on which the concept of electoral democracy can be further explored.

I. Direct Democracy

Direct democracy is a form of government in which the right to participate in making political decisions is exercised directly by all citizens, acting under procedures of majority rule. In large states, direct or participative democracy is not possible. The debate continues as to the origin of democracy. However, the city-states of ancient Greece stand out as one of the earliest example of codified and institutionalized democratic principles. The motivating force for the development of democratic political institutions in the Greek states was their desire to discover the best system of government that would maintain the liberty of the citizen. Their solution was a system in which the whole citizen body formed the legislature. All citizens had a voice and a presence in the formulation of the rules that governed their society. All citizens were eligible to hold executive and judicial offices, some were elected, while others were assigned by lot. In this early form of democracy, all officials were directly responsible to the popular assembly which was qualified to act in executive, judicial and legislative matters.

It should be noted that Greek democracy, which may be epitomised as the expression of the interests of all citizens, rested on a society radically different from the one which exists today. In the first place, the city-states were small enough to be allowed for direct participation in judicial and legislative affairs. Secondly, only male native-born Athenians were citizens and so were participants in this process. Slaves, women and foreigners, who together made up the majority of the population of any Greek city-state, were excluded. Thirdly, in ancient Greece, the notion that a citizen was in some way unique did not operate. Each citizen was part of a collective and public whole. Public life was significant and private life was not taken into account. Finally, the concept of citizenship carried with it military responsibility, either as a warrior or as a

contributor of funds. This early version of democracy, now known and frequently revered as "classical democracy", was both flawed and vulnerable to manipulation.

II. Representative Democracy

Representative democracy involves the selection of government officials by the people being represented. The most common mechanisms involve election of the candidate with a majority or a plurality of the votes.

Representatives may be elected or become diplomatic representatives by a particular district (or constituency), or represent the entire electorate proportionally with proportional systems, with some using a combination of the two. Some representative democracies also incorporate elements of direct democracy such as referendums. A peculiar characteristic of representative democracy is that while the representatives are elected by the people to act in their interest, they retain the freedom to exercise their own judgment as how best to do so. A brief highlight is given below on the different types of representative democracy.

A. Parliamentary Democracy

Parliamentary democracy is a kind of democracy where government is appointed by parliamentary representatives as opposed to a 'presidential rule' by decree dictatorship. Under a parliamentary democracy, government is exercised by delegation to an executive ministry and subject to ongoing review, checks and balances by the legislative parliament which is elected by the people.

B. Liberal democracy

Liberal democracy is a representative democracy in which the ability of the elected representatives to exercise decision-making power is subject to the rule of

law, and usually it is moderated by a constitution that emphasizes the protection of the rights and freedoms of individuals, and it places constraints on the leaders and on the extent to which the will of the majority can be exercised against the rights of minorities

III. Constitutional Democracy

Constitutional democracy developed to counter this possibility and is a form of representative democracy in which the powers of the majority are enshrined in constitutional provisions designed to guarantee the individual and collective rights of all citizens. These citizenship rights are enshrined in a constitution and can be amended to reflect social changes.

To enjoy reasonably effective, but still limited governance, many countries have adopted a mix of *constitutionalism* and *democratic theory*. The most so-called democratic systems such as those of Australia, Austria, Canada, Germany, India, Italy, Japan, Spain and the United States would be more accurately classified as *constitutional democracies*. Each of these *polities* have provided a wide measure of political participation and simultaneously restricted the peoples' *over-governance* by putting in place a variety of institutional means. Each of them, again, has distributed the power to the *Legislative, Executive*, and adjudicate among the three departments of government; everyone of them has a version of bi-cameralism and includes a *Bill of Rights*. In addition to these, Austria, Canada Germany, India, and the United States use federalism to further diffuse power. To splinter this diffused power of *majorities*, the United States employs stiffened elections for its legislature and indirectly elects its president. Each also authorizes politically independent judges to invalidate legislative and executive actions that they believe violate "*the constitution*".

To constrain power by means of a paper (word) – that is what a constitution really is – may sound foolish. Yet, a *political chemistry* may turn *sheets of paper* into *hoops of steel*.

First, by prescribing institutional structures and deregulating power among different offices, a document can push officials to co-relate their interest with that of their office, and jealously guard those interests against punitive incursions by other officials. Furthermore, by drawing vague divisions of authority, a document can make it likely that no set of officials can do much that is politically important; not without arousing the jurisdictional imperative of other officials. Thus, a constitutional text can dispense/disperse power and protect liberty by putting an ambition against another and one power against another power. In so far as a constitution is a collection of rules, establishing and regulating the system of government in a state, we can, as shown above, discern a formal and substantive aspect of a constitution.

In the modern world, constitutional democracy is the chief type of non-autocratic government. Constitutional democracy, according to its definition, should provide:

1. a system of periodic elections with a free choice of candidates,
2. competing political parties,
3. universal adult suffrage,
4. political decisions by majority vote,
5. protection of minority rights,
6. an independent judiciary,
7. constitutional safeguards for basic civil liberties, and

8. the opportunity to change any aspect of the governmental system through agreed procedures.

In most modern constitutional democracies, there is a constitutional document providing fixed limitations on the exercise of power. A constitution assigns certain specified powers to different structures of governments by:

1. limiting the powers of each structure and the establishment of arrangements for their co-operative interaction,
2. specifying the individual rights or liberties of the individual that are protected against the exercise of state power, and
3. providing a statement of the methods by which the constitution may be amended.

1.4 THE IMPORTANCE OF ELECTORAL LAW TO THE RULE OF LAW

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The same have been designated as the substantive, the formal aspects of constitution. Of the formal elements (aspects) of constitutive aspects, *rule of law* stand out as the most comprehensive and vital doctrine, principle and/or concept (hereinafter referred to as principle) of modern constitutions.

In the sense of Lon Fuller's view of the "*inner morality*" of law, *Rule of Law* is not treated in its general sense of *government under law*, but in much more specific, comprehensive manner. Yet, according to Fuller,

"... a comparison can be made between the internal morality of law and the natural law of carpentry; which the carpenter has to follow whether his aim is to build a hideout for thieves or an orphanage. The internal morality is to be distinguished from the external morality or the substantive aims or

values that particular legal rules (standards) seek to promote. In other world [The] developed a conception of the Rule of Law, not by appealing to moral values drawn from the external morality, (which will, of course, vary with different legal rules and systems and from natural school perspective to other schools of jurisprudence), but by spelling out the values that underlie the concept of law itself."

These values are characterized as the *eight desiderata*. These identified eight elements of law, recognized as necessary for a society aspiring to institute the *Rule of law* are stated as follows:-

1. laws must exist and those laws should be able to win obedience.
2. laws must be published.
3. laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. Laws should be written with reasonable clarity to avoid unfair enforcement.
4. laws must avoid contradictions, (intelligibility)
5. laws must not command the impossible, (Non self-contradictoriness)
6. laws must be general.
7. laws must stay constant through time to allow the formalization of rules; however; law also must allow for timely revision when the underlying and political circumstances have changed.
8. official action should be consistent with the declared rule.

Standing alone, these eight elements may seem clear and understandable. But they are actually difficult to implement in the real world because governments are often compelled to prioritize one goal over another to resolve conflicts in a

way that reflects society's political choice. For example, making too many laws that are too detailed and specific may make the legal system too rigid. Inflexibility could cause the particular case. Additionally, instead of only applying prospectively, few laws, under limited circumstances are meant to apply retroactively, or to past conduct, because they were passed with the specific intent of correcting the conduct in question. Fuller recognized these conflicts and suggested that societies should be prepared to balance the different objectives listed above.

Fuller's Criteria is helpful in understanding rule of law because it outlines the types of rules; formal constraints that societies should develop in order to approach legal problems in a way that minimizes the abuse of the legal process and political power. Rule of law, however, extends beyond mere regulation and is also shaped by the so-called *institutional constraints* on government as implied in *Fuller's elements*. One such *institutional constraint* is the existence of an independent judiciary; another is developing ways of promoting *transparent governance*. *Informal constraints* such as local culture or traditions that may encourage citizens to organize their behavior around the law also help constrain the government, prompt liberty and, therefore, define the rule of law.

Although still seemingly vague, *rule of law* may be most concretely defined as a theory of governance relying upon a series of law, which may be most concretely designed to encourage order and to prevent arbitrary and unreasonable exercise of government power. Multilateral institutions such as the World Bank and many policymakers throughout the world believe that the *rule* promotes economic development.

Modern economic development often comes with the introduction of a *market economy*; or, an economy based on private enterprise that does not rely on *government-planned* production. Max Weber, a famous sociologist and economist, has commented that the capitalistic order, upon which a market economy is based, is organized upon a rationale of *law-bound state*. Market economy brings buyers and sellers to the market for complex transaction from many different parts of the world and on international scale.

Law is important to the market economy because it is the common basis on which parties can make agreements; it provides parties with confidence that disputes can be resolved efficiently and fairly. For this reason, the *predictability* and *order* that the rule of law promotes in substantive laws is viewed as the stabilizing force behind much economic developments. Rule of law helps set the *rule of the game* in critical areas such as investment, property, and contract.

Rule of law also serves as an important assurance of social rights and government accountability. Government restraint is especially critical for many transitioning economies where a previously planned economy is to be transformed into one that is market based. When the government is no longer the sole owner of land, capital, and labor, rule of law guarantees that the crucial elements of the economy will be free from arbitrary *government will*, adopt a hands-off approach to investment and production, allowing those participating parties to fully exercise their rights in relations to land, labor and capital.

1.5 MEANING AND PURPOSE OF ELECTORAL DEMOCRACY

Election is the act or process of choosing a person for political office, position or membership by voting. It is an instance of the electorates' exercising their rights.

Generally, it is a modern and civilized way by which citizens give their consent in order to be represented by some that can advance and administer their interest, will, and aim in an organized and systematic manner.

Election is central for the existence of democratic political system. Through election, citizens can be involved in selecting the political leadership of their society. Elections provide the mechanism through which people can exercise control over their government officials. They can either *throw the rascals out* if they do not like what is happening or they can reaffirm their support by re-electing officials they like. The existence of election does not guarantee democracy, but it is difficult to imagine democracy without election.

Elections make a fundamental contribution to democratic governance. Because direct democracy – a form of government in which political decisions are made directly by the entire body of qualified citizens is impractical in most modern society, democratic government must be conducted through representatives. Elections enable voters to select leaders and to hold them accountable for their performance in office. Accountability can be undermined when elected leaders do not care whether they are re-elected or when, for historical or other reasons, one party or a coalition is so dominant that there are no alternative candidates, parties or policies. Nevertheless, the possibility of controlling leaders by requiring them to submit to regular and periodic elections helps solve the problem of succession in leadership, and thus, contributes to the continuation of democracy.

Moreover, where the electoral process is competitive and forces candidates or parties to expose their records and future intentions to popular scrutiny, election serve as a forum for the discussion of public issues and facilitates the expression

of public opinion. Elections thus provide political education for citizens and ensure the responsiveness of democratic governments to the will of the people. They also serve to legitimize the acts of those who wield power, a function that is performed to some extent even by elections that are non-competitive.

Elections also reinforce the stability and legitimacy of the political community. Like national holidays commemorating common experiences, elections link citizens to each other and thereby confirm the viability of the polity. As a result, elections help to facilitate social and political integration.

Moreover, elections serve a self-actualizing purpose by confirming the worth and dignity of individual citizens as human beings. Whatever other needs voters may have, participation in an election serves to reinforce their self-esteem and self-respect. Voting gives people an opportunity to have their say and, through expressing partisanship, to satisfy their need to feel a sense of belonging. Even non-voting satisfies the need of some people to express their alienation from the political community. For these precise reasons, the long battle for the right to vote and the demand for equality in electoral participation can be viewed as the manifestation of a profound human craving for personal fulfillment.

Whether held under authoritarian or democratic regimes, elections have a ritualistic aspect. Elections and the campaigns preceding them are dramatic events that are accompanied by rallies, banners, posters, buttons, headlines, and television coverage all of which call attention to the importance of participation in the event. Candidates, political parties, and interest groups representing diverse objectives invoke the symbols of nationalism or patriotism, reform or revolution, past glory or future promise. Whatever the peculiar national, regional, or local variations, elections are events that, by arousing emotions and

channeling them toward collective symbols, break the monotony of daily life and focus attention on the common fate.

Generally, in the representative government all over the world, election emerged to be the main instrument through which free will of the society can be expressed. Periodic nationwide or region wide voting is an essential safeguard of democracy and liberty that, at least, is an axiom of contemporary democratic faith. In other words, it is the only democratic and peaceful way that enables people to form a representative government thereby establishing sustainable democratic process. It is also a way for the prevalence of good governance.

Elections can be organized in a variety of ways. Saying that we are going to elect some one to office tells nothing about the actual procedures to be used other than that there will be vote. Who will get to vote? Will every one's vote be of equal weight? Does the winner need majority of the vote or just a plurality? Do most candidates be nominated or can anyone run? These are just few of the questions that should be asked about the way election are organized. The reality is that different ways of conducting election have few of the questions that should be asked about the way elections are organized. The other reality is that different ways of conducting election have different consequences. So, it is important to examine the way elections are structured.

In conclusion, we can say that elections are principal means of forming governments by deciding who can hold public offices. Moreover, they stabilize and legitimize the government by holding government officials accountable to the electorate.

1.6 TYPES OF ELECTORAL SYSTEMS

A country's electoral system is the method used to calculate the number of elected positions in government that individuals and parties are awarded after elections. In other words, electoral system is the way that votes are translated into seats in parliament or in other areas of government (such as the presidency).

There are many different types of electoral systems in use around the world, and even within individual countries, different electoral systems may be found in different regions at different levels of government (e.g. elections to school boards, city councils, state legislatures, governorships, etc.).

The purpose of an electoral system is to translate the will of the electorate, as expressed through the ballot box, into members of a legislative body. The ways this can be achieved are many and varied. Electoral systems throughout the world range from very simple first-past-the-post systems to quite complex arrangements using parts of different systems. Broadly speaking, the function of converting votes into legislative seats can be achieved by a plurality of votes, a majority of votes or proportionally. Thus, there are three main categories of electoral systems: *plurality*, *majority* and *proportional representation*. There are also systems that are a mix of features of two or more systems.

Some writers use the term 'electoral system' to mean all the structures and operations that are used to run an election.¹ The means for drawing up of electoral boundaries, the qualification of voters and candidates, the method of voting and the means of settling disputes would, thus, all be included, as would the administrative structure used to oversee the entire electoral process. Many others, however, use the term quite specifically to describe the voting method

¹ MArt.in Harrop and William L. Miller, *Elections and Voters: A comparative introduction*, Macmillan, Basingstoke, 1987.

itself.² This is the way in which the term is used in this electoral law teaching material.

As seen below, there are many types of electoral system, but the point that is needed to be made here is that electoral systems are not simply neutral statistical arrangements that enable members of the parliament (MPs) to be chosen for a legislature. The particular system used in a particular location can play an important role in determining:

- who is elected,
- the nature of the legislature,
- the legislative programme of the legislature,
- the place of particular parties in the political system,
- the attitude of the general community to the electoral process in general, and
- the attitude of the general community to a particular election result.

The use of a specific voting method in one location may produce quite different outcomes to the use of the same method in another. Therefore, we need not only to understand an electoral system but also the context(s) in which it has been used.

Categories of Electoral System

There are a host of electoral systems used for national elections in 211 nations, but it is possible to categorize the systems into four broad families as follows:

² Austin Ranney, *Governing: An Introduction to Political Science*, Prentice Hall, Englewood Cliffs, 6th ed., 1993.

- Plurality
- Majority
- Proportional
- Mixed

As suggested above, the electoral system adopted by a country probably depends more on the country's political culture rather than any abstract consideration of the relative merits of different voting methods. For example, countries with a British political heritage are more inclined to plurality and majority systems, while those of continental Europe have been more inclined towards proportional systems.

1.6.1. PLURALITY SYSTEMS

Plurality systems, which are almost always used in conjunction with single-member electorates, are the simplest of all electoral systems. Plurality systems are commonly used for the election of Heads of State. A plurality system, also called "*First-past-the-post* " or "*winner-take-all*" systems awards a parliamentary seat to the individual candidate who receives the most votes in election regardless of whether the candidate receives the majority of votes. Plurality systems normally depend on single-member constituencies and allow voters to indicate only one vote on their ballot (by pulling a single lever, punching a hole in the ballot, making an X, etc). Plurality electoral systems also tend to encourage the growth of relatively stable political systems dominated by two major parties. Such an electoral system clearly does not represent the interests of all (or even most) voters. In fact, since a candidate need to have only a plurality of votes to be

elected, most voters may actually have voted *against* the winner (although their votes are split among several candidates).

Elections for the House and Senate in the United States and for the House of Commons in the United Kingdom use the plurality system. The US presidential election is also generally considered a plurality system, but the existence of the Electoral College actually makes it a strange hybrid of plurality and majority systems.

Advantages of plurality systems

- These systems are easier to understand than are Majority or Proportional Representation systems, even when there is more than one MP to elect.
- Counting tends to be uncomplicated, and produces a speedy outcome.
- In single-member electorates, electors are not required to allocate preferences they may not have.
- Where First-past-the-post is used in single-member electorates, the link between voter and MP is said to be clear.

Disadvantages of plurality systems

- The 'winner's bonus' phenomenon can be particularly marked
- These systems can deny representation to quite substantial numbers representing minority opinions.
- The winner of an electorate may have a relatively small percentage of the vote. Many votes are therefore 'wasted' in single-member constituencies.

- The use of *First-past-the-post* can also result in the election of a government that does not receive support from a majority of the electorate, or even the largest number of votes.

1.6.2. MAJORITY ELECTORAL SYSTEMS

Majority electoral systems (also called “*second ballot*” systems) attempt to provide a greater degree of representativeness by requiring what candidates need to achieve a majority of votes in order to win. “Majority” is normally defined as 50%-plus-one-vote. If no candidate gets a majority of votes, then a second round of voting is held (often a week or so after the initial ballot). In the second round of voting, only a selected number of candidates from the first round are allowed to participate. In some countries such as Russia, the top two vote-getters in the first round move on to the second round. In other countries such as France, all candidates with a minimum threshold percentage of votes move on to the second round. Like plurality systems, majority systems usually rely on single-member constituencies, and allow voters to indicate only one preference on their ballot.

Presidential elections in Austria, Finland, Portugal, Russia and other east European states as well as presidential and National Assembly elections in France make use of various forms of majority electoral systems. The US Electoral College also has components of a majority system because a presidential candidate must get 50%-plus-one electoral votes (270 out of 538) in order to win. If no candidate reaches the 270 mark, the election is decided by the House of Representatives. In determining who votes for whom in the Electoral College, though the US presidential race is a strict plurality system, the candidate who gets a plurality of the popular vote in a state gets all that state’s electoral votes.

Majority systems require a winning candidate to receive an absolute majority (more than half) of the vote to ensure election. Such a majority can be achieved through a second ballot or by means of preference voting. The second ballot systems are restricted to electing members from single-member electorates while the alternative vote system can be used for both single- and multi-member electorates. In the *Second Ballot* system, two First-past-the-post elections are scheduled.

Candidates who receive more than half of the vote are declared elected. In those electorates where no candidate receives more than half of the vote, there will be a second, or run-off, ballot slip. This may be between the top two candidates on the first count, or it may be between candidates who receive a certain percentage of the vote. The Second Ballot system prevents the election of any candidate without an absolute majority of the vote, thus overcoming one of the main criticisms of plurality systems.

Advantages of Majority Systems

- Majority systems are easier to understand than Proportional Representation systems and can produce relatively speedy results.
- Majority systems prevent the election of any candidate who lacks an absolute majority of the vote, thus overcoming one of the main criticisms of First-past-the-post.
- Majority systems tend to avoid the situation where a candidate can be elected on a very small percentage of the vote.

- Preferential Voting is less cumbersome than the Second Ballot system because it removes the need for voters to have to return to the polling booth on a second occasion.
- Preferential Voting also lessens any perceived dangers of vote-splitting. Voters can give preferences to two similar candidates lessening the fear that a third and unacceptable candidate may be elected.
- Where 'optional' Preferential Voting is used, voters are required only to cast a first preference vote, and therefore, can avoid expressing 'preferences' for candidates they may dislike.

Disadvantages of Majority Systems

- The principal disadvantage of Majority systems is that results do not always reflect the wishes of the electorate.
- Preferential Voting can often be capricious in its practical application and can result in the election of the least unfavoured rather than the most popular candidate.
- When the Second Ballot is used, the need for a second contest results in greater expense for the candidates and parties involved, greater inconvenience to the electors, and it delays the result of an election causing uncertainty.
- As with Plurality systems, many votes are 'wasted' because individual candidates win many more votes than is required.
- When Preferential Voting arrangements require the allocation of preferences to all candidates on the ballot paper, voters may be required to express 'preferences' for candidates whom they oppose.

- Because many votes may exhaust (have no further preferences to be counted) when 'optional' Preferential Voting is used, it is possible for a candidate to win a seat with fewer than half of the formal votes cast.
- Under 'optional' Preferential Voting, if too many voters cast just a single preference, the system becomes a *de facto* First-past-the-post system defeating a major reason for the creation of Preferential Voting.

1.6.3. PROPORTIONAL REPRESENTATION SYSTEM

Proportional Representation (PR) is the general name for a class of voting systems that attempt to make the percentage of offices awarded to candidates reflect as closely as possible the percentage of votes that they received in the election. It is the most widely used set of electoral systems in the world, and its variants can be found at some level of government in almost every country.

The most straightforward version of PR is simply to award a party the same percentage of seats in parliament as it gets votes at the polls. Thus, if a party won 40% of the vote, it would receive 40% of the seats. However, there are clear problems with such a system: Should parties that receive only 0.001% of the vote also be represented? What happens if the voting percentages do not translate evenly into seats? How do you award a party 19.5 seats if it got 19.5% of the vote? More sophisticated PR systems attempt to get around these problems. Two of the most widely used are discussed below.

I. Party List Systems

Under party list forms of PR, voters normally vote for parties rather than for individual candidates. In a *closed party list system* the parties themselves determine who will fill the seats that they have been allocated. Voters vote only

for a particular party and then it is up to the party to decide which party members will actually serve as representatives. Legislative elections in Israel and Germany are conducted according to this system. Under *an open party list system*, voters are given some degree of choice among individual candidates, in addition to voting for entire parties. Denmark, Finland, Italy, Luxembourg and Switzerland all have versions of open party list systems.

Under all party list systems, one still needs some method for allocating seats to individual parties. One commonly used method is named for the nineteenth-century Belgian mathematician Victor d'Hondt, and is normally referred to as a *"highest average method using the d'Hondt formula."*

For example, assume that we have an election with 1,000 total voters in which five parties (A, B, C, D, and E) have gained 100 (10%), 150 (15%), 300 (30%), 400 (40%), and 50 (5%) votes respectively. Assume also that, in our electoral constituency, there are 3 seats up for election; that all votes cast are valid; and that the electoral system has a 7% **vote threshold**, (that is, parties must get at least 7% of the total valid votes cast in order to participate in the distribution of seats.) Party E would, thus, be eliminated from competition at the outset. The d'Hondt method of seat allocation then proceeds in the following steps.

1. Place the total number of votes earned by the competing parties (A, B, C, and D). E has been eliminated in a row.

100 150 300 400

2. Divide each figure in the row by 1, 2, 3, . . . , n. (How far the division you take varies? The more seats you have to allocate, the further you have to divide. For our purposes, 3 or 4 divisions should do the trick.)

	<u>Party A</u>	<u>Party B</u>	<u>Party C</u>	<u>Party D</u>
	100	150	300	400
div. by 1	100	150	300	400
div. by 2	50	75	150	200
div. by 3	33	50	100	133
div. by 4	25	37.5	75	100

3. Pick the highest quotient in the list (including the quotients obtained by dividing the votes by 1). The highest quotient is “400” in the Party D column. We, therefore, award one seat to Party D.

4. Pick the next highest quotient in the list. The next highest quotient is “300” in the Party C column. We, therefore, award one seat to Party C.

5. Pick the next highest quotient in the list. The next highest quotient is “200” in the Party D column. We therefore award another seat to Party D. We have successfully filled all the seats available in this constituency.

The final results of the election are therefore:

Party C 1 seat (or 33% of the total available seats) and
Party D 2 seats (or 66% of the total available seats)

Notice why we call this system “proportional representation”. Under a plurality system, Party D would have received 100% of the seats because that party received a plurality (40%) of the vote even though 60% of the voters voted *against* Party D by choosing other parties. Under PR, however, we are able to represent some of the interests of the other voters. Party D’s representation in parliament is reduced to 66% of seats while Party C’s is increased to 33% of seats. The system

yields a result that is clearly not perfectly proportional. But, the distribution more closely approximates the actual percentage of votes that each party received than would a plurality or majority system.

The d'Hondt method is only one way of allocating seats in party list systems. Other methods include the *Saint-Lague* method where the divisor is the set of odd numbers (1, 3, 5, 7, 9, . . . , n) and the *modified Saint-Lague* method used in Denmark, Norway and Sweden, where the divisor is 1.4 plus the set of odd numbers (1.4, 3, 5, 7, 9, . . . , n). Other methods divide the votes by a mathematically derived quota such as the *Droop quota* or the *Hare quota*.

One other feature of party list systems is called the *vote threshold*. Party list systems normally establish by law an arbitrary percentage of the vote that parties have to pass before they can be considered in the allocation of seats. The figure ranges from 0.67% in the Netherlands to 5% in Germany and Russia, or even more. Any party that does not reach the threshold is excluded from the calculation of seats. The vote threshold simplifies the process of seat allocation and discourages fringe parties (those that are likely to gain very few votes) from competing in the elections. Obviously, the higher the vote threshold, the fewer the parties that will be represented in parliament.

II. Single Transferable Vote (STV)

STV is another important form of proportional representation. In various forms, it is used widely in many countries although only Ireland, Australia and Malta have used it in major national elections. Other countries have used it in local elections.

STV was originally developed by Thomas Hare (1806-1891), a British politician whose writings greatly influenced the views of the philosopher John Stuart Mill. Under STV, voters vote for individuals, not for parties as in the party list system. The key feature of STV is that individual voters rank candidates according to their 1st, 2nd, 3rd, . . . , nth choices. Rather than simply voting for a single candidate, voters have the opportunity to express a range of preferences for several candidates on the ballot. Like party list systems, STV depends on having multi-member constituencies.

The complicated part of STV is tabulating the seats to be awarded after the votes have been cast. As with party list systems, there are a number of mathematical formulas that one can use to accomplish this task. One of the most widely used methods is known as the **Droop quota**, named after the nineteenth-century thinker and mathematician H. R. Droop. The Droop quota is used to determine the minimal number of votes that an individual candidate must get in order to be awarded a seat. It is calculated using the formula:

$$\left[\frac{V}{S+1} \right] + 1$$

Where V is the total number of valid votes cast in the constituency, and S is the total number of seats up for election in the constituency. Hence, if we have 1,000 votes cast for 3 seats, the Droop quota is $\left[\frac{1,000}{3 + 1} \right] + 1 = 251$. That means, any candidate who is able to get at least 251 votes will be assured of winning a seat. Once the Droop quota has been calculated and all the votes have been collected, we still have to allocate the seats.

In this example, assume that we have 5 candidates (A, B, C, D, E) for 3 seats. In accordance with STV, individual voters have ranked each of these candidates (1 to 5, with one being the first-choice candidate) on their ballots. The allocation of

seats then proceeds according to the following steps--but remember that there are a variety of STV methods in use. We will try to keep things very simple here as done below.

1. Pull each ballot out of the ballot box one at a time and place them in piles according to the first-choice candidate marked on the ballot (e.g. if a ballot indicates candidate C as the first choice, place it in a pile marked "C").
2. As soon as one pile of ballots reaches 251, that candidate is awarded a seat. Let us assume that candidate C was the first to reach the Droop quota of 251 first-choice ballots.
3. Continue drawing ballots out of the ballot box and place them in piles according to the first-choice candidate marked on the ballot. But, since C has already been elected, place any ballot that indicate candidate C as first choice in the pile of the candidate indicated on that ballot as the voter's second choice. For example, if you pull out a ballot that indicates candidate C as first choice and candidate A as second choice, place the ballot in the pile for candidate A since candidate C has already been awarded a seat. In this way, candidate C's surplus votes (i.e. the votes beyond those needed to win a seat under the Droop quota) are "transferred" to the next-choice candidate; hence the name "single transferable vote."
4. Continue with Step 3 until another candidate reaches the 251 mark. Then, continue carrying out Step 3 until you fill all the available seats. For example, let us assume that we have already elected candidate C on first-choice ballots alone, and that by combining second-choice ballots from candidate C with further first-choice ballots from the box, we have also been able to award a seat to candidate A. How do we fill the third seat? We continue in a similar manner as before. Any ballot that list candidate C as the first-choice will be transferred to the second-

choice candidate; if the second-choice candidate turns out to be candidate A (who has also already been elected), then we will transfer them to the third-choice candidate. Similarly, all first-choice ballots for candidate A will be transferred to the second-choice candidate indicated on the ballot; if the second-choice candidate turns out to be candidate C (who has already been elected), the ballot will be transferred to the third-choice candidate and so on.

5. But what happens if, after distributing all first-choice ballots, no further candidates have reached the Droop quota and we still have empty seats to fill? In this case, simply eliminate the candidate with the lowest number of first-choice ballots and transfer those votes to the second-choice candidates. Repeat this step as many times as necessary (always eliminating the lowest vote-getter) in order to reach the number of votes mandated by the Droop quota.

As with party list systems, there are variety of ways to conduct an STV election. For example, instead of using the Droop quota, we might use the **Hare quota** (V / S) or the **Imperial quota** [$V / (S + 2)$]. A country's choice as to which system should be used depends on its history and the degree to which policymakers value genuinely proportional representation.

STV can clearly be rather confusing. Some voters may feel that a plurality system is somehow more "natural," or that STV and other forms of PR are simply "tinkering with the numbers". But, PR in general and STV in particular can yield results that are more truly representative of the choices of individual voters. There is a strong movement for PR in the United Kingdom, with some political leaders arguing that STV should replace the current plurality system for electing parliamentarians to the House of Commons.

Advantages and Disadvantages of STV

Advantages of STV

The advantages claimed for PR generally apply to STV systems. In addition, as a mechanism for choosing representatives, STV is perhaps the most sophisticated of all electoral systems, allowing for choice between parties and between candidates within parties. The final results retain a fair degree of proportionality, and the fact that, in most actual examples of STV, the multi-member districts are relatively small means that a geographical link between voter and representative is retained. Furthermore, voters can influence the composition of post-election coalitions, as has been the case in the Republic of Ireland, and the system provides incentives for interparty accommodation through the reciprocal exchange of preferences between parties.

STV also provides a better chance for the election of popular independent candidates than List PR because voters are choosing between candidates rather than between parties (although a party-list option can be added to an STV election, this is done for the Australian Senate).

Disadvantages of STV

The disadvantages claimed for PR generally also apply to STV systems. In addition to that, STV has the following disadvantages.

- STV is sometimes criticized on the grounds that preference voting is unfamiliar in many societies, and demands, at the very least, a degree of literacy and numeracy.
- The intricacies of an STV count are quite complex. This has been cited as one of the reasons why Estonia decided to abandon the system after its first election. STV requires continual recalculations of surplus transfer values and the like. Because of this, votes under STV need to be counted at

counting centres instead of directly at the polling place. Where election integrity is a salient issue, counting in the actual polling places may be necessary to ensure legitimacy of the vote, and there will be a need to choose the electoral system accordingly.

- STV, unlike Closed List PR, can at times produce pressures for political parties to fragment internally because members of the same party are effectively competing against each other as well as against the opposing party for votes. This could serve to promote 'clientelistic' politics where politicians offer electoral bribes to groups of defined voters.
- STV can lead to a party with a plurality of votes nonetheless winning fewer seats than its rivals. Malta amended its system in the mid-1980s by providing some extra compensatory seats to be awarded to a party in the event of this happening. Many of these criticisms have, however, been proved to be little trouble in practice. STV elections in the Republic of Ireland and Malta have tended to produce relatively stable and legitimate governments comprising one or two main parties

1.6.4 MIXED SYSTEM

The legislature consists of a block of seats that are elected by plurality or majority from single-member districts, and another block of seats that are elected in multi-member districts under a proportional system. The proportional seats are awarded in such a way as to compensate for disproportional effects in the single-member district outcomes.

The three types of electoral system outlined in this paper (plurality, majoritarian and proportional representation) all have advantages and disadvantages. Logic

might suggest that the best electoral system should consist of a combination of individual systems so that the disadvantages of one system might be overcome by the advantages of the others. Some 'mixed' systems have been devised with this aim. An example is Mixed Member Proportional (also known as the Additional Member system) used in Germany, Italy and New Zealand. Part of the parliament (50 per cent in Germany, 25 per cent in Italy, 42 per cent in New Zealand) is elected by Plurality methods, usually from single-member electorates. The remainder of the legislature is chosen from closed party lists so as to ensure that a party's proportion of the national vote is matched in the national parliament. Thus, if a party were to fail to win a single seat despite gaining 15 per cent of the national vote, it would be granted a number of list seats to bring its representation to approximately 15 per cent of the legislature. If the party wins more individual seats than its national vote entitles it, then it keeps those seats in the legislature, which is temporarily increased in number.

Some Mixed systems do not seek to achieve proportionality—often called Parallel Systems. The electoral system used to elect members of the Russian national legislature is such a system, for no provisions exist for representation to be adjusted to achieve proportionality. Voters cast two votes. One of these votes is for a Duma member representing a single-member electorate—of which there are 225 in all. The other vote affects the election of 225 members elected on a proportional basis.³

1.7 General Principles of Election

³Russian 2003 legislative election results. Available at http://en.wikipedia.org/wiki/Russian_legislative_election,_2003 (visited on June 2009)

Election means recruitment of the representatives by the choice of the voters. It may be done in one of the two ways. In case the voters choose a representative by their votes, it is direct election. Different from this, when the voters elect some persons and they elect some other person, it becomes indirect election. For instance, the American voters elect the electors who elect the president. Both methods of election have their merits and demerits. First, we take up the merits of the method of direct election. These are:

- it establishes direct touch between the voters and their chosen representatives,
- it stimulates the interest of the voters in public affairs. It sharpens their political consciousness and makes the public spirited,
- the representative has a particular regard for the wishes of his constituents. He knows that he has to act according to their wishes; in case he desires to be re-elected, and
- it has educative value. When the candidates go to the voters and ask for their votes on the basis of their electoral pledge, it all adds to the political knowledge of the voters.

But, direct election method has its demerits too. These are:

- all voters are not equally intelligent and so clever candidates have more chances to win the voters in their own interest,
- wrong and undesirable methods are adopted by the candidates for securing votes. Even vilification campaigns are launched. Reality is distorted by false propaganda, and
- really good conscientious people avoid such elections though they may prefer to try their fate in direct election.

The method of indirect election has its own merits and demerits. Its merits are:

- it confines the electorate to a small body of person possessing a higher average of political ability and necessarily feeling a keener sense of responsibility,
- it tends to diminish the evils of a party passion and struggle by removing the object of the popular choice by one degree and confining the function of the electorate as a whole to the choice of those upon whom the ultimate responsibility must rest, and
- it is well suited to infant democracy where the number of politically conscious and intelligent people is very small.

The term suffrage indicates entitlement to cast a vote on, by electorate , public election. However, this right was conferred, historically, to certain kind of people. For instance, for John Locke, the right to vote is vested only on those persons who are owners of property. Meaning, non-property owners are excluded from casting a vote. In addition, historically, in the United States of America, until the Fifth Amendment Declaration, the right to vote was conferred to those people who are tax payers and property owners. Yet, this declaration manifested that the right to vote should not be conducted based on discriminatory manner. Moreover, until the 1965 voting right act, blacks were excluded from voting in electoral campaign.

Yet, after world war second, the trend was to abolish voting right based on the discriminatory manner. The tendency was to broaden this right to all groups of people. One can indicate this trend on the Universal Declaration of Human Rights under article 21(3) which states universal suffrage is decisive; in which the will of the people is manifested. Since this law is now serving as international

customary law, the principle of universal suffrage is applicable to the entire world. In addition, in case of Ethiopia, article 54 of the FDRE Constitution stipulates the applicability of universal suffrage.

However, the term universal suffrage is not as such absolute; rather this right is susceptible to certain reasonable limitations. For instance, in our country context, there are certain persons who are excluded from universal suffrage. Some of them are the following:

- minors,
- non Ethiopian citizens,
- legally interdicted persons,
- judicially interdicted persons, and
- non registered persons to vote.

Internationally, this reasonable limitation to the right to vote is also recognized under international covenant on civil and political right.

1.7.1. SECRET VOTING

The other principle of election is performing election through secret voting. This principle is embodied in different international and domestic instruments. From international perspective, UDHR states that genuine election should be conducted by means of secret ballot. Domestically, our constitution states the electors will choose the candidate and provide their will in secret ballot. Therefore, the aforementioned instruments, both domestically and internationally, confirm the need of voting through secret ballot. Moreover secret voting was adopted or used first by Australia, and now serves as a guarantee for securing free and fair suffrage.

However, the question here is why we need to make voting in secret? Before the twenty century, voting was performed in public. And, the practice was, every person who is capable enough to vote was exercising his right through 'loud speech'. Thus, the consequence of this practice was, every body surrounding the place in which election was performed, will simply know the electoral choice. However, in the twenty century, the attitude regarding oral public election would not provide sufficient guarantee for free and fair voting. Voters will not be on equal footing with respect to their intellectual, educational and economic status. This situation makes certain parts of the electorate exposed to the influence of other people, open voting was no longer tolerable because undue influence will be a threat to election, and this threat will no longer be tolerable; and this threat will emanate from the hidden persuasion, intimidation and frustration of the electorate and expose them to the influence of other peoples. Here, the acceptable means of attacking such danger from outside, which is accepted by the entire world state, that is recognized by UDHR is secret voting.

Further more, ICCPR not only obliges member states to make voting in secret but also demands states to take positive measures to ensure the actual opportunity for voters to cast their vote without fear. Yet, secret voting is not the absolute way in which voting is made secret. Voting, as universal suffrage, is also with some limitation; that is some of the people are susceptible to opt their representative on support of the persons with justified and factual reasons. For instance, those disabled persons who are blind or persons without fingers will need other persons' support. This is vividly stated under article(1) of our electoral proclamation, which states "any elector who needs assistant to put a

mark on his ballot paper and insert it into the ballot box has the right to decide his assistance”.

1.7.2. FREE AND FAIR SUFFRAGE

The other principle of election is free and fair suffrage; it is applicable to those persons who have the right to participate on election, has the right to freely or with out any coercion to choose their representative through fair mechanism of participation. This principle is embodied both under intentional and domestic instrument. For instance, UDHR of human right comprises this right by saying the will of the people shall be express through free voting procedures. Locally, electoral proclamation expressed the need for free and fair election process based on the consent of the people.

However, the question is to what extent freedom and fairness is required and what are the parameters of free and fair election? Electorates are with vested right to freely choose their representatives so that their freedom is going to be preserved. The main concern of freedom for electorate is to enable them to make their own decision based on this free will.

Free and fair election process can be achieved via establishing effective, impartial and non-discriminatory procedure for votes registration; setting up ways in which appeal can be proved in case of denial or restriction of voting rights by preserving the absolute right of electorate to choose in secret .The most and decisive criteria of free and fair election is the electoral list; that is a decisive feature of securing free and fair election conduct. This should be designed so as

to enable or qualify citizens to be included, to prevent electoral abuses and fraud by individuals, special interested groups, political parties and the government.

From the point of view of free suffrage, positive measures should be taken to protect the principle of secret ballot suffrage. So, by making this, there will be assurance of voters' right to make their decision with out the influence of others. This is expressed by international covenant of civil and political rights.

1.8 SUMMARY

This chapter has outlined some of the electoral systems in use throughout the world. There are many systems, and an almost infinite number of variations. Proponents of particular electoral systems tend to maintain that their particular system is the best and that all others fail to measure up. However, it should be stressed that there is no such thing that is described as the 'best' electoral system, for no single system satisfies all possible requirements. The most appropriate system for a particular location is the one that best satisfies those requirements that are considered to be the most important by that particular region. A satisfactory electoral system has been defined as one that 'performs a range of tasks reasonably well in a specific context even at the expense of doing none of these tasks superbly well'.

Activities for the Chapter

Dear Students, discuss the following points.

1. What are electoral Systems?
2. What are the *pros and cons* of alternative electoral systems?

3. What would you *recommend* if you are asked to advise about designing the electoral system in either (a) Afghanistan (b) Iraq or (c) Indonesia? And *why*?
4. What are the effects and consequences of electoral systems on democracy?
5. Discuss the General principles of Election ?
6. Dear Student, what do you think characterizes a constitutional democratic state?
7. Explain the following key terms
 - Election
 - Election System
 - Electoral democracy
 - Direct and indirect democracy
 - Plurality System
 - Majority system
 - Proportional representation System
 - Universal Suffrage
 - Secret voting
 - Mixed system
 - First-past-the-post
 - Second ballot
 - Single transferable vote

CHAPTER TWO

INTERNATIONAL EXPERIENCE ON ELECTORAL PRACTICE

Unit Contents:

- 2.1 Introduction
- 2.2 Unit Objective
- 2.3 Electoral law in the United States of America.
 - 2.3.1 Introduction
 - 2.3.2 Electoral College
 - i. Origin of the name (Back ground)
 - ii. Nomination process

- iii. The Popular vote on Election Day
- iv. Arguments against the Electoral College
- v. Arguments in favor of the Electoral College

2.4 Electoral law in Developing countries.

2.4.1 South Africa

- i. General Overview
- ii. Advantaged of PR system in South Africa

2.4.2 India

- i. Introduction
- ii. Indian Electoral system
- iii The Election Process

2.5 Summary

2.1 Unit Objectives

By the end of this chapter, students are expected to:

- understand and comprehend the US electoral system,
- understand and comprehend the South African electoral system,
- understand and comprehend the Indian electoral system, and
- compare and contrast electoral systems of other countries with the Ethiopian electoral system.

2.2 Electoral Law in the United States of America

2.2.1 Introduction

Elections for President and Vice President in the United States are indirect elections in which voters cast ballots for a slate of electors of the U.S. Electoral College, in turn, directly elect the President and Vice President. They occur quadrennials (the count beginning with the year 1792) on Election Day, the Tuesday between November 2nd and 8th. The most recent election occurred on November 4, 2008, the next one is scheduled for November 6, 2012.

The process is regulated by a combination of both federal and state laws. Each state allocates a number of Electoral College electors whose number is equal to the number of its Senators and Representatives in the U.S. Congress. Additionally, Washington D.C. is given a number of electors whose number is equal to the number held by the smallest state. U.S. territories are not represented in the Electoral College.

Under the U.S. Constitution, each state legislature is allowed to designate a method of choosing electors. Thus, the popular vote on Election Day is conducted by the various states, not directly by the federal government. Once chosen, the electors can vote for anyone. But, with rare exceptions like an unpledged elector or faithless elector, they vote for their designated candidates and their votes are certified by Congress in early January.

The nomination process, including the primary elections and the nominating conventions, were never specified in the Constitution and were instead developed by the states and the political parties. Article Two of the United States Constitution originally established the method of presidential elections, including the Electoral College. This was a result of a compromise between those constitutional framers who wanted the Congress to choose the president, and those who preferred a national popular vote. Each state allocates a number of electors whose number is equal to the size of its delegation in both houses of Congress combined. With the ratification of the 23rd Amendment to the Constitution in 1961, the District of Columbia is also granted a number of electors whose number is equal to the number of those held by the least populous state. However, U.S. territories are not represented in the Electoral College.

Constitutionally, the manner of choosing electors is determined within each state by its legislature. During the first presidential election in 1789, only 6 of the 13 original states chose electors by any form of popular vote. Gradually, throughout the years, the states began conducting popular elections to help choose their slate of electors, resulting in the overall, nationwide and indirect election system that exists today.

Under the original system established by Article two, electors could cast two votes to two different candidates for president. The candidate with the highest number of votes becomes the president, and the second-place candidate becomes the vice president. This presented a problem during the presidential election of 1800 when Aaron Burr received the same number of electoral votes as Thomas Jefferson and challenged Jefferson's election to the office. In the end, Jefferson was chosen as the president because of Alexander Hamilton's influence in the House of Representatives. This added to the deep rivalry between Burr and Hamilton, which resulted in their famous 1804 duel.

In response to the 1800 election, the 12th Amendment was passed, requiring electors to cast two distinct votes: one for President and another for Vice President. The Amendment also established rules to be applied when no candidate wins a majority vote in the Electoral College. In the presidential election of 1824, Andrew Jackson received a plurality, but not a majority, of electoral votes cast. The election was thrown to the House of Representatives, and John Quincy Adams was elected to the presidency. A deep rivalry was fermented between Andrew Jackson and House Speaker Henry Clay, who had also been a candidate in the election.

Although the nationwide popular vote does not directly determine the winner of a presidential election, it does strongly correlate with who is the victor. In 52 of the 56 total elections held so far (about 93 percent), the winner of the Electoral College vote has also carried the national popular vote. However, candidates can fail to get most votes in the nationwide popular vote in a Presidential election and still win that election. In the 1824 election, Jackson won both the popular vote and the electoral vote, but it was eventually decided by the House. Then, in

1876, 1888 and 2000, the winner of electoral vote lost the popular vote outright. Numerous constitutional amendments have been submitted seeking to replace the Electoral College with a direct popular vote, but none has ever successfully passed both Houses of Congress. Another alternative proposal is the National Popular Vote Interstate Compact, an interstate compact whereby individual participating states agree to allocate their electors based on the winner of the national popular vote instead of just their respective statewide results.

2.2.2 Electoral College

i. Origin of the Name (Background)

Although the United States Constitution refers to "Electors" or "electors", the name "Electoral College" — or any other name — is never used to describe the collective vote of the electors. It was not until the early 1800s that the name "Electoral College" came into general usage as the collective designation for the electors selected to cast votes for President and Vice President. It was first written into federal law in 1845, and today the term appears in 3 U.S.C. § 4, in the section heading and in the text as "college of electors."

At the Constitutional Convention, the delegates used the Virginia Plan as the basis for discussions, as the Virginia delegation had proposed it first. The Virginia Plan called for the Executive to be elected by the Legislature. Delegates from a majority of states agreed to this mode of election. However, a Committee of Eleven was formed to work out various details including the mode of election of the President, recommended instead that the election be by a group of people apportioned among the states in the same numbers as their representatives in Congress (the formula for which had been resolved in lengthy debates resulting

in the Connecticut Compromise and Three-fifths compromise), but chosen by each state "in such manner as its Legislature may direct." Committee member Gouverneur Morris explained the reasons for the change; among others, there were fears of "intrigue" if the President was chosen by a small group of men who met together regularly, as well as concerns for the independence of the President if he was elected by the Congress. Though some delegates preferred popular election, the Convention approved the Committee's proposal, with minor modifications, on September 6, 1787.⁴

The design of the Electoral College was based upon several assumptions and anticipations of the Framers of the Constitution as stated below:

1. Each state would employ the district system of allocating electors.
2. Each presidential elector would exercise independent judgment when voting.
3. Candidates would not pair together on the same ticket with assumed placements toward each office of President and Vice President.
4. The system as designed would rarely produce a winner, thus sending the election to Congress.

On these facts, scholars have described the intended role of the Electoral College as simply a body that would nominate candidates from which the Congress would then select a President and Vice President.

ii. Nominating Process

⁴ Chang S "Updating the Electoral College: The National Popular Vote Legislation". *Harvard Journal on Legislation* ,Vol 44 (2007)(205, at 208).

The modern nominating process of U.S. presidential elections currently consists of two major parts: a series of presidential primary elections and caucuses held in each state, and the presidential nominating conventions held by each political party. This process was never included in the United States Constitution, and thus evolved over time by the political parties to clear the field of candidates.

The primary elections and caucuses are run by state and local governments. Some states only hold primary elections, some only hold caucuses, and others use a combination of both. These primaries and caucuses are staggered between January and June before the federal election, with Iowa and New Hampshire, traditionally holding the first presidential state caucus and primary respectively.

Like the general election, presidential caucuses or primaries are indirect elections. The major political parties officially vote for their presidential candidate at their respective nominating conventions, usually all held in the summer before the federal election. Depending on each state's law and state's political party rules, when voters cast ballots for a candidate in a presidential caucus or primary, they may be voting to award delegates "bound" to vote for a candidate at the presidential nominating conventions, or they may simply be expressing an opinion that the state party is not bound to follow in selecting delegates to their respective national convention.

iii. The popular Vote on Election Day

Under the constitution, the manner for choosing electors for the Electoral College is determined by each state's legislature. Today, the states and the District of Columbia each conduct their own popular elections on Election Day to help determine their respective slate of electors. Thus, the presidential election is

really an amalgamation of separate and simultaneous state elections instead of a single national election run by the federal government. Like any other election in the United States, the eligibility of an individual for voting is set out in the Constitution and is regulated at state level. The Constitution states that suffrage cannot be denied on grounds of race or color, sex or age for citizens who are eighteen years or older. Beyond these basic qualifications, it is the responsibility of state legislatures to regulate voter eligibility.

Generally, voters are required to vote on a ballot where they select the candidate of their choice. The presidential ballot is a vote "for the electors of a candidate" meaning that the voter is not voting for the candidate, but endorsing a slate of electors pledged to vote for a specific Presidential and Vice Presidential candidate.

Many voting ballots allow a voter to "blanket vote" for all candidates in a particular political party or to select individual candidates on a line by line voting system. Which candidates appear on the voting ticket is determined through a legal process known as ballot access. Usually, the size of the candidate's political party and the results of the major nomination conventions determine who is pre-listed on the presidential ballot. Thus, the presidential election ticket will not list every candidate running for President, but only those who have secured a major party nomination or the size of their political party warrants having been formally listed. Laws are in effect to have other candidates pre-listed on a ticket, provided that enough voters have endorsed the candidate, usually through a signature list.

The final way to be elected for president is to have one's name written at the time of election as a write-in candidate. This is used for candidates who did not fulfill

the legal requirements to be pre-listed on the voting ticket. It is also used by voters to express a distaste for the listed candidates, by writing an alternative candidate for president such as Mickey Mouse or comedian Stephen Colbert (whose application was voted down by the South Carolina Democratic Party). In any event, a write-in candidate has never won an election for President of the United States.

Because U.S. territories are not represented in the Electoral College, U.S. citizens in those areas do not vote in the general election for President. Guam has held straw polls for president since the 1980 election to draw attention to this fact received votes from a majority of the electors. After the choosing of the President, the person with the most electoral votes among the remaining candidates would become the Vice President. If no one received a majority of the votes, the decision would be made by the House of Representatives.

Each state's legislature determines how its electors are to be chosen.⁵ Currently, all states choose electors by popular election on the date specified by federal law. Forty eight states and Washington D.C. employ the winner-takes-all method, each awarding its electors as a single bloc. Two states, Maine and Nebraska, select one elector within each congressional district by popular vote, and additionally select the remaining two electors by the aggregate statewide popular vote. The current system of choosing electors is called the "short ballot." In all states, voters choose among slates of candidates for the associated elector; only a few states list the names of the electors on the ballot. In some states, if a

⁵ United States Constitution, Article II, Section 1. "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed as an Elector."

voter wishes to write in a candidate for President, the voter also is required to write-in the names of candidates for elector.

iv. Arguments against the Electoral College

1. Irrelevancy of National Popular Vote

The elections of 1876, 1888 and 2000 produced an Electoral College winner who did not receive the plurality of the nationwide popular vote. In 1824, there were six states in which electors were legislatively appointed rather than popularly elected. So, the true national popular vote is uncertain. When no candidate received a majority of electoral votes in 1824; the election was decided by the House of Representatives and thus could be considered distinct from the latter three elections in which all of the states had popular selection of electors. Opponents of the Electoral College claim that such outcomes do not logically follow the normative concept of how a democratic system should function.

Outcomes of this sort are attributable to the federal nature of the system. From such a configuration, argue supporters of the Electoral College, candidates must build a popular base that is geographically broader and more diverse in voter interests. This feature is not a logical consequence of having intermediate elections of Presidents rather the winner-takes-all method of allocating each state's slate of electors with the exception of Maine and Nebraska. Allocation of electors in proportion to the state's popular vote would reduce this effect.

Scenarios exhibiting this outcome typically result when the winning candidate has won the requisite configuration of states (and thus their votes) by small margins while his opponent captured large voter margins in the remaining

states. Given the allocation of electors in 2000, it is possible a candidate could win with only a small margin of support in the 11 largest states. In such an example, the very large margins secured by the losing candidate in the other states would aggregate to well over 50 percent of the ballots cast nationally. Claims that the Electoral College suppresses the "popular will" are therefore open to debate.

A result of the present functionality of the Electoral College is that the national popular vote bears no legal or factual significance on determining the outcome of the election. Since the national popular vote is irrelevant, both voters and candidates are assumed to base their campaign strategies around the existence of the Electoral College; any close race has candidates campaigning to maximize electoral votes by capturing coveted swing states, not to maximize national popular vote totals.

2. Focus on Large Swing States

Most states use a winner-take-all system, in which the candidate with the most votes in that state receives all of the state's electoral votes. This gives candidates an incentive to pay the most attention to states without a clear favorite, such as Pennsylvania, Ohio, and Florida. For example, California, Texas, and New York, in spite of having the largest populations, have in recent elections been considered safe for a particular party (Democratic for California and New York, Republican for Texas), and therefore candidates typically devote relatively few resources, in both time and money, to such states.

It is possible to win the election by winning eleven states and disregarding the rest of the country. If one ticket were to take California (55 votes), Texas (34), New York (31), Florida (27), Illinois (21), Pennsylvania (21), Ohio (20), Michigan

(17), Georgia (15), New Jersey (15), and North Carolina (15), that ticket would have 271 votes, which would be enough to win. In the close elections of 2000 and 2004, these eleven states gave 111 votes to Republican candidate George W. Bush and 160 votes to Democratic candidates Al Gore and John Kerry. In 2008, the Democratic candidate Barack Obama won nine of these eleven states (for 222 electoral votes), with Republican John McCain taking a combined 49 electoral votes from Texas and Georgia.

Proponents of the Electoral College claim that adoption of the popular vote would simply shift the disproportionate focus to large cities at the expense of rural areas. Candidates might also be inclined to campaign hardest in their base areas to maximize turnout among core supporters, and ignore more closely divided parts of the country. Whether such developments would be good or bad is a matter of normative political theory and political interests of the voters in question.

3. Discourages Turnout and Participation

Except in the few closely fought swing states, it does not matter how many people turn out to vote. The Electoral College eliminates any advantage to a political party or campaign for encouraging voters to turn out, except in those swing states.⁶ If the presidential election were decided by a national popular vote, in contrast, campaigns and parties would have a strong incentive to work to increase turnout everywhere. Individuals would similarly have a strong incentive to persuade their friends and neighbors to turn out to vote. The differences in turnout between swing states and non-swing states under the current electoral college system suggest that replacing the Electoral College with

⁶Nivola, Pietro *Thinking About Political Polarization*, Brookings Institution Policy Brief, (January 2005), Available at http://www.brookings.edu/~media/Files/rc/papers/2005/01politics_nivola/pb139.pdf (visited dec/2009).

direct election by popular vote would likely increase turnout and participation significantly.

4. Allows states to disenfranchise citizens without penalty

If a state makes it harder for its citizens to vote, whether by making voting more difficult, or by legally disenfranchising some citizens (such as those convicted of felonies) from voting, and turnout in the state is reduced as a result, the Electoral College insulates the state from being penalized. In fact, legal scholars Akhil Amar and Vikram Amar point out that the original compromise of the Electoral College was largely due to this very fact. Direct national election of the President (which was proposed by a delegate from Pennsylvania) would have enabled the North to outvote the South because "the South would get no credit for its half-million slaves, none of whom, of course, would be able to vote. The Electoral College system that ultimately emerged gave the South partial – three-fifths – credit for its slaves." The states were thus allowed to disenfranchise large numbers of citizens while maintaining the same influence in the Electoral College. Akhil and Vikram Amar note, "The founders' system also encouraged the continued disenfranchisement of women. In a direct national election system, any state that gave women the vote would automatically have doubled its national clout. Under the Electoral College, however, a state had no such incentive to increase the franchise; as with slaves, what mattered was how many women lived in a state, not how many were empowered."

The Electoral College continues to insulate states from losing any influence when they disenfranchise or suppress the votes of their citizens, whether through voter suppression, through making it more difficult or expensive to vote, or through actually taking away some citizens' votes by law. "Even today, a state with low voter turnout gets precisely the same number of electoral votes as if it had a high

turnout. By contrast, a well-designed direct election system could spur states to get out the vote."

5 Favors less populous states

As a consequence of giving more per capita voting power to the less populated states, the Electoral College gives disproportionate power to those states' interests. Democrats often assert that the Electoral College system favors the Republican Party by disproportionately boosting the electoral weight of the less populous states, which have tended historically to vote Republican. In fact, on all three occasions that the electoral vote winner and popular vote winner has been different, the Republican party won the election. While this argument does apply to the 2000 election, it is debatable whether it helps to explain the 1876 and 1888 results, since in these cases the small states were more evenly divided.

In one countervailing analysis, the Banzhaf Power Index (BPI) model based on probability theory was used to test the hypothesis that citizens of small states accrue more election power. It was found that in 1990, individual voters in California, the largest state, had 3.3 times more individual power to choose a President than voters of Montana, the largest of the minimum 3 elector states. Banzhaf's method has been criticized for treating votes like coin-flips, and more empirically-based models of voting yield results which seem to favor larger states less.

v. Arguments in favor of the Electoral College

1. Prevents an urban-centric victory

Proponents of the Electoral College claim the Electoral College prevents a candidate from winning the Presidency by simply winning in heavily populated

urban areas. This means that candidates must make a much wider appeal than they would if they simply had to win the national popular vote.⁷

2. Maintains the federal character of the nation

The United States of America is a federal coalition which consists of component states. Proponents of the current system argue that the collective opinion of even a small state merits attention at the federal level greater than that given to a small, though numerically-equivalent, portion of a very populous state. The system also allows each state the freedom, within constitutional bounds, to design its own laws on voting and enfranchisement without an undue incentive to maximize the number of votes cast.

For many years early in the nation's history, up until the Jacksonian Era, many states appointed their electors by a vote of the state legislature, and proponents argue that, in the end, the election of the President must still come down to the decisions of each state, or the federal nature of the United States will give way to a single massive, centralized government.

3. Enhances status of minority groups

Far from decreasing the power of minority groups by depressing voter turnout, proponents argue that, by making the votes of a given state an all-or-nothing affair, minority groups can provide the critical edge that allows a candidate to win. This encourages candidates to court a wide variety of such minorities and interest groups.

4. Encourages stability through the two-party system

⁷ Berg-Andersson(supra note 7)

Many proponents of the Electoral College see its negative effect on third parties as a good thing. They argue that the two party system has provided stability through its ability to change during times of rapid political and cultural change. They believe it protects the most powerful office in the country from control by what these proponents view as regional minorities until they can moderate their views to win broad, long-term support from across the entire nation.

5. Death, Legally Defined Disability to Execute the Office or Legal Disqualification from Office of a candidate

The Constitution grants each state the right to appoint electors in a manner chosen by that state. While it is common to think of the electoral votes impersonally, as mere numbers, the Electoral College is in fact made up of real people (usually party regulars of the party whose candidate wins each state) with the capacity to adapt to unusual situations. That capacity might be particularly important if, for example, a candidate were to die or become in some other way legally disabled or disqualified to serve as President or Vice President. Advocates of the current system argue that these electors could then choose a suitable replacement (who would most likely come from the same party of the candidate who won the election) more competently than could the general voting public. Furthermore, the time period during which such a death or the onset of such a legal disability or disqualification might call for such an adaptation extends, under the Electoral College system, from before Election Day (many states cannot change ballots at a late stage) until the day the electors vote (the first Monday after the second Wednesday of December).

Thus, until the electors cast their votes, it is not a federal issue, per se, but a state's rights issue and state laws (should) regulate the situation. In Virginia, for

instance, the law clearly states that the electors must vote for the name of the candidate whom they represent on the ballot, and therefore these electors are not able to adapt to unusual situations, unless they are willing to violate the law, and suffer the penalties for so doing.

6. Isolation of election problems

Some supporters of the Electoral College note that it isolates the impact of any election fraud, or other such problems, to the state where it occurs. It prevents instances where a party dominant in one state may dishonestly inflate the votes for a candidate and thereby affect the election outcome. For instance, recounts occur only on a state-by-state basis, not nationwide.

7. Neutralizes turnout disparities between states

There are factors that affect the turnout around the country. Weather can vary greatly across a large nation, rain or winter storms can impact voter participation in affected states. In addition, when a state has another high profile contest, such as a hotly contested Senate or gubernatorial race, turnout in that state can be affected. Because the allocation of electoral votes is independent of each state's turnout, the Electoral College neutralizes the effect of all such turnout disparities between states.

8. Maintains separation of powers

The Constitution separated government into three branches that check each other to minimize threats to liberty and encourage deliberation of governmental acts. Under the original framework, only members of the House of Representatives were directly elected by the people, with members of the Senate chosen by state

legislatures, the President by the Electoral College, and the judiciary by the President and the Senate. The President was not directly elected in part due to fears that he could assert a national popular mandate that would undermine the legitimacy of the other branches, and potentially result in tyranny.

2.3 Electoral Law in Developing Countries

2.3.1 SOUTH AFRICA

I. General Overview

South Africa's transition through the National Peace Accord 1993, which paved the way for the Convention for a Democratic South Africa (CODESA) forum, was negotiated with the principles of establishing a multi-party democracy in the country. The document ensured that the stakeholders (political parties, the police and security forces) agreed on certain principles or rather the codes of conduct while the political groups had in common a vision to establish a multiparty democracy in a non-violent and peaceful manner.

The constitution adopted in 1996, two years after the first democratic elections, prescribed for an electoral system that "results in general, in proportional representation". As a result, South Africa chose to have a Proportional Representation (PR) closed list system (herein referred to as a PR system) for an electoral system at national and provincial level of government. At the local government level, the country has a mixed electoral system where half of the councillors are elected through a PR list process while the other half is elected through local representation at ward level (that is, by a constituency system).

The absence of an electoral threshold means the country's national electoral system is truly proportional, that is, every vote counts. There are currently (since 2007) 15 political parties represented in the National Assembly, this is up from 7 in 1994, and 13 in the 1999 elections. There is even a one-member party in Parliament. The increase in the number of political parties across legislatures was also a result of the floor-crossing legislation adopted in 2002 by which Parliament amended the Constitution to allow elected representatives to change their political affiliations without losing their seats at national, provincial and local levels. One, therefore, can assert that South Africa's Parliament personifies the demographics of its people in the diversity of its make-up and its opinions, which transmits and directs this diversity in the political process of legislation making.

There is currently an ongoing debate on whether the electoral system should be revised. This is because the representatives in national and provincial legislatures are elected by their respective parties through a party list system instead of being elected by the people through a First Past The Post (FPTP) system, often referred to as a Constituency system. The proponents of the electoral change argue that Members of Parliament (MPs) are more accountable to their political parties in the PR system, therefore, eliminating the basic tenet of accountability in a democracy.

Elections in South Africa take place on national, provincial, and local levels. South Africa has a multi-party democracy with the African National Congress in power with a significant majority since 1994. Although South Africa's democracy is rated as flawed in the Democracy Index Survey conducted by the Economist, its score for electoral process is the same as that of the United States and Japan. A

system of proportional representation, incorporating party lists, is in place, which makes it possible for small parties to achieve representation in parliament.

The parliament has two chambers, and elects the president. The National Assembly has 400 members, and is elected for a five year term. The National Council of Provinces has 90 members, and is elected for a five year term by the provincial parliaments. The National Assembly and Provincial Councils are elected when General Elections are held. The National Assembly seats are allocated using a proportional representation system with closed lists. Seats are first allocated according to the (integer part of the) Droop quota. Thereafter, the most five seats are allocated using the largest remainder method (using the Droop quota). Any additional seats are allocated amongst the parties who then already will have seats using the highest averages method.

Voters have one vote at elections to the National Assembly. Seats are allocated in ten multi-member constituencies via party lists. One constituency is a national or 'at large' constituency and nine others represent each of the nine provinces. The lists were called the national lists and regional lists in the 2009 election. The word 'Regional' was used to avoid confusion with the provincial legislature elections held at the same time. Previously, they were called 'National to National' and 'Provincial to National'. Parties decide whether they want to set up both national and provincial lists or only provincial lists. If all parties choose national lists, then half of the members will come from the national 'at large' constituency and half from the nine provincial constituencies. If no party chooses a national list then all members will come from the nine provincial constituencies. In the 2009 election, one party chose not to use a national list resulting in 168 members being

elected from the national constituency and 232 from the nine provincial constituencies.

The National Council of Provinces (NCOP) is the upper house of the Parliament of South Africa under the (post-apartheid) constitution, which came into full effect in 1997. It replaced the former Senate, but is very similar to that body, and to many other upper houses of legislatures throughout the world, in that its purpose is to represent the specific viewpoints of individual provinces.

The NCOP consists of representatives from the nine provinces. Each province has 10 delegates in the NCOP. These delegates are elected by the Provincial Legislature according to the strength of the parties in the legislature. Members of the provincial delegation in NCOP are directly accountable to the Provincial Legislature. However, they also have an obligation to take account of the national interest. The South African Local Government Association (SALGA) is also represented in the NCOP, but does not have the same kind of power as provinces.

Election to the NCOP is indirect. Citizens vote for provincial legislatures. Each of these legislatures then nominates a delegation of ten members to the NCOP. The delegation, which includes the premier, must reflect the proportion of each political party in the provincial legislature. Thus, each of South Africa's nine provinces has equal representation in the Council regardless of population. A delegation from the South African Local Government Association (SALGA) may also attend sittings of the NCOP, but may not vote.

The NCOP has two decision making mechanisms depending on the type of Bill. In the first mechanism, bills are passed if the majority of members vote for that bill. In the second, each provincial delegation may cast one vote. In such cases, legislation is passed if five of the nine provinces vote in favour. A bill proposing a Constitutional Amendment requires the approval of six provincial delegations before going to the National Assembly for approval. The NCOP may consider, amend, propose amendments, or reject legislation. It must consider all national bills, and also has the power to initiate legislation which relates only to the provinces or in areas in which both the national and provincial governments have powers to make law.

Members to the local governing councils in the municipalities and mayors are elected in municipal elections.

ii. Advantages of a PR system in South Africa

South Africa's current electoral system is truly representative and this is reflected at both national and provincial legislatures through the diversity in the members.

There are four principles that run through the current electoral system:

- *Fairness*: every vote counts and all votes are equal (hence, there is no electoral threshold). This is also based on the history of the country where for a long period Blacks and Africans in particular were disenfranchised under the Apartheid regime.
- *Inclusivity*: to ensure demographic and political inclusivity
- *Simplicity*: it would accommodate even the illiterate in the society
- *Accountability*: to live to the connotation that democracy is the governance of the people by the people.

There is a consensus that the PR system has produced a system where the minority groups have a voice in the legislation-making sphere of government regardless of the political majority attained by the African National Congress (ANC). The preoccupation of South Africa during the negotiations was the concern of the representation of minorities in a system dominated by a political majority. The ANC in particular was concerned about the dangers of too much local representation within a racially divided urban system undermining attempts to create a municipality-wide focus on longer-term development issues. The ANC, for example, has used the PR system internally to ensure that the lists are representative of marginal and minority groups in the country.

The ANC claims that it attempts to transform society. Hence, the party's guidelines for its internal list processes that is used to elect MPs reflects key objectives of creating a united, non-sexist, non-racial and democratic society. The guidelines normally include factors such as geographical representivity, racial, ethnic, linguistic representation, skills, interest groups, 50% representation of women in all party structures in order to comply with the party's Constitution.

Although the above highlights the success of a PR system, the setback of this system is the power of the party in determining representation and the benefits that accrue to people elected to positions of leadership in legislatures. This scenario creates a political milieu whereby it is in the interests of the aspirant and the elected politicians to behave in ways that please the party leadership, rather than Constituents.

It is, therefore, evident that the current electoral system has done very well in ensuring and maintaining three of its principles, that is, it remains fair, inclusive and simple. Accountability, however, remains a challenge.

2.3.2 INDIA

i. Introduction

India held general elections to the 15th *Lok Sabha* in five phases between 16 April 2009 and 13 May 2009. With an electorate of 714 million (larger than the European Union and United States combined), it was the largest democratic election in the world to date. By constitutional requirement, elections to the *Lok Sabha* (lower house of the parliament of India) must be held every five years, or whenever Parliament is dissolved by the President of India.

ii. Indian Electoral System

The Parliament of India comprises the head of the country – the president – and the two Houses which are the legislature. The President of India is elected for a five-year term by an electoral college consisting of members of federal and state legislatures. The Parliament of India has two chambers. The House of the People (*Lok Sabha*) has 545 members, 543 members elected for a five-year term in single-seat constituencies and two members appointed to represent the Anglo-Indian community, (as envisaged by the Constitution of India, as of now the members of *Lok Sabha* are 545, out of which 543 are elected for 5-year term and 2 members represent the Anglo-Indian community). The two unelected members are a relic from the past. The 550 members are elected under the plurality ('first past the post') electoral system.

Council of States (*Rajya Sabha*) has 245 members, 233 members elected for a six-year term, with one-third retiring every two years. The members are elected by legislators of the state and union (federal) territories. The elected members are chosen under the system of proportional representation by means of the Single Transferable Vote. The twelve nominated members are usually an eclectic mix of

eminent artists (including actors), scientists, jurists, sportspersons, businessmen and journalists and common people.

iii. The Election Commission of India

Elections in India are conducted by the Election Commission of India, an authority created under the Constitution. It is a well established convention that once the election process commences, no courts intervene until the results are declared by the election commission. During the elections, vast powers are assigned to the election commission to the extent that it can function as a civil court, if needed.

The Election Commission of India is an autonomous, quasi-judiciary constitutional body of India. Its mission is to conduct free and fair elections in India. It was established in January 25, 1950 under Article 324 of the Constitution of India. The commission presently consists of a Chief Election Commissioner and two Election Commissioners, appointed by the president.

The Election Commission enjoys complete autonomy and is insulated from any kind of executive interference. The body also functions as a quasi-judiciary body in matters of electoral disputes and other matters involving the conduct of elections. Its recommendations and opinions are binding on the President of India. However, the decisions of the body are liable to independent judiciary reviews by courts acting on electoral petitions.

The Election Commission is responsible for planning and executing a whole amount of complex operations that go into the conduct of elections. During the elections, the entire Central (Federal) and State government machinery including

para-military forces and the Police is deemed to be on deputation to the Election Commission, which takes effective control of personnel, movable and immovable Government Properties it deems necessary for successful completion of the electoral process. Apart from conducting elections to representative bodies, the Election Commission has been on many occasions, called upon by the Courts to oversee and execute elections to various governing bodies of other autonomous organizations such as Syndicates of Universities, statutory professional bodies, etc. The following are the principal functions of the Election Commission of India:

1. demarcation of Constituencies,
2. preparation of Electoral Rolls,
3. recognition of Political parties and allotment of symbols,
4. scrutiny of nomination papers,
5. conduct of polls, and
6. scrutiny of election expenses of candidates

iv. Electoral Process

Electoral Process in India takes at least a month for state assembly elections with the duration increasing further for the General Elections. Publishing of electoral rolls is a key process that happens before the elections and is vital for the conduct of elections in India. The Indian Constitution sets the eligibility of an individual for voting. Any person who is a citizen of India and who is above 18 years of age is eligible to enroll as a voter in the electoral rolls. It is the responsibility of the eligible voters to enroll their names. Normally, voter registrations are allowed in the latest one week prior to the last date for nomination of candidates.

Pre elections

At first, before the elections the dates of nomination, polling and counting takes place. The model code of conduct comes in force from the day the dates are announced. No party is allowed to use the government resources for campaigning. The code of conduct stipulates that campaigning should be stopped 48 hours prior to polling day. For Indian states, pre-election is a must.

Voting Day

Campaigning ends the day before the voting day. Government schools and colleges are chosen as polling stations. The Collector of each district is in charge of polling. Government servants are employed to many of the polling stations. Electronic Voting Machines (EVMs) are being increasingly used instead of ballot boxes to prevent election fraud via booth capturing, which is heavily prevalent in certain parts of India. An indelible ink manufactured by the *Mysore Paints and Varnish Limited* usually is applied on the left index finger of the voter as an indicator that the voter has cast his vote. This practice has been followed since the 1962 general elections to prevent bogus voting.

Post elections

After the Election Day, the EVMs are stored in a strong room under heavy security. After the different phases of the elections are completed, a day is set to count the votes. The votes are tallied typically, the verdict is known within hours. The candidate who has mustered the most votes is declared the winner of the constituency. The party or coalition that has won the most seats is invited by the President to form the new government. The coalition or party must prove its

majority in the floor of the house (Lok Sabha) in a vote of confidence by obtaining a simple majority (minimum 50%) of the votes in the house.

Activities for Chapter Two

Dear student, assess your progress with the following questions.

1. Describe the electoral law system of USA and compare and contrast it with our electoral system.
2. What do you understand by electoral College in the U.S?
3. Describe and explain the electoral system of South Africa and its contribution towards the democratization of the country.
4. Describe the electoral law system of Indian and compare and contrast it with our electoral system.

CHAPTER THREE

ELECTION IN ETHIOPIA

Unit Contents:

- 3.1. Introduction
- 3.2 Unit Objectives
- 3.3. Brief History of Election in Ethiopia
 - 3.3.1 Election during the Emperor Era
 - 3.3.2 Election during the *Derg* regime
 - 3.3.3 Election during the transitional Period
 - 3.3.4 The 1992, 1995, 2000 and 2005 Elections
- 3.4. Major problems observed in the Ethiopian Election History
- 3.5 Current Legal Framework of Election in Ethiopia
- 3.6 Summary

3.1 INTRODUCTION

This unit is a survey of the election history of Ethiopia. It seeks to develop the historical aspect of election starting from the emperor era up to the 2005 election of Ethiopia. The unit draws the distinctions among the various major elections held in the country. Section one is about the election history of Ethiopia in chronological order. The second section deals with the major problem observed during elections held specially during the 1992 – 2005 democratic election of the country. Finally, the last section provides a highlight of the current legal frame of election, and detail discussions of these laws will be made in the subsequent units.

3.2. UNIT OBJECTIVES

At the end of this unit, students will be able to:

- explain the election process during the Emperor Era,
- define the election process during the *Derg* regime,
- explain the Election process during the transitional period,
- compare and contrast the various major election processes of the three regime,
- examine the different major problems observed during the few democratic elections held in the country, and
- determine the relevance of the current legal frame work of election in Ethiopia for the establishment of democracy in the country.

3.3 A Brief History Of Election In Ethiopia

Though it is an ancient country, Ethiopia got an effective central government in 1889 when Menelik II became an Emperor. Since then, the country passed through the following systems, (Political evolution since 1889).

1889-1935: Absolute monarchy.

1936-1941: Italian occupation.

1942--1974: Absolute Monarchy.

1975-1984: Military rule.

1985-1987: A mix of military and one-party dictatorship.

1988-1991: One party rule (Worker's Party of Ethiopia seized power).

1992-1995: Transitional government.

1996- to date : Emerging democracy.

3.3.1 Election and the Emperor Era

In Ethiopia, election seems to have emerged since kings started to appoint landlords in a nearby regime. However, it was only after the enactment of the 1930 constitution that landlords and elderly advisors of the king were elected in accordance with the law. Accordingly, by 1931, the first Ethiopian Council/Parliament was established and it functioned until 1935.

After the expulsion of the Italian troops, the second election in the history of Ethiopia was conducted in 1942. The then parliament had stayed in office until 1955, which is for 14 years, advising the king. Since the 1955 Revised Constitution had been promulgated and until 1974 when the *Derg* assumed power, elections were conducted. As a result, one can conclude that, in one way or another during the Emperor era, the public were made to have certain understanding about election.

3.3.2 Election during the *Derg* regime

The *Derg* government, when it assumed power in 1974, dissolved the parliament members elected during the emperors time, and suspended election for mean while. As the *Derg* was follower of the communist ideology of the eastern world, and its legitimacy was at stake due to internal problems and public strikes, there were grounds for it to think about election.

The *Derg* has enacted a constitution in 1987 to alleviate the problem of public strike and to change the external military feature. According to this constitution public representatives were made to be elected. However, as the constitution it self was the direct copy of the constitution of the then Soviet Union, it could not help bring about free and direct election in the country.

3.3.3 Election during the Transitional Period

Following the ouster of the military regime in Ginbot 20, 1991 (Ethiopian Calendar), EPRDF has been taking concrete measures to democratize the country. The foundation for multi-party system of government was laid at the July 1-5, 1991 conference of all political parties and a number of armed groups. The conference, held in Addis Ababa, was the first ever peaceful dialogue between different political parties of the country. A delegation of 24 nationality movements and representatives of armed groups such as the Ethiopian Democratic Union (EDU), Oromo Liberation Front (OLF), Afar Liberation Front (ALF) and others took part in this conference. Subsequently, some 29 political parties attending the conference shared 82 seats of the Transitional Government, out of which 32 seats went to EPRDF, 12 seats to Oromo Liberation Front, 4 seats to Sidama Liberation Front, 3 seats each to Oromo Islamic Liberation Front, Afar Liberation Front, and the Islamic Front Liberation Organization. The rest seats were shared by the remaining parties. The conference, thus, heralded democracy to the country that languished in tyranny for centuries.

Thus, it is not difficult to understand that the then election was pioneer in its kind and coverage although the election was not perfect. There were some problems encountered. To mention some:

- boycotting of some political parties from the election,
- the establishment of the election board was through the composition of political parties and hence highly criticized for being partial,
- armed groups interference in certain areas (e.g. Region 4), and
- financial problem of the election board.

3.3.4 The 1992, 1995, 2000 and the 2005 Elections of Ethiopia

The First Multi-party Election (1992)

After the establishment of the transitional government in June 1991 and enactment of the Charter, there was a plan to conduct election within three months of time to establish regional administration. However, for different political reasons, that intended election was not realized until June 1992.

Ethiopia exercised its first ever contested multi-party election in June 21, 1992. Only the Oromo Liberation Front (OLF), which took part in the July conference that formed the TG, won 12 seats while EPRDF won the remaining seats. The election comprised not less than 26,000 constituencies. Fifty-two political parties and around 3,000 individual candidates had participated.

Election 1995

After President Mengistu Haile Mariam fled the country, a national conference in July 1991 led to the creation of the Transitional Government of Ethiopia (TGE). The TGE's main goal was to establish a Constitution for a federal republic, as well as create orderly elections for the legislative arm of that republic. On 5 January 1995, the National Election Board of Ethiopia (NEBE) set the date for the general elections which would mark the end of the transition for May of that year.

At this juncture seven national parties and 57 regional political parties secured certificates of legal personality from the National Electoral Board of Ethiopia (NEBE). The first federal legislative election had also independent candidates. Opposition political parties, though registered, boycotted the election. All

Amhara People's Organization (AAPPO), Council of Alternative Forces for Peace and Democracy in Ethiopia (CAFPDE), and Ethiopian Democratic Unity Party (EDUP) were among the parties that boycotted the 1995 legislative election. Despite this, 94 percent of the 21,337,379 registered voters cast their ballots. After a long and remarkable competition, over 40 of the parties won seats in the parliament. The election was monitored by OAU and local observers such as AD-NET. Observers described the election as free and fair, with minor irregularities. The process had, therefore, immense contribution to the ongoing democratization in the country. Out of the 546 parliament seats, Ethiopian Peoples Revolutionary Democratic Front won 483 seats, other political parties 53 and independent candidates 10.

To handle the millions of citizens, who came to cast their votes, 40,000 polling stations were opened. In addition to local observers, Britain, the United States, Italy, France, Sweden, Belgium, Austria, the Netherlands, Spain, Canada, Finland, Norway, and Russia provided observers and the Organization of African Unity deployed 81 observers. The election process was reported to be peaceful with a high turnout in most polling stations throughout the country.

Election 2000

Unlike the past election, all parties and independent candidates competed in this election. Out of the 65 political parties, 57 were regional and the remaining were national. What made the May 2000 parliamentary election different from the preceding ones was the level of competition. Drawing lessons from their past mistakes, a number of opposition political parties decided to take part in the election and competed fiercely. Subsequently, close to 90 percent of the 21,834,806 registered voters elected 35 political parties. EPRDF won 481 seats and affiliated parties secured 37 seats, while opposition parties and independent

candidates won 39 seats. During this election, there were tabled programs of different political parties which convinced many that the overall process was a healthy development in the democratization of the country.

According to observers organized by Ethiopian Human Rights Council, local U.N. staff, diplomatic missions, political parties, and domestic non-governmental organizations, both the general and the regional elections that year were generally free and fair in most areas; however, serious election irregularities occurred in the Southern Nations, Nationalities and Peoples' Region (SNNPR), particularly in the Hadiya Zone. As a result, the National Election Board of Ethiopia (NEBE) investigated the complaints and determined that many of them had merit.

Election 2005

The clearly stated objective of the ruling party during the third national and regional Election was to hold a democratic, free and fair election. Forums which enabled the different political parties to air their alternative policies and programs were accordingly broadcast through the state TV and Radio. Media coverage was also fairly distributed. Some 46 percent of the allocated air time for electoral campaign was given to opposition parties and 54 percent to the ruling party.

There were 32,000 polling stations throughout the country. Over 26 million people were registered to vote. The turn-out on election day was 90%. Election campaigns were conducted for more than six months throughout the country. Hotly contested debates between the opposition and ruling party candidates were conducted. Town hall meetings and huge rallies were organized. On Sunday, 15th May 2005 voting took place throughout the country, with the

exception of the Somali region where elections took place on 15th August. Both elections took place peacefully and the Ethiopian people exercised their right to elect representatives of their choice in this historic election in their country.

More than 300 foreign observers, including EU, Carter Center and AU, as well as more than 5,000 local civic society representatives were invited to observe the election across the nation. Out of the close to 26 million registered voters, 22.6 million turned out and more than 5,900 individuals representing 39 political parties and independent candidates stood for election. This was indeed the first exciting election in Ethiopia. The ruling party won four regional states and lost Addis Ababa city. Other regional parties also won in the developing states. The ruling party acknowledged its defeat in the capital and some major towns. The opposition ultimately managed to win 170 seats, mostly in urban areas. This was a huge gain.

The unexpected gains, however, emboldened the opposition parties to undemocratically demand for additional seats. The Complaints Review Board under NEBE finally received 380 complaints out of which 178 cases were identified for the Complaints Investigation Panels (CPI) to be investigated. Accordingly, 31 seats that went for revote were all won by the ruling party.

At this juncture, some hard-line opposition party leaders, in defiance of the Constitution and National Electoral Board, started agitating their sympathizers for violence. As a result, violence erupted on June and November, 2005 leading to tragic loss of lives.

Alarmed by the political turmoil, many predicted that the democratic process would be reversed. The ruling party and moderate opposition parties that joined

the parliament have, nonetheless, been working to iron out differences peacefully and democratically.

However, under pressure from the public and the international community, all parties met for discussions held under the auspices of the NEBE. Finally, an agreement was signed by representatives from the EPRDF, the CUD and the UEDF on 10th June. Despite some initial set-backs caused by pre-conditions set by the CUD, which were then retracted, agreement was reached, with all parties re-affirming their commitment to the successful conclusion of the electoral process and accepting the legal authority of the NEBE. In signing the agreement, all parties also re-asserted their condemnation of all acts of violence or incitement to violence and affirmed their resolution to resolve all issues through legal and peaceful means only.

The Ethiopian Parliament was opened on 10th October 2005 and all the parties except the CUD took up their seats. Disagreeing with their party's intention to boycott the parliament, 38 CUD members out of 109 took up their seats in parliament. In conclusion, Ethiopia conducted the most free and fair elections in its entire history on 15th May 2005. This election was monitored by international and local election monitors. Accordingly, the following were among them.

- The African Union,
- The Carter Centre,
- The European Union,
- The US Department of State,
- The Donors' Representatives in Ethiopia,
- The Arab League,
- Monitors from India, Japan, China, Turkey and Russia, and

- Monitors from the Embassies in Addis Ababa and the Pan-African Parliament.

3.4 MAJOR PROBLEMS OBSERVED IN THE ETHIOPIAN ELECTION HISTORY

These are some of the problems observed in the Ethiopian election history specially during the periodic election held from 1995- 2005.

- The alleged reasons put by the boycotting opposition parties were the incredibility of the electoral process and lack of democracy. Aside the truthfulness or otherwise of these causes, non-participation of such parties had affected the nature of the election to a greater extent.
- Another problem faced was that life was not easy for the participating parties. They faced problems that had bearings on their competitiveness. They lacked the necessary funds that enable them to carry out essential political activities such as expenses of instrument to be used to propagate to the public their general stand.
- Since most of the political parties were small ethnic groups (minorities), their membership was limited to a small number of the elite of the ethnic groups.
- For most political parties were established in the capital, Addis Ababa (the capital) and their activities were limited only to Addis Ababa and other major towns, they had limited activity in the rural areas. Their reason was due to lack of resources like money

for they were not financially strong. Logistical problems were severe as we go from the capital to the peripheral areas.

- The high illiteracy rate of the people had created problems both to the electoral officials and to the candidates. The voters were not able to understand the stance of candidates due to lack of experience or awareness. Consequently, this situation reduced the voter's ability to make intelligent decisions.
- There were some security problems in some regions that hampered the election process.

3.5 Current Legal Framework of Election in Ethiopia

The basic principles of election envisaged under the international human right laws were incorporated under the current Ethiopian electoral laws as the way they appear in the Universal Declaration of Human Rights (UDHR) and the International Covenant of Civil and Political Rights (ICCPR).

To begin with, with the promulgation of the 1931 constitution, the concept of "election" came to picture in the Ethiopian legal arena at least theoretically though it did not serve the free will of the society. Members of the upper chamber- the senate were handpicked/appointed by the emperor from among the nobility (*mekuanint*) and local chiefs (*'shumoch'*), who served the empire as ministers, judges or military officers. Members of the lower chamber, on the other hand, were elected by the nobility and local chiefs.

The rights to vote and to be elected were also reflected under the 1955 Revised Constitution. It was only in 1955 that the idea of election was introduced by the revised constitution as members of the lower chamber began to assume seats

through election. Since the coming into existence of the revised constitution, various laws meant to regulate the country's election procedure were issued.

The first electoral law was issued on the 27th day of August, 1956. This law established a National Board for registration and elections and determined the powers and duties of the Board. Later on, subsequent electoral proclamations were amended and consolidated into a new proclamation, proclamation No. 264/1969, which regulated elections in Ethiopia until the 1974 revolution.

The PDRE constitution and electoral proclamations promulgated during the time of *Derg* were directly taken from the constitutions and other laws of socialist countries. These laws actually come up with the voting principles with the sense of socialist thought, which do not generally go in line with the current democratic electoral tenets. Proclamation No. 314/1987, which was meant to govern the process of election for the formation of the National *Shengo* was adopted.

With the coming into existence of the transitional government of Ethiopia (TGE), ratification of the International Human Right Laws, i.e., UDHR came into picture. So, the electoral law's Proclamation Nos. 11/1992 and 64/1993, that were promulgated after the TGE but before the establishment of the FDRE government, adjust themselves to the voting principles envisaged under the UDHR and ICCPR, which Ethiopia acceded to on 11 June, 1993. In those electoral laws, a tendency of decrease in the age of voters and candidates was seen. The age of voters was reduced from 21 to 18 and that of candidates was reduced from 25 to 21.

The FDRE constitution came up with the concept of the right to vote and the right to be elected in a very comprehensive manner. Following the FDRE constitution, a proclamation to make the electoral law of Ethiopia conform with the constitution of the Federal Democratic Republic of Ethiopia, No. 1/95 was promulgated for the implementation of the right to vote and to be elected is stated under Art. 38 of the FDRE constitution and it reads as:

Article 38 -The Right to Vote and to be Elected

1. Every Ethiopian national, without any discrimination based on colour, race, nation, nationality, sex, language, religion, political or other opinion or other status, has the following rights:

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

(b) On the attainment of -18 years of age, to vote in accordance with law;

(c) To vote and to be elected at periodic elections to any office at any level of government; elections shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

2. The right of everyone to be a member of his own will in a political organization, labor union, trade organization, or employers' or professional association shall be respected. If he or she meets the special and general requirements stipulated by such organization.

3. Elections to positions of responsibility within any of the organizations referred to under sub-Article 2 of this Article shall be conducted in a free and democratic manner.

4. The provisions of sub-Articles 2 and 3 of this Article shall apply to civic organizations which significantly affect the public interest.

Proc. No. 111/1999 as amended by Proc. No. 187/1999, was adopted with a view to make the country's electoral laws conform to the FDRE constitution. The proclamation defines election as popular elections held at representative levels for the formation of national and regional organs of state power and their corresponding substitutes. The proclamation established the National Electoral Board, which is accountable to the Council of Representatives of the transitional Government of Ethiopia or its successor, i.e. the House of People's Representatives.

In addition to these, on 18 January 2005, a proclamation No 438/2005 that amends some provisions of the previous election law was declared. The principle of universal suffrage, direct suffrage, free suffrage and fair suffrage are recognized by Art. 38(1)(c) and Art. 54 (1) of the FDRE constitution. Besides, these basic principles of election envisaged under Arts. 21 and 25 of the UDHR and ICCPR, respectively, are clearly depicted in proclamation No 111/95 (amended by proc. 438/2005). The most common reasonable restrictions on election principles that are enumerated under Art. 25 of the ICCPR such as age, residence, convicted criminals, citizenship are restated under the electoral proclamation No. 111/95 and electoral proclamation (amendment) No. 438/2005.

In 2007, the house of people's representative promulgated the amended electoral law of Ethiopia. In proclamation number 532/2007 with the objective of guiding all electoral activities of the country by an electoral law that meets international standards. Electoral law of Ethiopia Amendment Proclamation No.532/2007

(Proclamation No.532/2007) repealed proclamation No.111/1995, proclamation No. 187/2000 and Proclamation No.438/2005 under its article 109.

The National Election Board of Ethiopia (NEBE) established by the Parliament, is entrusted to conduct elections throughout the country. The NEBE was established in 1993 as an independent body for conducting, in an impartial manner, free and fair elections in Federal and State constituencies. The Board can issue necessary regulations and directives and is responsible for appointing and training electoral officers, providing the public with civic education related to the elections, confirming results and officially announcing them.

It has the power to rectify electoral irregularities and investigate complaints submitted to it. It may cancel election results and order fresh elections where it finds that there have been violations of directives or fraudulent acts or disturbances of the peace of such magnitude that they would create irregularities in the election process. The Board also compiles and analyses statistical data, and where necessary, makes recommendations to parliament concerning improvements in the electoral process. The board's functions and powers are set out in the Constitution of the Federal Democratic Republic of Ethiopia in 1994, and the Proclamation to make the Electoral Law of Ethiopia Conform with the Constitution of the Federal Democratic Republic of Ethiopia in Proclamation No. 111/1995, as amended by Proclamation No. 438/2005.

Laws and procedures of election practiced in the country ensure fairness, the secrecy of the election and command the confidence of the people. In addition to the principal legislations identified above, there are several regulations and directives that facilitate the fair, free and transparent conduct of elections. Some of these include the following.

- Regulation to Determine Structure and Operation of Grievance Hearing Committees at all levels, Regulation No. 1/ 2007/08;
- Regulation on Issuance of License and Code of Conduct for Civic and Voter Education, Reg. no. 2/2007/08;
- License for the Operation and Code of Conduct of Local Election Observers and Code of Conduct, Regulation No. 3/2007/08;
- Election Code of Conduct Regulation No. 4/2007/08;
- Electors' Registration Directive No. 2/2007/08
- Voting, Counting and Announcement of Results Directive No. 5/2007/08
- The Amended Directive on the Code of Conduct of Election Officials to be Recruited at various Levels, Directive No. 4/2009.
- Regulation Concerning the Procedure for Determining the Apportionment of Government Financial Support to Political Parties, Regulation No. 5/2009.
- Organization and Procedure of Grievance Hearing Committees Established By the Board at Every Level during Elections, Regulation No. 1/2009.
- Directive on the Registration of Candidates, No.1/2009.
- Directive concerning the procedure for the activities of public observers and representatives of political parties and private candidates, No. 3/2009

All these directives and regulations are believed to have ensured the confidentiality of the voting process, the security of the voters, and the confidence people have in the electoral system of the country. In all polling stations, conditions are created by which voters can cast their vote in secret and

comfort. In accordance with the regulations and to build public confidence, all polling stations and constituencies are made to have observers from the public and representatives of candidates are assigned in the process of election from voters' registration up to announcement of results. Local and foreign observers of election have been given recognition and permission by the Electoral Board so that neutral third parties would observe the fairness and transparency of elections conducted.

Check your Progress by the following questions

1. Explain the election process during the Emperor Era.
2. Describe the election process during the *Derg* regime.
3. Explain the Election process during the transitional period.
4. Compare and contrast the various major election processes of the three regime .
5. Examine the different major problems observed during the few democratic elections held in the country.
6. Explain the relevance of the current legal frame work of election in Ethiopia for the establishment of democracy in the country.

CHAPTER FOUR

ELECTION ADMINISTRATION IN ETHIOPIA

Unit Contents:

- 4.1. Introduction
- 4.2 Unit objectives
- 4.3 The National Electoral Board of Ethiopia and Its Bodies
- 4.4 Constituencies and polling stations
- 4.5. Dispute Resolution mechanism in relation to Election in Ethiopia

4.6 Summary

4.1 INTRODUCTION

In democratic countries, election as a pre-requisite needs the confidence of the public at large together with the active participation of all eligible voters, private candidates and political parties because those persons are the most vital and integral elements for electoral campaign. Yet, in order to create trustworthiness, as far as public confidence is concerned, and to enhance public participation, the preservation of rights which are accorded to voters and candidates, including the principle of universal suffrage, equal and fair suffrage, and an impartial procedure to ensure democratic election, is inter-dependent with the existence of an organ conducting this mandate with impartial manner.

Moreover, the very sensitive nature of politics needs an organ which is independent from any kind of political contender and other externalities. This is possible through organizing an organ which is in task of accomplishing this mandate. Cognizant of this, the National Electoral Board of Ethiopia was established by the 1995 electoral law proclamation.

During the transitional period (at the beginning of 1990's), when the multi-party democratic system became operational in the country, members of the then Election Commission and committees at constituencies were chosen from political parties having seats in the then house of representatives. This initial effort was transformed into a system aimed at ensuring fair and free election. The Constitution ensured the independence of the National Election Board. The Board was made to be free from any influence in order to conduct free and fair election at federal and regional levels.

Four proclamations were issued in the last fifteen years alone to ensure a fair and free election. As a result, this has made it possible to make amendments deemed to be necessary in the legal regime regulating the conduct of elections. Lessons learnt in conducting elections were accommodated in the proclamations issued subsequently. The present proclamation, Electoral Law of Ethiopia Amendment Proclamation 532/2007, provides for members of the Board to be loyal to the Constitution, be non-partisans, have professional competence, and be known for their good conduct. Upon recommendation by the Prime Minister, Board members are appointed by the HPR. The Prime Minister shall, before nominating Board members, ensure that there has been sufficient consultation forum for political organizations having seats at the House to ascertain that the nominees are independent and impartial. This unit is designed to discuss the power and duties of the National Electoral Board of Ethiopian (NEBE).

4.3 THE NATIONAL ELECTORAL BOARD OF ETHIOPIA (NEBE)

After the downfall of the *Derg* regime, a Transitional Government was established. Based on the Charter of the Transitional Government, an Electoral Commission was established by Proclamation no. 11/1984 E.C. In February 1984 E.C., the Electoral Commission conducted the election for transitional administration committee members at the *Woreda* and *Kebele* levels. In May of the same year, it conducted elections for National, Regional and *Woreda* Councils.

After the completion of its mission, the Electoral Commission was replaced by the National Electoral Board of Ethiopia (NEBE), which was established by Proclamation number 64/1985 E.C. The Board is accountable to the House of

Peoples Representatives and is an independent and autonomous organ for conducting elections having its own legal personality. Article 102 of the Federal Democratic Republic of the Ethiopian Constitution declared the establishment of permanent electoral board. The permanent nature of the national Electoral Board keeps up the confidence of the people towards election. And, the major rationales of having permanent Electoral Board are:

- As international instruments and domestic laws of Ethiopia regarding election stipulates the tendency towards periodic election. Meaning the government hold power for limited term of time; conversely, the incoming and the out going nature of government confirms the existence of periodic election. In order to get public confidence towards period election, there should be a permanent electoral organ.
- Active participation of citizens on election is so much decisive, even if there exists barriers to active citizen's participation, avoiding this evil is possible by promoting public awareness. Indeed, in order to enhance active participation of people, it is decisive to have a permanent electoral organ holding an objective to accomplished this task by providing sufficient training for the public.

To this end proclamation no 532/2007 under its preamble justifies the necessity of the establishment of the board to conduct free, fair and peaceful elections at every level in an impartial manner, in which Ethiopians freely express their will on the basis of equal popular suffrage and secret ballot systems.

National Electoral Board of Ethiopia, which is accountable to the House of People's Representative (HPR) of the Federal Government, and which has its own legal personality, is established for conducting elections. The objectives of the Board include ensuring the establishment of a government elected through a

free, impartial and fair election conducted at all levels in accordance with the Constitution; and enabling citizens to exercise their constitutional democratic rights to elect and be elected. Missions of the Board include ensuring the establishment of a government at all levels elected periodically through a free, fair, impartial, transparent and peaceful election that fulfils national and international standards; and also thereby maintain the integrity and credibility of the electoral process in the country and to enable the citizens to exercise their constitutional democratic rights to elect and to be elected.⁸ Art. 5 of proclamation no. 532/2007 states, as follows, the objective of the NEBE.

1. Ensure the establishment of a government elected through a fair and, impartial election conducted in accordance with the Constitution;
2. Ensure the existence of an electoral system that enables political parties and private candidates that respect the Constitution and institutions established by it to compete equally and impartially; and
3. Enable citizens to exercise their constitutional democratic rights to elect and be elected.

The Board is governed by nine members. What is new about the quantity of the members is, during the 1995 electoral proclamation, the members of the electoral Board were consisting of seven members. But, the proclamation no. 532/2007 stipulated the National Board to consist nine members.⁹ The prime minister is required by law to ensure that sufficient consultation is made with political organizations that have seats in the House of Peoples' Representatives to

⁸ Electoral law of Ethiopia Amendment proclamation No. 532/2007 (here in after Procl.no 532/2007) Art.icle 5(1-3).

⁹ Ibid, Art..6(1) ‘...the board shall have *nine* members appointed in accordance with Art.icle 102 of the constitution by the House of peoples’ representatives upon recommendation by the prime minster.”

ascertain that the nominees are independent and impartial before nominating Board members who fulfill the criteria. The composition of Board members shall take into consideration national contribution and gender representation, and at least one member of the Board shall be a lawyer.¹⁰

Moreover, the Board has a chairperson and a deputy chairman. Nonetheless, both the members of the board are appointed by the prime minister and are approved by the House of People's Representative on the criterion based on their national contribution.

Despite the fact that the members of the National Electoral Board are elected through national contribution, there are also other additional criteria to be a member of the Board such as:

- IMPARTIALITY: this is stated on the electoral law proclamation 532/2007 under article 6(3) which states "... *The members of the Board shall be non-partisan*". Conversely, it means the impartial nature of members of the Board is the other criteria. Moreover, impartiality has a meaning that the members of the Board should conduct our electoral or statutory function in a politically neutral manner. In addition to this, impartiality embraces the treatment of all voters, candidates and political parties fairly and impartially with giving due regard to the law.
- PROFESSIONALISM: the other criterion to be member of the National Electoral Board is being professional. This qualification is manifested in the above mentioned article, under article 6(3) (b), which states that the members of the National Board should be selected, as far as, if they are professional. Professionalism includes:

¹⁰ Ibid, Art. 6(3).

- the members of the Board, as far as professionalism is concerned, should be passionate and devoted to preserve the integrity of electoral process as the electoral law and the constitution demands.
 - accomplishing our electoral proclamation in a reasonable, truthful, secured and timely manner.
 - assuring that the members and employees act together with their personal life and public life to act in the manner which is not going to jeopardize their independence from any political party act in politically impartial way, and
 - when there exists a changing circumstance which creates hazard to the electoral law, they will provide to the house of people's representative the high need of the changing of the existing law on their report.
- GOOD CONDUCT: as it is stipulated in article 6(3)(c), members of the Board got or hold their position if and only if they have good conduct. This means, the members of the Board should be notorious to the society with their good conduct. In addition, good conduct includes the personality of the members of the Board. This is as far as the qualification of members of the Board is concerned.

In addition, members of the board also have ethical duties to discharge their responsibilities impartially , freely and in good faith; not to support or oppose directly and indirectly any political organization and/or private candidate participating in the election; not to seek and benefit out of confidential information that he obtained by virtue of being a board member; not to disclose to a third party any confidential information of the board and to refrain from

any act that in any way damages the credibility , impartiality and independence of the Board or its members.¹¹

The duration (term of office) of the members of the Board in the position is for 5 years as stated under article 6(4) proclamation 532/2007. However, with out the prejudice to the above statement, the House of Peoples' Representatives may terminate the term of Board member if he resigns for personal reasons or if the House of Peoples' Representatives believes that:

- a) the Board member is unable to properly carry out his duties due to illness;
- b) the Board member has committed serious misconduct.

The Board has a Secretariat headed by one Chief Executive and two Deputy Chief Executives. The Chief Executive is accountable to the Board while the Deputy Chief Executives are accountable to the Chief Executive. The Board has permanent employees working at the head office and regional branch offices of the Secretariat. In addition, it has temporary electoral officers recruited from various governmental and non-governmental organizations, who assist the Board during elections. Currently, the Board has 547constituencies and around 43,500 polling stations.

The board has the following Powers and Duties, which are vested on it pursuant to procl.no.532/2007 to effectively conduct free, fair and peaceful elections at every level in an impartial manner, in which all Ethiopians freely express their will on the basis of equal popular suffrage and secret ballot system.

¹¹ Supra note 8, Art. 12.

- Execute impartially any election and referendum conducted in accordance with the Constitution and the amended Proclamation number 532/1999 E.C.
- Facilitate and ascertain that elections held periodically and at every level are conducted in free and fair manner.
- Prepare and distribute documents and materials necessary for conducting elections.
- Widely provide to the public civic and voter education related to election; issue license to other bodies engaged in civic and voter education; follow and supervise their activities.
- Issue licenses to election observers and follow and supervise their activities.
- Register and issue licenses to political parties; follow up and supervise them in accordance with the law.
- Recruit, on permanent and temporary basis, competent and non partisan electoral officers required to conduct elections at every level.
- Evaluate the implementation of periodical elections and electoral laws, undertake studies, collect and compile statistical data, identify areas that need amendments and submit it to the concerned body, keep properly any electoral documents.
- Organize and coordinate political parties' joint forum.
- Investigate, cancel election results, order re-election or order injunction of the act and bring perpetrator before the court of law where it has received information about violation of law in the election process, fraudulent act or disturbance of peace and order of such magnitude and type, which would determine the outcome of election from political organization running for

election, private candidates, observers, electoral officers or any other sources.

- Certify and officially announce election results.

4.3. Dispute Resolution and Miscellaneous Provisions

In the conduct of election, due process needs to be respected. The Proclamation provides detailed procedure as to how election complaints are handled and entertained.

Where a person is denied of registration as an elector, he shall have the right to lodge a complaint with the electoral office of the polling station and seek decision thereon. A person or political organization complaining that a person who has no eligibility to register as an elector has been registered shall have the right to lodge its complaints to the polling station Grievance hearing Committee and seek a decision. The polling station GHC is expected to conduct investigation and give decision within 24 hours.

If a party is not satisfied with the decision of the Committee, they may appeal to the Constituency Electoral Office (Constituency Grievance Hearing Committee), and then appeal to *Woreda* Court. The procedure is the same for complaints related to voting. Complaints related to registration of candidates may also be directed to Constituency Grievance Hearing Committee first, then to Regional Electoral Office Grievance Hearing Committee, and finally to the Regional Supreme Court. Complaints related to vote counting and results may be taken to the Constituency Grievance Hearing Committee, then to the Election Board and finally to the Federal Supreme Court.

Grievance Hearing Committees (GHC) are established at each electoral office and polling station. Their role is to make administrative decisions on complaints and grievances received about the electoral process.

The Polling Station Grievance Hearing Committee is chaired by the Chief Officer of the Polling Station and has two of the polling station observers as its members. All decisions made must be majority decisions.

Complaints to the GHC can be made by:

- a person who has been denied registration,
- a person who request cancellation of registration, and
- a person who is prohibited from voting.

A complaint may be submitted in writing or orally. A complaint made in writing must be made in triplicate and provide all the information related to the complaint including:

- the name of the GHC to which the complaint is brought;
- the date on which the complaint is made;
- full name and address of the complainant;
- the facts constituting the cause for complaint and the remedy requested;
- list of evidence and documents; and
- where there is witness evidence, the list of witness.

The complainant is required to produce the witnesses.

Oral complaints are recorded by the GHC. Where a complainant is illiterate, the record of his or her complaint is read to them in the presence of the committee

members and the complainant verifies the complaint with their signature or thumb mark.

The GHC examines each complaint and makes a decision which is conveyed to the complainant. The decision of the GHC is made in triplicate; one copy goes to the complainant, one copy to the party or body that needs to execute the decision and the third copy is kept on record.

A person who complains that their right to vote has been denied has five hours to make the complaint to the GHC or they forfeit the right. The GHC has five hours to respond to the complaint and if they do not do so within five hours, it is assumed that the person has a right to vote and may proceed with voting.

An appeal to the decision is made to the Appellate Committee and there is no further appeal to the courts.

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CHECK YOUR PROGRESS WITH THE FOLLOWING QUESTIONS

- What are the rationales behind establishing an independent organ to conduct periodic elections?
- Discuss the power and duties of the National Election Board of Ethiopia as envisaged under proclamation no.532/2007.
- Discuss the objectives of the National Election Board of Ethiopia.
- Explain the criteria for the nomination of members of the Board.
- Discuss the power and duties of the chairman of the National Election Board of Ethiopia as envisaged under proclamation no.532/2007.

- Discuss the power and duties of the deputy board chairman of the National Election Board of Ethiopia as envisaged under proclamation no.532/2007.
- Explain the rights of Board members of National Election Board of Ethiopia as envisaged under proclamation no.532/2007.

CHAPTER FIVE

ELECTORAL PROCEDURES UNDER PROCLAMATION no. 532/2007

Unit Contents:

5.1 Introduction

5.2 Unit Objectives

5.3 Registration of Electors

5.3.1 Age Requirement

5.3.2 Residency Requirement

5.3.3 Citizenship Requirement

5.3.4 Non Felony Requirement

5.4 Regulation on Candidacy

5.4.1 Education or Experience Requirement

5.4.2 Age Requirement

5.4.3 Residency Requirement

5.4.4 Citizenship Requirement

5.4.5 Qualified Elector Requirement

5.4.6 Petition Signature Requirement

5.4.7 Miscellaneous Candidacy Requirement

5.5 Pre-election Campaigning

5.6 Voting

5.6.1 Establishment of Voting Station

5.6.2 Voting Station Observers

5.6.3 Voting Station Rules

5.6.4 Before Voting Begins

5.6.5. The Voting Process

5.6.6. At the End of Voting

5.7 Summary

5.1 INTRODUCTION

The establishment and strengthening of democratic processes and institutions is the common responsibility of governments, the electorate and organized political forces, that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment of all human rights and fundamental freedoms.

This unit is designed to provide a basic overview of electoral procedure in the Ethiopian election law. The main focuses of discussion in the unit are registration of election, candidacy, campaigning and voting. The unit does not attempt to provide a detailed analysis of election procedures; rather it attempts to present an overview of basic principles that may be of use for discussions in the electoral law course.

5.2 UNIT OBJECTIVES

After going through the Unit, you will be able to:

- explain the procedural rules during registration of voters,
- explain the procedural rules for the regulation of candidacy,
- state the various rules in relation to pre-election campaigning,
- describe the general voting system in Ethiopian election process, and
- understand the regulations in campaigning.

5.3 REGISTRATION OF ELECTORS

The right to vote is regulated by establishing criteria voters must meet before they can participate in elections. Individual's right to vote is regulated to further government's interest in:

- electoral integrity,
- preventing "party raiding",
- preventing fraud,
- limiting governmental participation to individuals who are within the political community,
- making sure that all voters understand the nature and effect of voting, and
- political stability.

Prospective voters must register to vote in advance of the election and by a government -set deadline. Administration of voters registration must conform to the constitutional protections individuals right to vote and other electoral laws of the country. Failure to allow otherwise qualified individuals to register to vote can void an election.

Voter registration processes is regulated through provisions in the procl.532/2007. It is widely accepted that voter registration is a threshold voting requirement, where the inability to register results in the prospective voter's disenfranchisement. Electoral laws expand the franchise by removing barriers that prevent or prohibit otherwise qualified individuals from registering to vote or maintaining their registration status. They accomplish this by:

1. prohibiting discrimination,
2. expanding voter registration opportunities, and
3. regulating voter registration databases, including purges of voter registration records.

The right to vote of individuals can be restricted if failed to satisfy the traditional voter qualification criteria of age, citizenship, residency, and non-felon status.

5.3.1 Age Requirements

The Ethiopian Constitution granted the right to vote with out any discrimination based on sex, language, colour, race, nation, nationality, religion, political or other opinion or other status - to anyone eighteen or older.¹² By the same token, Art. 33 of proclamation 532/07 states attainment of age of eighteen as a condition for registration, and thus, for voting.

Hence, the Constitution and the electoral law of Ethiopia does establish a minimum voting age that is eighteen. Although age may not be used to disqualify voters who are eighteen or older, in reality, elderly voters are likely to

¹² FDRE constitution Art.. 39(1)(b).

be disenfranchised if they are not independently mobile, lack access to transportation or if the polling place is inaccessible to them.

5.3.2 Residency Requirements

Prospective voters are usually required to satisfy residency requirements before they can register to vote.¹³ Residency requirements generally encompass three components: geographic residency, bona fide residency status and durational residency.

A. Geographical Residency Requirements

Geographical residency requirements restrict voting to individuals who live within a political subdivision. Individuals who live outside a political subdivision's boundaries have no right to vote in its elections, even if they are subject to some of its laws.

B. Bona Fide Residency Requirements

Bona fide residency requires more than the voter's presence in the locality by requiring the voter to make the locality her domicile. Domicile is the union of physical residency and the *present intent to remain* in the location indefinitely, or the *absence of a present intent to leave*. A prospective voter's bona fide residency status may be of special concern in areas that experience the significant and regular turn-over of an identifiable population subset compared to the rest of the community such as communities that are extended from homes to colleges, universities, military bases, or federal enclaves. States may require prospective voters to demonstrate that they are bona fide residents before extending voting rights to them. States may require prospective voter registrants to objectively establish the necessary domiciliary intent by:

- acquiring a dwelling,
- obtaining a driver's license, or

¹³ The ability of homeless individuals to meet residency requirements may also be arguable.

- registering an automobile.

C. Durational Residency Requirements

Durational residency requirements establish the amount of time a new resident must live in the community before becoming eligible to vote in its elections. Durational residency periods may be created specifically by statute or they may result from the operation of a pre-election registration deadline. Independent statutory durational residency requirements receive strict scrutiny because they:

- burden the right to vote,
- burden the right to travel, and
- treat newly arrived bona fide residents less favorably than established residents.

The Electoral laws of Ethiopia seem to adopt the third type of residency requirement- durational residency requirement. Art 33 of the procl.532/2007 put at least 6 month residency with in the constituency as a condition for registration. The election shall be registered in a polling station where he resides by producing an identification card or passport irrespective of its validity.

5.3.3 Citizenship Requirements

Governments have an interest in limiting political participation to individuals who are within the political community, which does not include non-citizens. A person shall be an Ethiopian national where either parent is Ethiopian based on the Constitution and pertinent legislation on nationality in the country. Foreign nationals may also acquire Ethiopian nationality. Every Ethiopian national, irrespective of the method of acquisition of nationality, has the right to the

enjoyment, exercise and recognition of all the rights and benefits accorded to Ethiopian nationals as prescribed by the law.

The Constitution provides that every Ethiopian national has the right to take part in the conduct of public affairs, directly and through freely chosen representatives without any discrimination.¹⁴ Every national has also the right to vote and to be elected at periodic elections to any office at any level of government.¹⁵ Citizenship is also a condition for registration under procl. 532/2007 stating that any person who is an Ethiopian may be registered as an elector as long as the person has attained 18 by the time of registration and has been residing in the constituency for at least 6 months.¹⁶

Traditionally, prospective voters are required to affirm their citizenship. And, article 36 of the procl.532/2007 requires electors to produce an identification card or passport by the time of registration to prove the residency and citizenship and other conditions as discussed above. The identification card or passport may, irrespective of its validity, serve the purpose of registration. In the absence of ID card, evidence identifying the voter such as driving license, residence permit, military discharge document, a refugee card issued by the UN bearing a recent photograph of the elector, shall be deemed to be sufficient document for registration purpose. In the absence of the aforementioned documents, registration may be carried out upon recognition of the elector's identity by the electoral officials or through traditional or customary means in the case of rural areas.

5.3.4 Non-Felon Requirements

¹⁴ FDRE constitution Art..38(1)(a).

¹⁵ Ibid. Art..38(1)(c).

¹⁶ Procl.532/2007 Art. 33 (1)(a),(b) &(c).

Disenfranchising felons because of their conviction does not directly violate the constitution. Such disenfranchisement affects only those convicted of crimes sufficiently serious to warrant an immediate custodial sentence. It, nevertheless, had the effect of removing the right to vote from a substantial number of persons in an indiscriminate manner, irrespective of the length of the sentence and the nature or gravity of the offence. For this reason, some argue that, taking under the 'purpose of enhancing civic responsibility and respect for the rule of law', there is no clear, logical link between the loss of vote and the imposition of a prison sentence.

Nevertheless, given the variety of political and penal philosophies and policies, it could not be said that these aims were not legitimate; and accordingly the Ethiopian electoral law also denies the right to vote for convicted persons irrespective of the length of their imprisonment or serious offence. Art. 33(3)(b) of procl.532/07 states that, without prejudice to the provision of sub article (1), a person serving a term of imprisonment passed by a court of law is not eligible for registration.

5.4. Regulation of Candidacy

A "*candidate*" is the prospective recipient of an award or honor or a person seeking or being considered for some kind of position. "*Nomination*" is part of the process of selecting a candidate for either election to an office, or the bestowing of an honor or award. "Presumptive nominee" is a term used when a person or organization believes that the nomination is inevitable. The act of being a candidate in a race is called a "*candidacy*."

"*Candidate*" is a derivative of the Latin "*candida*" (white). In Ancient Rome, people running for political office would usually wear togas chalked and bleached to be bright white at speeches, debates, conventions and other public functions.

i). Candidates in Elections

In the context of elections for public office in a representational partisan democracy, a candidate who has been selected by a political party is normally said to be the nominee of that party. The party's selection (that is, the nomination) is typically accomplished either based on one or more primary elections according to the rules of the party and any applicable election laws.

Candidates are either incumbents or if they are already serving in the office for which they are seeking re-election challengers, if they are seeking to unseat an incumbent or are simply candidates for an open seat in an elective office for which no incumbent is seeking re-election. In the context of elections for public office in a direct democracy, a candidate can be nominated by any eligible person and if parliamentary procedures are used, the nomination has to be seconded, i.e., receive agreement from a second person.

In some non-partisan representative systems (e.g. administrative elections of the Bahá'í Faith), no nominations (or campaigning, electioneering, etc.) take place at all, with voters free to choose any person at the time of voting with some possible exceptions such as through a minimum age requirement in the jurisdiction. In such cases, it is not required (or even possible) that the members of the electorate be familiar with all of the eligible persons in their area though such systems may involve indirect elections at larger geographic levels to ensure

that some first-hand familiarity among potential electees can exist at these levels (i.e., among the elected delegates).

Presumed Advantages of Nominations

- Although a nominee need not have sought appointment by himself or herself (presumably the existence of a system of nominating others implies that a person desiring the position would not (or could not) necessarily seek out a post by themselves), nominations frequently occur in the context of elections with the active awareness of the nominee. An awareness beforehand of the willingness of the would-be candidate to accept the post might be seen as at least a time-saving advantage and an indicator of their confidence in being able to handle the job (if not a minimal indicator in their competence to handle the job).
- Having a narrowed down set of choices would allow people to study the positions, character, etc. of the nominated choices before making their choice.
- In typically two-party systems, the competitive process is seen to promote moderate candidates (as they are believed to be able to have the best chance to capture the vote for their party and have a broader appeal across the voting spectrum).

Presumed Disadvantages of Nominations

- The nomination process may limit the choices open to the voters at the time of voting.
- The limited number of choices may lead to voter disenfranchisement and lackluster participation.
- Nominations (and the often associated electioneering and campaigning) are seen to more often elect self-aggrandizing, self-seeking and deal-making individuals, instead of humble, selfless and conscience-voting/independent-minded persons. As such, some often less assertive or media-shy (yet potentially capable) groups such as women, certain ethnic groups or skilled technocrats may tend to be overlooked in such a process, especially when the nomination process is allowed to be followed by campaigning.

Under the Ethiopian Electoral law regime, any Ethiopian national who fulfills the criteria can become a candidate:

- A. through a political party ,or
- B. privately

A political organization can nominate only one candidate for a single seat in a constituency.¹⁷Each political party shall notify the Board or the constituency. According to the timetable issued by the Board, the list of candidates is grouped separately based on the type of the council seat they are running for. The list of candidates nominated by a political organization for a general election must bear the signature of the top leadership of the organization and must also be attested by the seal of the organization.

¹⁷ Directive on the Registration of Candidates Number 1/2009, Art. 15.

The list of candidates nominated by a political organization for local elections shall be notified to the constituency by the signature of the organization's top leadership or by its highest leadership in the zone or *woreda* and it must be attested by the seal of the organization. If it appears that there is disagreement on the nomination of candidates, the list submitted by the top leadership shall prevail. An evidence of nomination by a party and the consent of the person nominated shall be presented along with details of candidature for candidates nominated by a political organization.

Every candidate shall register in person.¹⁸ Without prejudice to the above statement, if a candidate nominated by a political organization is unable to register in person, he/she may register provided that concrete documentary evidence or witnesses to prove the candidate's fulfillment of the criteria for candidature are presented through the political organization that nominated the candidate, or through his/her representative. At the time of registration each candidate shall specifically mention to the constituency office, which council she is running for.

It is axiomatic that before a candidate can be elected to office, the candidate's name must appear on the ballot. Candidate's ballot access is regulated by the state as part of the general regulatory power over elections as long as the regulations comport with the constitutional protections.

The legal effect of a candidate's ballot access interest varies from country to country and depends on whether the state constitution recognizes a fundamental right to candidacy. Under the Ethiopian legal System the right to be recognized

¹⁸ Ibid Art..16.

as a candidate is not a privilege but a right that is driven from citizenship. Indeed, the federal constitution does recognize a fundamental right to candidacy.¹⁹

Voters have an interest in candidate ballot access requirements because voting for their preferred candidate is one means through which voters exercise their constitutionally-protected interest in associating with politically like-minded individuals. This protected interest is burdened if the state ballot access laws are overly restrictive and few candidates gain ballot access. State ballot access requirements must not restrict the right to vote by so heavily burdening prospective candidates that few candidates (or only those candidates affiliated with the major political parties) qualify for ballot access.

To be qualified for ballot access, candidates need to satisfy a number of legal requirements. Some of these requirements—such as age, residency, citizenship and education—are personal to the prospective candidate. Other requirements—such as those related to petition signatures or political party nominations—are intended to demonstrate that the candidate has public support. Finally, before the state grants ballot access, the prospective candidate may need to pay a filing fee, resign from a current office, or satisfy other criteria.

This section discusses the most common criteria required for prospective candidates to personally satisfy to gain ballot access, followed by a discussion on public support requirements. Miscellaneous qualification requirements are discussed in the final ballot access criteria section. Because candidates are not always able to maintain their candidacies through election day, the section concludes with a discussion on candidate withdrawal and substitution.

¹⁹ Art. 38 of the FDRE constitution

International Law jurisprudence recognizes a variety of conditions and exclusions, including penal detention and residence requirements, but provides generally that they shall be prescribed by law and reasonably necessary in a democratic society. They must also not be arbitrary or violate the principle of non-discrimination.

5.4.1 Education or Experience Requirements

Education or experience requirements are common qualification criteria for ballot access. Laws that requires fulfillment of certain education and/or experience need to specify:

- the deadline by which the requirements must be met,
- whether the requirements are currently satisfied, and
- whether the experience must be uninterrupted or whether earlier episodes can be “tacked” onto more recent ones to achieve the relevant amount of experience.

Under the Ethiopian electoral law, education or experience are not incorporated as a requirement for candidature.

5.4.2 Minimum Age Requirements

Many legal systems established minimum age requirements for candidates for state or local offices. Many age-related candidate qualification challenges concern the date the candidate must satisfy the requirement when the statute does not clearly specify one. The most common measuring dates or events are:

- the petition filing deadline,
- the date of the primary election,
- the date of the general election,

- the date the election results are certified, or
- the date the winner is sworn into office.

The rationale for setting age as a requirement for candidacy is obviously to ensure a sufficient level of maturity of the candidate. Accordingly procl.532/2007 under its art.45(1)(c), any person shall be eligible for candidature where he is 21 years old or above on the date of the registration. This specific provision does not specify as to what evidence has to be produced to prove the attainment of the required age taking under consideration of the poor level of birth registration practice in the country as it has been stated under art 33(2) for the purpose of registration of voters .

5.4.3 Residency Requirements

Candidate residency requirements are important derivative rights of voters because they protect voters from fraudulent candidacies. Residency requirements improve the likelihood that voters will have an opportunity to get to know all the candidates before selecting amongst them in the election. Residency requirements are also intended to ensure that candidates are familiar with the local political climate and can identify important constituent concerns. Candidate residency requirements may contain:

- 1) geographical and
- 2) durational components.

Under art 45(1)(d) of the procl.532/2007 a person shall be eligible for candidature where she has been regularly residing in the constituency of her intended candidature for *two* years immediately preceding the date of election or her birth place is within the constituency of her intended candidature or

where the city or *wereda* has more than one constituencies or she has been regularly working in the city or *wereda* for *two* years. The exceptional grounds where the aforementioned provision would not be applied are when the person has been outside the constituency on duty or study leave and when the person is on duty having been previously elected in the constituency as per sub article 2 of the same provision.

5.4.3 Citizenship Requirements

States can deny ballot access to non-citizens without violating the fundamental right to participate in political affairs of the country as envisaged in the Constitution and international human right instruments. The right to participate in a political system based on common and equal citizenship and universal franchise is essential for the exercise of the principle of periodic and genuine elections. Under Ethiopian Electoral law having Ethiopian nationality is the first criteria set under art 45(1)(a) for a person to be eligible for candidature.

5.4.5 Qualified Elector Requirements

Certain legal system, sometimes require candidates to be “qualified electors” – that is, registered and eligible voters in the jurisdiction before they can obtain ballot access. Prospective candidates can be denied ballot access if they are not registered voters, their voter registration information is not current, and they have been disqualified from voting because of a felony conviction, they have been adjudicated incapacitated or any other circumstance that impacts their qualified elector status.

In this regard, under the Ethiopian legal system , the constitutionally granted right the right to be elected can fully exercised if and only if the person with the

intention to run election has not been deprived of his/her right to vote and to be elected as per art 45(1)(e) of the proclamation at hand. Eligibility for voting is a criterion for eligibility for candidature. A person who failed to fulfill the requirements stated under art 35 cannot be eligible for candidature under art 45.

5.4.6. Petition Signature Requirements

Many states require prospective candidates to demonstrate the seriousness of their candidacy by collecting a specified number of qualified voters' signatures on petitions of support. The number of supporting signatures required is commonly a specified percentage of the registered voters, a percentage of the voters who participated in a specified recent election, a percentage with a maximum cap, or a fixed number of signatures. Petition signature requirements that are too high may burden voters' associational rights too severely.

In addition to specifying the minimum number of supporting signatures the candidates need to qualify for ballot access, governments usually regulate additional aspects of petition signature gathering such as:

- the maximum number of signatures a campaign may submit,
- who may sign the petition,
- who may circulate the petition,
- the time frame in which the petitions can be circulated, and
- the deadline for submitting the petitions.

The wording and format of the petitions as well as the required witness or attestation statements may also be regulated.

Under Ethiopian electoral law, only private candidates are required to produce endorsement signature for not less than 1000 from among the people who are certified by the local administration. To be residents of the constituency of his candidature, voter should be 18 years old or above and not barred by law from voting (Art.45(3) procl.532/2007).

According to art 12(6) of directive no.1/2009²⁰ the number of endorsement signatures to be produced by a private candidate for *Woreda* or City Administration or *Kebele* Council shall be as follows:

- a. for *Woreda* Council, no less than 200 signatures;
- b. for City Administration Council, no less than 200 endorsement signatures; and
- c. for Kebele Councils, no less than 50 endorsement signatures.

Without prejudice to the above provisions, the Board can reduce the number of endorsement signatures. A private candidate must produce in certain constituencies if it deems it necessary.

A person who is eligible to give an endorsement signature:

- A. shall be an Ethiopian national;
- B. has been residing in the constituency at least for six months;
- C. is 18 years old and above;
- D. should be a person who has not been deprived of her right to vote by law ;
- E. should be a person who is not insane; and
- F. should be a person who is not serving a prison sentence.²¹

²⁰ Directive on the Registration of Candidates, Number 1/2009, Art. 12.

²¹ Ibid Art..13.

A person cannot sign for endorsing more candidates than there are seats available in the constituency. Every candidate shall present the endorsement signatures he/she gathered to the constituency he is running according to the timetable after having the endorsement signatures verified by the *Kebele* administration they were gathered from. Endorsement signatures shall be gathered and presented according to the following procedure:

- a. every private candidate could gather endorsement signatures after getting one copy of the form for endorsement signatures from the constituency office and reproducing the same.
- b. he/she shall sort out the people who gave him/her the endorsement signatures according to the *Kebele* they reside in, and present the forms to the respective *Kebele* Administration.
- c. The *Kebele* Administration shall give back the forms to the candidate or her agent after having screened and stamped them according to the law .
- d. The constituency shall receive and screen the endorsement signatures presented by the candidate. The *Kebele* Administration shall register the candidate on the form for candidates if it finds that the required criteria have been met.
- e. If it is found that the endorsement signatures are lacking in any way, the candidate shall be notified promptly so that he/she may be able to rectify it, and present it according to the timetable.²²

5.4.7 Miscellaneous Candidacy Regulations

In addition to meeting personal requirements and demonstrating public support for their candidacy, candidates are also required to meet other miscellaneous

²² Ibid.

candidacy requirements. This part of the section discusses the most common additional restrictions placed on a candidate's ballot access and the legal issues that might arise with respect to those restrictions.

i. Limits on the Number of Simultaneous Candidacies

Some states limit candidates who are running or seeking nomination for only one office at a time. Under the Ethiopian law too a person can be nominated as a candidate in only one constituency.²³ However, a candidate may be transferred from one constituency to another during the period of candidates' registration in accordance with the law. As per art 49 of the proclamation, the number of candidates running for election to the house of peoples' representatives in a constituency shall not exceed 12.

ii. Resignation Requirements

"Resign to run" statutes require current elective office holders to resign their office before they become candidates for a different elective office. In addition, "resign to run" statutes place fewer restrictions on election officials than constitutional restrictions on civil servants' political activity in general. If a state's constitution recognizes a right to candidacy, then a "resign to run" statute may violate the state constitution.

Art 47 of procl.532/2007 laid the detail on the rights of government employees who run for election. According to this provision any government employee can run for election as a private candidate or a member of a political organization and may not lose any benefits as a result of his/her running for election as long as he/she has achieved the required performance. As an exception to the above stated general principle certain groups of government employees are required to

²³ Art..56 (1) procl.532/2007

resign office if they decided to run an election. Pursuant to art 47(2) of the same proclamation any judge, soldier or policeman shall resign from his post if he runs for election as a private candidate or candidate of political party.

In addition, any judge, soldier and policemen may not participate in political campaigning through speeches, writings and the like in support of any candidate. In particular, armed force or police force may not participate in party meetings or in election activities with his uniform on.²⁴ Such limitation are intended to protect the integrity of the political system for it may threaten legislative responsibilities.

iii. Election Code Violations

States may prohibit or restrict candidacies or individuals who violated election statutes. Ethiopian electoral law also put this criterion among others for eligibility of candidature. Accordingly, a person shall be eligible for candidature where she has accepted and signed the election code of conduct as issued by the board in accordance with Art 105 of the proclamation.²⁵

iv. Candidate Removal or Substitution

Candidates who have gained ballot access sometimes die, withdraw their candidacy or become disqualified before an election. Under these circumstances, they (or others) may seek to remove their names from the ballot and may also request a substitute candidate's name to be included on the ballot.

In general, a candidate's pre-election death, withdrawal, or disqualification does not automatically remove the candidate's name from the ballot. Instead, electoral

²⁴ Art. 47(1-4) of proclamation 532/2007.

²⁵ Art. 451)(f) of Procl.532/2007.

laws govern the circumstances under which a withdrawal is allowed, who may make a withdrawal request? and when the withdrawal request must be received?

According to art 54(1-4) of procl.532/2007, a candidate of political organization or private candidate can withdraw from election. A political party candidate who has withdrawn from the election shall notify his/her decision in writing to the political party nominated her. In such case, the political organization may replace the candidate but can only do so if the deadline for the registration of candidates is not lapsed. However, if the candidate has withdrawn on the final date of the timetable, it shall be made to replace the candidate in one week after the date of the candidate's withdrawal. The timetable for registration of candidates is issued by the board and is to be carried out in constituencies where the candidate decided to run for election.²⁶

On the hand where the candidate of political organization has died after the end of candidates' registration, the political organization may replace the candidate within 15 days before the voting date. The election shall continue with the remaining candidates in accordance with the timetable if the party failed to replace the deceased candidate within the prescribed dates. Conversely, where the candidate of political party has died in less than 15 days preceding the voting date, the election process in the constituency shall be discontinued, and another election shall be conducted in accordance with the decision of the board after replacement of the deceased candidate.²⁷

According to the NEBE's directive,²⁸ the registration of candidates shall be conducted by the Election Execution Committee that will be established in each

²⁶ Art. 44 proclamation no.532/07.

²⁷ Art. 55(1-6) Proclamation no. 532/2007

²⁸ Directive on the Registration of Candidates, Number 1/2009, Art. 11.

constituency. Registration of candidates for the election of members of The House of Peoples' Representatives of the FDRE is conducted with Regional and Zonal Councils of the respective constituencies. Whereas, registration of candidates for City and Sub -City Councils is conducted in one of the polling stations in a *Kebele* which had previously served as the *Kebele* Election Office. The registration will be conducted by polling station officials thereof. Like wise for the election of members of the *Kebele* Council, a candidate registration shall be conducted in a *Kebele* constituency, locality or village apportioned according to the laws of the Regions. The registration shall be conducted by election officials of the polling station.

Candidate registration shall be conducted according to the timetable issued by the Board, every day including weekends and public holidays, during working hours of government offices. Without prejudice to the above statement, if the Board deems it necessary, it could extend the candidate registration period or arrange special registration hours.

5.5 Campaigning

A political campaign is an organized effort which seeks to influence the decision making process within a specific group. In democracies, political campaigns often refer to electoral campaigns, wherein representatives are chosen or referenda are decided. Political campaigns also include organized efforts to alter policy within any institution or organization. Politics is as old as humankind and is not limited to democratic or governmental institutions. Some examples of political campaigns are: the effort to execute or banish Socrates from Athens in the 5th century BC, the uprising of petty nobility against John of England in the

13th century, or the 2005 push to remove Michael Eisner from the helm of The Walt Disney Company

Campaign Message

The message of the campaign is composed of ideas that the candidate wants to share with the voters. The message often consists of several talking points about policy issues. The points summarize the main ideas of the campaign and are repeated frequently in order to create a lasting impression with the voters. In many elections, the opposition party will try to get the candidate "off message" by bringing up policy or personal questions that are not related to the talking points. Most campaigns prefer to keep the message broad in order to attract most potential voters.

A message that is too narrow can alienate voters or slow the candidate down with explaining details. For example, in the Election of 2008 John McCain originally used a message that focused on his patriotism and political experience; later the message was changed to shift attention to his role as a "maverick" within the political establishment. Barack Obama ran on a consistent, simple message of "change" throughout his campaign. If the message is crafted carefully, it will assure the candidate a victory at the polls. For a winning candidate, the message is refined and then becomes his or her political agenda in office.

A campaign team (which may be as small as one inspired individual, or a heavily-resourced group of professionals) must consider how to communicate the message of the campaign, recruit volunteers, and raise money. Campaign advertising draws on techniques from commercial advertising and propaganda. The avenues available to political campaigns when distributing their messages is limited by the law, available resources and the imagination of the campaigns'

participants. These techniques are often combined into a formal strategy known as the campaign plan. The plan takes account of a campaign's goal, message, target audience, and resources available. The campaign will typically seek to identify supporters at the same time as getting its message across.

Techniques of Campaign

➤ Campaign advertising

Campaign advertising is the use of paid media (newspapers, radio, television, etc.) to influence the decisions made for and by groups. These advertisings are designed by political consultants and the campaign's staff.

➤ Mass meetings, rallies and protests

Holding protests, rallies and other similar public events (if enough people can be persuaded to come) may be a very effective campaign tool. Holding mass meetings with speakers is powerful as it shows visually, through the number of people in attendance, the support that the campaign has.

➤ Modern technology and the internet

The internet is now a core element of modern political campaigns. Communication technologies such as e-mail, web sites, and podcasts are used for various forms of activism to enable faster communications by citizen movements, and deliver a message to a large audience. These internet technologies are used for cause-related fundraising, lobbying, volunteering, community building, and organizing.

➤ Hustling

A hustling, or the hustings, was originally a physical platform from which representatives present their views or cast votes before a parliamentary or other

election body. By metonymy, the term may now refer to any event, such as debates or speeches, during an election campaign where one or more of the representative candidates are present.

➤ **Other Techniques**

- Greeting babies – it is a traditional campaign activity,
- Writing directly to members of the public (either via a professional marketing firm or, particularly on a small scale, by volunteers),
- By distributing leaflets or selling newspapers,
- Through websites, online communities, and solicited or unsolicited bulk email,
- Through a new technique known as *Micro targeting* that helps identify and target small demographic slices of voters,
- Through a *whistlestop* tour - a series of brief appearances in several small towns,
- Hampering the ability of political competitors to campaign, by such techniques as counter-rallies, picketing of rival parties' meetings, or overwhelming rival candidates' offices with mischievous phone calls (most political parties in representative democracies publicly distance themselves from such disruptive and morale-affecting tactics, with the exception of those parties self-identifying as activist,
- Organizing political house parties,
- Using endorsements of other celebrated party members to boost support, and
- Remaining close to or at home to make speeches to supporters who come to visit as part of a *front porch campaign*.

Process of Campaigning

Campaigns start anywhere from several months to several years before election day. The first part of any campaign for a candidate is deciding to run. Prospective candidates will often speak with family, friends, professional associates, elected officials, community leaders, and the leaders of political parties before deciding to run.

Candidates are often recruited by political parties and interest groups interested in electing like-minded politicians. During this period, people who are planning to run for office will consider their ability to put together the money, organization, and public image needed to get elected. Many campaigns for major office do not progress past this point as people often do not feel confident in their ability to win. However, some candidates lacking the resources needed for a competitive campaign proceed with an inexpensive paper campaign or informational campaign designed to raise public awareness and support for their positions.

Once a person decides to run, they will make a public announcement. This announcement could consist of anything from a simple press release to concerned media outlets to a major media event followed by a speaking tour. Campaigns will often be announced and then only officially "kicked off" months after active campaigning has begun. Being coy about whether a candidacy is planned is often a deliberate strategy by a prospective candidate, either to "test the waters" or to keep the media's attention.

Campaigns often dispatch volunteers into local communities to meet with voters and persuade people to support the candidate. The volunteers are also responsible for identifying supporters, recruiting them as volunteers or registering them to vote if they are not already registered. The identification of supporters will be useful later as campaigns remind voters to cast their votes. Late in the campaign, campaigns will launch expensive television, radio, and direct mail campaigns aimed at persuading voters to support the candidate.

Campaigns will also intensify their grassroots campaigns, coordinating their volunteers in a full court effort to win votes

Campaigns for minor office may be relatively simple and inexpensive - talking to local newspapers, giving out campaign signs, and greeting people in the local square.

Under Ethiopian electoral law, a candidate , after the date of issuance of candidature I.D card and up until two days before the voting day, has the right, by respecting his legal duties, to call rallies and hold peaceful demonstrations by his own or through his supporters by notifying in writing the administration or municipality, and without requesting for permission. He shall also have the right to request for information useful for election campaign. Campaigning activities shall be conducted peacefully and democratically by respecting the constitution and other relevant laws, the rights of voters and other candidates.

Any candidate or his/her supporters have the right to enjoy freedom of oral and written expression, and the right to assemble supporters, organize peaceful demonstration, and to request and obtain pertinent information even though it is obvious that such rights should not be exercised in contravention of the law.

With a view to the effectiveness of campaigning activities, government organs and officials, at any level, have the obligation to allow equal access to candidates in respect of such facilities as radio stations, assembly halls and newspapers under their respective authority. All political parties and independent candidates have the right of equal access to the mass media; that is, by way of entitlement to free use of an air time on the radio and television and/or a column in the print media.

Devoid of prejudice to rights and obligations specified above, the following are the code of conduct for candidates during campaigning that need to be adhered and respected:

- every candidate shall, during the campaigning period, carry his/her Candidature ID and present it upon request by those so authorized;
- every candidate or political party shall, while campaigning, observe the electoral law and other laws of the land;
- campaigning speeches made, written materials circulated and posters displayed by candidates, candidates' representatives or political parties may not violate the rights of other candidates or political parties;
- candidates and political parties shall refrain from misrepresenting, defacing or removing the campaigning materials of other candidates or political parties;
- candidates may not scorn, insult or affront other candidates or political parties;
- campaigning activities shall not be carried out within a radius of 500 meters of a polling station;

- candidates and political parties shall abide by the determinations of electoral offices and by a code of campaigning ethics to be issued by the Board, as necessary; and
- No candidate may display his/her electoral poster or candidature symbol outside the respective constituency. Campaigning activities shall not be carried out in: military camps; churches and mosques; educational institutions, while class is being held; government and public institutions, during their working hours.

5.6 Voting

A voting system contains rules for valid voting, and how votes are aggregated to yield a final result. The study of formally defined voting systems is called *voting theory*, a subfield of political science, economics or mathematics. A voting system specifies the form of the *ballot*, the set of allowable votes, and the *tallying method*, an algorithm for determining the outcome. This outcome may be a single winner, or may involve multiple winners such as in the election of a legislative body. The voting system may also specify how voting power is distributed among the voters, and how voters are divided into subgroups (constituencies) whose votes are counted independently.

Many elections are held to the ideal of "one person, one vote," meaning that every voter's votes should be counted with equal weight. This is not true of all elections, however. Corporate elections, for instance, usually weight votes according to the amount of stock each voter holds in the company, changing the mechanism to "one share, one vote". Votes can also be weighted unequally for

other reasons such as increasing the voting weight of higher-ranked members of an organization.

Voting weight is not the same thing as voting power. In situations where certain groups of voters will all cast the same vote (for example, political parties in a parliament), voting power measures the ability of a group to change the outcome of a vote. Groups may form coalitions in order to maximize their voting power.

5.6.1 Establishment of Voting Stations

The law provides for the establishment of polling stations at locations suitable for security.²⁹ The polling stations are required to be organized in a manner that they are sufficiently secured and protected prior to polling day. Polling stations can be established at Office and Assembly Halls of Urban Dwellers Associations or Peasant Associations or Producer's Cooperative Associations. Polling stations may not be established at military camps, police stations, places of worship, hospitals, places where alcohol is sold, buildings of political and religious organizations and places of residence.

Persons who are not electors and electors who have already voted, other than those engaged in conducting electoral activities, are required to keep themselves out of the vicinity of the polling station. No person may be present within the radius of five hundred meters of the polling station while drunk, carrying a weapon or in any other situation disturbing peace. Where a person is present in

²⁹ Supra note 8, Art. 63.

such situation, the chief electoral officer may authorize necessary measure against the person.

When arranging the layout of the polling station provision must be made for a booth where the voter can vote in secret and cannot be observed by anyone else. The ballot box must be placed in a way that is possible to be observed for security reasons. Seven days before voting day, each polling station must have a ballot box, electoral roll, ballot papers, ink and ink pads, ballot box seals, indelible ink, a box for storing ballot papers that have not been marked properly and report forms.

5.6.2 Voting Station Observers

Ethiopian electoral law provides for the election of five observers for each polling station. These observers must be independent and not affiliated to a political party and must be residents of the area where the polling station is situated. The role of the polling station observers is to observe the elections and report any irregularities in the voting process to the person in charge of the polling station. In Ethiopia, presiding officers are called Chief Officers of the polling stations.

5.6.3 At the Voting Station

Each polling station has three staff and a Chief Officer (the presiding officer). The Presiding Officer is responsible for all voting day activities at his or her polling station. They are assisted by the other staff that supports the voting process. The Presiding Officer also has the responsibility of security at the polling station. No one can come within a 500 metre radius of the polling station if they carry a

weapon, are drunk or are disturbing the peace in any way. The Presiding Officer determines whether they require police to assist them in ensuring security of voters, and can request police assistance through the electoral commission offices.

Representatives from the media are permitted to be in the polling stations on condition that they present their credentials and do not interfere with the voting process.

The Presiding Officer must arrange the polling station to accommodate the following:

- seats for candidates' representatives,
- seats for public observers,
- a seat for Registrar No. I,
- a seat for Registrar No. II,
- a place for applying the voter marking-ink,
- a place for handing out ballot papers,
- a secret voting booth/shelter,
- a place for the ballot box, and
- a place for giving briefings on the voting process to voters and observers at the entrance to the polling station.

Each polling station must be clearly marked and each stage of the voting process must be identified through placards or tags. Polling station should also contain posters with information on the candidates' symbols, and a pictorial illustration of the voting process. Special consideration is given to the prevailing

circumstances in each polling station. The Presiding Officer is required to find a secured space for election material that is free from pests, rodents, and humidity.

Presiding Officers must give a full briefing on the voting process and all the tasks and functions that must be carried out on Election Day. All the officials who will be present at the polling station will receive this briefing.

Unless the Board decides otherwise the voting hours are from 6:00 a.m. – 6:00 p.m. Under special circumstance, the board has the mandate to decide a different voting hour as long as this is officially announced to the public.³⁰

5.6.4 Before Voting Begins

The Presiding Officer opens the sealed bag received from the Constituency Electoral Office and counts out the election documents and materials inside and verifies that the quantity and the variety tallies with the checklist. The tag number of the ballot box and of the padlocks is recorded by the observers, the party and candidates' representatives. The sealed bag is opened in front of the observers and representatives.

The Presiding Officer sorts the ballot papers into piles for the different types of elections and signs on the reverse side of each ballot paper. He/she then counts out ballot papers equal to the number of registered voters and places and then puts it in sight of the observers. The remaining ballot papers are kept aside as reserve ballots.

Voting shall begin in the presence of representatives of political parties and private candidates, electoral officers and election wardens, after the chief

³⁰ Supra note 8, Art. 64 (1-2).

electoral officer of the polling station shows to the bodies stated above that the ballot is empty , sealed and put in an open place, and within close distance to observers and after minutes are recoded and filled specifically designed for this purpose.³¹

5.6.5 The Voting Process

Before voters enter the polling station, the Presiding Officer takes them through a briefing on the voting process. He/she waits until a group of voters are gathered and gives these briefings throughout election day. The briefing includes an explanation of the ballot papers and an explanation of who is contesting the elections without showing any favouritism for or bias against the candidates or parties. The briefing also contains information on how a ballot should be marked and what constitutes a spoilt ballot.

After prospective voters receive their briefing, they enter the polling station and produce their elector's card. This card was issued to them at registration and identifies them as people who have registered to vote. Their card is checked to see if they are at the correct polling station and to identify which voters' roll they are on. Both the elector's card and their identification document are checked against the voters' roll.

Once they have been checked against the voters' roll and their fingers have been examined for voter's ink, the elector's card is destroyed and his/her identity document is returned.

³¹ Supra note 8, Art. 62(3)(a)&(b).

The voter is required to sign, or in the case of illiterate voters make a thumb mark, in a column of the voters' roll that is designated for this purpose after identification of her identity, and that she has not voted.³² After the elector signed on the elector roll, her thumb, if she does not have a thumb, her any other finger, shall be marked with indelible ink after which she shall be handed with a ballot paper and directed to the voting booth. If she does not have fingers, the election officers shall allow her to vote after ascertaining that she has not voted.³³ The left hand thumb of the voter is inked to prevent double voting.

In the voting booth the voter marks his or her ballot by placing an X next to her choice or, if the voter is illiterate, places a thumb mark next to the preferred choice; after which he/she shall fold the ballot paper and insert it in the ballot box placed in front of him/her and in close sight to observers. Illiterate electors shall vote by pressing one of their fingers in the square corresponding to the symbol of the candidate for whom they want to vote after dipping it in ink made available for this purpose.³⁴

Voters who are blind or physically disabled may be accompanied by a person of their choice to assist them in casting their ballot. However, the assistant has to be 18 years old and above, and should not be a candidate or representative of a candidate.³⁵ If a voter inadvertently spoils their ballot paper, they can return this ballot and request another ballot. The spoilt ballot will be marked by the electoral official with the words "spoilt and returned" and be kept in a special box.

People who are not allowed to vote are those:

³² Supra note 8, Art. 66(2)

³³ Ibid , Art. 66(3)

³⁴ Ibid, Art. 66(5)&(6).

³⁵ Ibid , Art. 67.

- without an electors card and whose name is not on the voters' roll,
- who are not willing to have their thumb inked, and
- whose thumb is already inked.

Any elector may cast his/her vote freely where he/she appears in person and each elector has to cast her vote only once.³⁶

5.6.6 At the End of the Voting Process

At 6:00 p.m. or where the final voting hour is completed, the gate of the polling station must be closed. People who are at the gate and in the queue at the time of closing will be allowed to cast their vote if they meet all the legal requirements for voting. Election wardens are stationed at the gate to ensure that no people will further try to enter the area. No person except electoral officers, public observers, representatives of candidates and authorized election observers, should be allowed to enter polling stations before the opening and after the closing of polling stations.

After the last voter has cast his/her vote, the ballot box/es are sealed with a special seal in front of all the observers, party and candidate representatives. The tag number of the padlock of the ballot box is recorded by the election officers, observers, party, and candidates' representatives.

³⁶ Ibid, Art. 65(1).

Check Your Progress

1. Students, what do you think is the logic of setting the age requirement for candidature different from attainment of majority age?
2. Compare and contrast the requirements stated under proclamation 532 /2007 for voters registration and eligibility of candidature and try to understand their essence and contribution for periodic and genuine election.
3. What are the rules and Regulations under the Ethiopian electoral law pertinent to pre election campaigning.
4. Describe the voting process as prescribed in procl.532/2007.
5. Indentify the meaning and essence of the following key terms.

- Registration of Electors
- Age Requirement
- Residency Requirement
- Citizenship Requirement
- Non Felony Requirement
- Candidacy
- Qualified elector Requirement
- Petition Signature Requirement
- Campaigning
- Candidate Removal
- Voting
- Ballot

CHAPTER SIX

STAKEHOLDERS IN THE ELECTORAL PROCESS AND THE

LAW (POLITICAL PARTIES, MEDIA AND ELECTION

OBSERVERS)

Unit Contents:

- 6.1 Introduction
- 6.2 Unit Objectives
- 6.3 Political Party and Election
 - 6.3.1 Notion and Essence of Political Party
 - 6.3.2 Functions of Political Party
 - 6.3.3 Political Party and Election
 - 6.3.4 Financing Political Parties and Election Campaigns
- 6.3 Media and Election
 - 6.4.1 Notion and Social Role of Media
 - 6.4.2 Constitutional and Legal Role of Media
 - 6.4.3 Media and Election
- 6.5. Election Observers and Election
- 6.6 Summary

6.1 Introduction

Article 25 of the Covenant on Civil and Political Rights provides that every citizen has the right, without discrimination, to take part in the conduct of public affairs, to be elected, and to have equal access to public service in his or her country. Those rights are not absolute, however, and may be subject to a variety of reasonable limitations. This unit is dedicated for the discussion of the essence

of political parties and their role in election, media and its role in ensuring fair and free election and the ethical and legal obligations of election observers.

6.2 Unit Objectives

Upon the end of this unit, students are expected to:

- have clear understanding of the notion of Political party,
- explain the role of political parties in election,
- describe the extent of media's involvement in election process, and
- understand the role of election observers in election.

6.3 Political Party and Election

A political party is defined as an organized group of people with at least roughly similar political aims and opinions, that seeks to influence public policy by getting its candidates elected to public office. States have broad, but not unlimited, power to regulate the time, place and manner of elections because of their acknowledged interests in orderly elections, electoral integrity, minimized voter confusion, political stability, and electoral finality. By the same token, individuals have a constitutionally protected right to associate others with like-minded to advance their political goals. A common means individuals use to advance shared political goals is the organization of a political party. Elections can result in tension and conflicts between these public and private interests. This sub-section discusses the state's ability to regulate political parties and hence to maximize parties' role to in free and fair election.

6.3.1 Notion and Essence of Political party

The institution of political party has now assumed an honorable place after having a notorious past. The reason for this lies in the fact that now a political party is considered fundamentally different from a destructive body like a clique or a faction. Though it is true that the institution of political parties has assumed a respectable place now, its meaning, nature and role are still a matter of serious debate. While liberal view appreciates the existence and role of political parties as agencies organized public opinion, with the help of which a political system operates. The Marxist view of political party and its role are quite different from the liberal. For Marxist political party is an instrument whereby the working class develops class consciousness so as to overthrow the bourgeois order. Lenin's theory of party, in addition to this, has more formidable characteristics. The party is not only the 'vanguard' of the working class, it alone is the custodian of all power and any opposition to it is, visited by severe punishment.

From what we have said above, the following essential features of a political party may be earmarked so as to offer a comprehensive meaning of the term:

1. a political party is not a loosely – knit organization of some persons. It is required that the members of a political party must be organized on some specific principles or interests in a tight manner so that the party may be distinguished from any oligarchical entity,
2. there must be close and intimate relationship among all the members of a party. An intermittent relationship between the 'lords' and the 'vassal' does not constitute a party in this sense,
3. there must be a clear line of distinction between 'principles' and 'personalities'. Despite the weighty influence of the personalities of few leaders, the life of a party must not depend upon the life of its members,

4. the leaders of a party must endeavour and struggle for maximizing their base of popular support and legitimizing the circle of decision – makers, and
5. in the end, a party must adopt constitutional means for the seizure of power so as to implement its policies and programmes, or to protect and promote some specific interest.

The party system essentially means the way the political parties of the day interact with one another within the politically competitive nature of Westminster and beyond. A number of different types of party systems have been identified:

i. One-party system: a one-party system cannot produce a political system. One party cannot produce any other system other than autocratic/dictatorial power. A state where one party rules would include the remaining communist states of the world (Cuba, North Korea and China), and Iraq (where the ruling party is the Ba'ath Party). The old Soviet Union was a one party state. One of the more common features of a one-party state is that the position of the ruling party is guaranteed in a constitution and all forms of political opposition are banned by law. The ruling party controls all aspects of life within that state. The belief that a ruling party is all important to a state came from Lenin who believed that only one party - the Communists - could take the workers to their ultimate destiny and that the involvement of other parties would hinder this progress.

ii. Two-party system: as the title indicates, this is a state in which just two parties dominate. Other parties might exist but they have no political importance. America has the most obvious two-party political system with the Republicans and Democrats dominating the political scene. For the system to work, one of the

parties must obtain a sufficient working majority after an election and it must be in a position to be able to govern without the support from the other party.

iii. The multi-party system: as the title suggests, this is a system where more than two parties have some impact in a state's political life. A multi-party system is a system in which three or more political parties have the capacity to gain control of government separately or in coalition. A multi-party system can lead to a coalition government as Germany and Italy have experienced. In Germany, it provided reasonably stable governments and a successful coalition can introduce an effective system of checks and balances on the government that can promote political moderation. Also, many policy decisions take into account all views and interests. In Italy, coalition governments have not been a success; many have lasted less than one year. In Israel, recent governments have relied on the support of extreme minority groups to form a coalition government and this has created its own problems with such support being withdrawn on a whim or if those extreme parties feel that their own specific views are not being given enough support.

iv. Dominant-party system: this is different from a one-party system. A party is quite capable within the political structure of a state, to become dominant to such an extent that victory at elections is considered a formality. This was the case under the Conservative governments of Margaret Thatcher and John Major. For 18 years (1979 to 1997), one party dominated politics in Britain.

6.3.2 The Functions of Parties

Although often abused by politicians and publics alike, political parties do perform vital functions in every political system; and in countries with

democratic traditions they are an indisputably necessary part of the democratic process. Parties perform at least five major functions as discussed below.

I. Aggregation of Demands

In any society, social groups with particular interests to promote or defend need some means whereby their demands can be aggregated and articulated in government. Traditionally, political parties have performed this function – hence the association of party with particular social groups, regions or religions. Political parties bring together sectional interest, overcome geographic distance and provide coherence to sometime divisive government structure. Political parties tend to provide the highest common denominator.

II. Staffing the Government

In a modern and complex society, parties are a necessary link in the relationship between government and people. According to social-contract theory, governments must be held accountable for their actions. If they are perceived to be failing, then the people can always replace them at election time. Unfortunately, accountability and responsiveness can never be continuous or complete except in very small societies or communities. Given this, parties provide the public with a focus for accountability. Once elected, a president appoints government officials to fill the major posts in the new administration. Not only departmental chiefs (members of the cabinet) but also the top civil service positions are filled with party linkages. When judging the performance of the government, therefore, the public can look to the record of an administration united by a common party label, and presumably, a common set of policies. As the party is rooted in society via party organizations, staffing the government through party helps to ensure an intimate link between the implementation of policies and public preference.

III. Coordination of Government Institutions

National legislature is separated from executive. Federalism adds a further fragmenting influence by giving state (and through the states, local) governments considerable independence from the federal authorities. In centralized systems with cabinet government, parties actually dominate institutions. In Britain, for example, powerful political-party organizations nominate candidates, fight elections and, if successful, form the government out of a majority in the House of Commons. By exercising control over the party organization, governments (or oppositions) can usually ensure the obedience of individual members of the parliament.

Iv. Promotion of Political Stability

Parties do not always promote political stability. In many countries, parties mobilize movements against existing regimes and are a major force in bringing regime change. Moreover, if *governmental* (as opposed to regime) stability is the measure, it is clear that the multi-party systems of Western Europe do anything but promote stability. In 'mature' democracies, however, parties do help to socialize citizens into an acceptance of the regime, only by legitimizing national parliaments and assemblies and facilitating the peaceful transfer of power from one government to another.

In addition, political parties perform several important functions in modern political system that may be enumerated as under:

- the parties struggle for capturing power; they strive to form order out of chaos. They seek to widen the interests they represent and harmonize these interests with each other,

- they provide a link between the government and its people. They seek to educate, instruct and activate the electorate. That is, they perform the job of political mobilization, secularization and recruitment,
- they present issues: they set value goals for the society. All parties have philosophical bases no matter how blurred and no matter how divorced from the actual political behavior of the party they are, and
- in newer and developing nations of the world where political habits and traditions are yet to grow up, political party or parties does or do the job of political modernization. That is, they strive to give a particular shape to the government, provide the main link between different social and economic groups, constitute the chief agency for political education and socialization, break down traditional barriers and act as the binding force in communities divided by groups based on tribal affiliation, religious denomination or national origin.

To perform the above mentioned tasks and functions, political parties and citizens need some rights and obligations guaranteed or ruled by constitution or law. These include

- freedom of organization,
- freedom to stand for election,
- freedom of speech and assembly,
- provision of a fair and peaceful competition,
- mechanisms of plurality,
- inclusion in the electoral process and contacts with the EMB,
- a level of playing field and freedom from discrimination,
- media access and fair reporting, and
- Transparent and accountable political finance.

6.3.3 The Role of Political Party in Election

Political parties are vital political institutions for contemporary democracy. They are essential for the organization of the modern democratic polity and are crucial for the expression and manifestation of political pluralism. Political parties perform a variety of functions, all of which are to some degree quintessential to modern liberal democracy. Parties perform an important function as a channel for integrating individuals and groups in society into the political system; they mobilize and socialize the general public, particularly at elections; and they constitute the core vehicles for the articulation and aggregation of social interests. Political parties, furthermore, fulfill an important role in the recruitment of political elites by nominating and selecting candidates for public office; they are essential for the organization of government; and perform an important policy-making function by making political decisions and implementing these in political practice.

6.3.4 Financing Political Parties and Election Campaigns

In order to carry out their core activities, political parties need appropriate funding. The relationship between money and politics, however, is controversial and much of the debate on the role of money is concerned with the improper influence of money on the democratic political process and with the illegitimate personal enrichment of politicians. While the shady aspects of finance and politics should not be ignored, the relevance of money extends beyond illegitimate sources that flow into party coffers and the pockets of politicians. The scope of political finance has a wider relevance in the context of the functioning of democracy and should thus be seen as broader than merely involving illicit

transactions. More generally, political activity involves expenses which should be seen as the necessary and unavoidable costs of democracy.

Under the Ethiopian legal system, a substantial legislative action has been taken in recent years to regulate the practice of party financing. The relevant laws in this regard are *The Revised Political Parties Registration Proclamation No. 573/2008* (here in after proclm. No.573/2008) and *Regulation Concerning the Procedure for Determining the Aporsionment of Government Financial Support to Political Parties Regulation Number 5/2009*. The objective of this Regulation is to lay down a transparent procedure for determining the criteria for the distribution of government support to political parties as well as for its utilization and administration so that political parties could play their part in building a democratic system in addition to the electoral law proclm. no. 532/2007.

According to proclamation no.573/2008, government shall grant support for political parties that have representation at the Federal and at State houses for conducting their day to day activity and to effect for election purpose. The support to be granted by the government according to this Article may be in the form of money, in kind and in service.³⁷

The main traditional sources of internal party financing are membership fees, income from property, revenue from party activities such as the sale of newspapers or other party publications, fundraising activities, party festivals and other social events, and occasional public collections. Political parties are private voluntary associations which should in principle be in control of their own financial affairs although these may be subject to some degree of state regulation.

³⁷ The Revised Political Parties Registration Proclamation No. 573/2008 (here in after proclm. No.573/2008) , Art. 42.

Membership contributions are an attractive form of party finance because they are donated on a voluntary basis, and, notwithstanding material incentives which may underlie an individual's motivation to join a party or clientelist services which are offered to party membership, they do not imply a direct pay-for-service relationship. Membership contributions are not accompanied by direct demands for influence on programming decisions or access to party-related functions. From a normative point of view, membership fees are, therefore, the most unproblematic form of party financing.

Pursuant to art 51 of Proclamation .no 573/2008, the income source of a political party may be:

- membership dues collected from members;
- donations or grants by Ethiopian nationals and companies in accordance with the limit to be set by the Board on the basis of its study; and
- the grant and support to be given by the government as provided from Article 42 to Article 50 of the same Proclamation.

However, a political party may, upon the approval of the government or regional state administration, collect money from the proceeds of events organized on non-permanent basis to enhance its financial position. This, being the case under Ethiopian law, no political party that has attained legal personality may directly or indirectly be engaged in commercial and industrial activities.

i. Qualification of Donors

Because private donations may run the risk of establishing inappropriate links between money and specific political decisions, it is advisable that state laws

adopt a set of general principles on private donations. Measures taken by states governing donations to parties should provide specific rules to avoid conflicts of interests to avoid prejudice to the activities of political parties to ensure transparency of donations and to avoid secret donations. Public law should be tailored such that it does not endanger the autonomy of political parties and that it ensures their independence.

Regulations on the qualification of donors can take two basic forms. Germany provides an example of the first approach, which is through the identification of “*impermissible donors*”, outlining the types of donors which are excluded from making financial contributions to political parties altogether or whose donations are strictly limited. A second approach, such as the one which was recently adopted in the United Kingdom, provides a positive list of “*permissible donors*”. In contrast with this negative list of impermissible donors, the positive identification of permissible donors entails a potentially more restrictive approach, as no donations may be accepted from a person or entity not included in the list.

The first approach is adopted under the Ethiopian legal system.³⁸ Every political party is prohibited to accept donation or grant from the following persons or bodies:

- a) foreign nationals;
- b) foreign government or foreign political party;
- c) welfare organization or non-governmental organization;
- d) religious organization;
- e) prisoners of law;

³⁸ Proclm. No.573/2008 , Art. 52.

- f) an organized group or person assuming state power in a manner other than that provided under the Constitution;
- g) terrorist organization;
- h) donation or grant having unknown source;
- i) government organization; and
- j) donation or grant from any body or person for the execution of any future object that conferred inappropriate benefit or for receiving unlawful benefit.

Anonymous donations should be limited or prohibited. From the standpoint of equality of the democratic process and the transparency of political finance, it would perhaps be best to prohibit any type of anonymous donation. The same is true for secret funding of politicians and parties by foreign governments that has a long history. The example of the Soviet Union financing communist parties from abroad is particularly well known. When it comes to foreign money funding politicians and parties, a distinction should thus be made between secret and clandestine activities with a political purpose, on the one hand, and legal activities often explicitly targeted at democracy building on the other hand.

Various objections, of principle as well as practice, can be raised against foreign contributions. The most important principled objection to foreign donations to political parties is that it interferes with the autonomy and sovereignty of domestic politics. More pragmatic objections include the difficulties involved with ensuring the accountability of the donor and the fact that they may remove an incentive for parties and politicians to raise money from their own supporters.

ii. Financing the Electoral Campaigns of Political Parties

Since campaigning constitutes a special type of party activity, the types and amounts of necessary resources are likely to be different from those required to sustain the party's daily functioning. Furthermore, and despite the fact that modern day electioneering may have become an almost uninterrupted activity, campaigning is likely to be heavily concentrated in particular periods, reaching its peak immediately before Election Day.

Given their special nature, election campaigns may be subject to a financing regime different from that of normal party operations. Governments may, therefore, adopt special provisions covering the amounts and sources of permissible private donations, expenditure limits and the criteria for state subventions for the financing of elections. However, the considerations underlying the advantages and disadvantages of different types of private and public funding are the same, regardless of whether they concern election campaigns or routine party activity. The framework of party finance legislation should, therefore, be inspired by a common set of principles which applies *qualitate qua*, to both the financing of routine operational costs and the financing of election campaigns.

The proclamation for political parties registration set rules applicable to the support granted by government for the purpose of election.³⁹ The support to be granted by government to political parties participating in election shall only be utilized for the purpose of election at federal or state houses. Limits on party and campaign expenditure are a device used to avoid excessive increases in the cost of party politics, control inequalities between political parties and restrict the scope of improper influence and corruption. In the absence of an upper threshold on expenditure, there are no limits to the escalation of campaign costs. This can

³⁹ Proclm. No.573/2008 , Art. 47

be prevented by setting legal limits on election expenditures. Expenditure limits should also be seen as a means to prevent candidates or parties from buying votes. Unrestricted spending gives an unfair advantage to those with access to money and may make elected officials excessively dependent on contributors at the expense of being responsive to the public at large. In order to ensure equality of opportunities for the different political parties, electoral campaign expenses should have a fixed ceiling.

Under Ethiopian Electoral law, expenditure for the purpose of election, as determined by Regulation no. 5/2009, which is issued by the board with the mandate given to it under art 47(2) of procl.532/2007, are expenses incurred for:

- A. the nomination of candidates,
- B. for conducting a campaign to publicize its political program to the whole people,
- C. conducting civic education widely with a view of making the election free, fair, peaceful, lawful and democratic, and
- D. training and deploying party agents and other similar expenses.⁴⁰

iii. Monitoring

Important elements of the legal framework on political financing need to incorporate rules which oblige parties to publish their financial accounts and which subject them to independent scrutiny. In case of evasions of obligations, breaches of the law or attempts to fraud, clear and enforceable sanctions should be imposed. To this effect, party financing legislation should include stipulations regulating at least four distinct aspects related to the transparency of political finance. These are:

⁴⁰ Regulation Concerning the Procedure for Determining the Apportionment of Government Financial Support to Political Parties Regulation Number 5/2009, (here in after Regulation No.5/2009), Art. 14.

- *Disclosure*: rules which oblige political parties to open up their financial accounts and reveal information on their levels of income, including the identity of donors and expenditure.
- *Reporting*: regulations stipulating that party accounts be made public and reported to the appropriate institution.
- *Monitoring*: provisions for an independent body to inspect and control party accounts.
- *Enforcement*: a legal system of sanctions to ensure that regulations on party financing are not evaded, and to impose penalties when the law is breached.

Disclosure and reporting of information on party finances is crucial to the transparency of political funding, and it provides the cornerstone for public. In most circumstances, disclosure of party income and expenditure should be seen as in the public interest. The main argument in favour of disclosure rules is that they enhance transparency and may prevent improper financing. The type and sources of financial support may inform the electors of the party's type of policies, activities and political style, and thus, may reasonably be expected to influence electoral choices. Voters should, therefore, be entitled to know who the financial supporters are, from the different political parties and candidates they vote for. In addition, disclosure of political donations makes it easier to detect (and thus potentially to avoid) political corruption. If a corporate entity would donate a large sum of money to a political party and would subsequently benefit from favourable government decisions or acquire a favourable public contract, public disclosure of political contributions will make it easier to detect such possibly questionable transactions.

Accordingly, the Ethiopian electoral law imposes the duty to report periodically to the Board in the audit report by the political parties after listing the expenditure of the grant in expenditure heading, and certified by the auditor.⁴¹ Hence, any political party has the obligation to deposit the support granted by government in specific bank account; transact the account according to the law and may not expend outside the allowed expenditure ;keep the granted support in specific books of account by listing under every expenditure heading; submit audit report certified by auditor, according to finance law, specifying the amount granted by the government in the budget year and the particulars for which the money has been expended. The auditor shall forward his comment in the audit report as to whether the account audited by him has been expended outside the legal scope.

iv. Intervals of Reporting

For reporting to be effective, they should be timely. This requires that parties should submit reports at regular intervals. Separate reporting requirements should be adopted for operational activities and electoral activities. For routine operational costs, reports should include all income and expenditure related to the maintenance of the party organisation, the employment of paid party personnel and all activities with no direct electoral purpose. Reporting at annual intervals would seem suitable. Special records of all direct and indirect expenditure should also be required on electoral campaigns for each political party and each candidate. Reporting on election activities should more or less follow the electoral cycle. Under the political party registration proclamation too the political parties are required to submit their reports to the Board⁴² within 3 months from the end of the budget year if the report relates to the support

⁴¹ proclm. No.573/2008 , Art. 48

⁴² Ibid, Art. 48 (3).

granted to it for conducting its day to day activity and within the period as determined by the Board if it relates to the report to be submitted as to the support granted for the purpose of election.

V. Infringement of Rules Concerning the Funding

Any infringement of rules concerning the funding of political parties and election campaigns is subject to effective, proportionate and dissuasive sanctions. The existence and effective imposition of sanctions plays an important role in discouraging parties and party officials from attempting to evade the rules of public accountability and transparency. Legal regulations on disclosure and reporting, and provisions for monitoring and control are of little value if they are widely disregarded and if offences go undetected and unsanctioned. Party finance, thus, needs a system of concrete and effective sanctions to act as a deterrent to violations of the law.

Frequently occurring types of offences are the evasion of legal restrictions on donations, exceeding the limits on campaign expenditure and violation of reporting requirements. Possible sanctions for these offences are forfeiture of the relevant donations, administrative fines and loss of public funding. In case of severe violations of the law, parties and candidates may face a loss of public office, or even prison sentences.

By the same token, the political parties registration proclamation declared ⁴³ that where a political party utilizes the government grant outside the purpose of the support, or not submits report on the required time, or submits a false financial document, or is in default of the obligation in relation with the grant:

- a) the support for the party may be declined or terminated;

⁴³ Ibid Art. 49.

- b) the party may be, according to the criminal law, fined, suspended or dissolved;
- c) the party may be cancelled from registration, or
- d) the leader or leaders of the political party may be fined or sentenced.

In addition any political party which secured income by receives “directly” or “Indirectly” the donation or grant prohibited by art 52 of the same proclamation will be punished by the confiscation of the property or money donated. Where a political party happened to get in any way the donation or grant prohibited, the party shall return the donation or grant to the Board together with related documents within 21 days from the date it received the donation or grant.

6.4. Media and Election

6.4.1 Notion and Social Role of Media

For an election to go well, it must be free and fair. There must be free speech so that all citizens and all political candidates can speak without fear. The media must be free to tell everyone what was said without pressure not to twist the truth. That is the job of professional journalists – to fully inform citizens of the issues and their choices so they can decide for themselves for whom to vote.

Elections are great challenges for the media. Journalists need to know the election rules. They must report fairly on all candidates, parties and issues. The media should be the voice of the voters. Journalists must adhere to professional standards of accuracy, impartiality and responsibility. And, they have to work

amidst great excitement, under pressure from powerful interests, and with very little time.

Given that a choice between government and policy alternatives is central to the democratic ideal, access to the media in modern society is self-evidently crucial to the dissemination of party platforms and programmes. As the CSCE Copenhagen Document puts it, 'no legal or administrative obstacle (should stand) in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.' Only if such facilities are available, will candidates effectively enjoy the right to express themselves freely, including by way of criticism and electors take the benefit of the freedom to seek and receive information.

6.4.2 Law or Regulations on Media during Elections

Whatever the differing political culture as regards media regulation, it is generally acknowledged that the media have a vital role to play in communicating information to the electorate. This makes it rather surprising that so few electoral laws deal to any great extent with the media. The absence of formal statutes or regulations might indicate a mature media environment in which there is a free interchange of political ideas in the press and over the airwaves and where every party has fair access to the media to get its ideas across. Or it might not.

In situations where large sections of the media are either publicly owned or under the control of one particular political interest group (this may in practice be the same thing), then it probably makes sense for the law to set out some basic

rules for election coverage. These will often differ in their provisions for public and privately owned media. The areas that the law (or subsidiary regulations) may cover include the following:

- how time or space will be allocated to candidates and political parties,
- whether paid political advertising is to be permitted,
- what duty the media have to carry voter education material or candidate debates, and
- whether there is to be a right of reply to factual misrepresentation in the media.

In addition, the regulations may deal with other more specific issues such as:

- news blackouts or "reflection periods",
- restrictions on reporting of opinion polls, and
- policies on "hate speech" and defamation.

The law or regulations will probably create a legislative body with responsibility for oversight of the media during election or will assign that responsibility to some existing body such as the electoral commission or broadcasting regulator. Included in the law, there is likely to be some speedy mechanism for dealing with complaints about media coverage.

One of the most widespread features of modern electioneering is the allocation of time to political parties to allow them, free of charge, to deliver their messages on television and radio. Given the overwhelming importance of television as a medium of political communications, this "free time" is a vital benefit-in-kind, though it is hard to calculate its commercial value. The methods and principles of allocation of free broadcasting time are usually similar to those of direct funding:

parties are either given an equal amount of time or the time for party political broadcasts is allocated proportionally according to party performance in the previous general election. In order to meet the requirements of such state aid, a party must obtain a minimum of votes and/or must compete in a fixed number of constituencies.

The first press law in the history of Ethiopia was adopted in 1992. According to Proclamation No. 34/1992, titled the “Proclamation to Provide for the Freedom of the Press”, the freedom of press was recognized and respected in Ethiopia and censorship of the press and any restrictions of a similar nature were prohibited (Article 3). The proclamation stated that any Ethiopian national would receive press license from the Ministry of Information or from the Information Bureau (for regions) by submitting the following particulars: the name of the proprietor or the editor in-chief of the press, the type of press activity, the address of the head office of the press, the name of the press, and the name and address of the publisher (*Article 7*).

The proclamation also stipulated that the publisher or the editor of any press may not be forced to disclose the source of the news (Article 8(4a)). However, in case of a crime committed against the safety of the state, administration, the national defense force, or in the case of proceedings of a serious crime, the court may order the publisher or the editor of the press to disclose his (her) source of information (Article 8(4b)).

Moreover, the proclamation requires that any press product should not give rise to criminal and civil liability (Article 10); should be free from a criminal offence against the safety of the state (Article 10(2b)); should be free from defamation or

false accusation against any individual, national/nationality or organization; should be free from criminal instigation of one nationality against another, or conflict between peoples (Article 10(2c))

In 1994, Ethiopia adopted a new Constitution, and under its article 29, the Constitution declares that, *“Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.”* According to the Constitution, *“Freedom of the press and other mass media and freedom of artistic creativity are guaranteed.”*

The second press law titled *“Mass Media and Freedom of Information Proclamation,”* which was adopted by the parliament in July 2008 was initiated for the first time in 2003. The revised version banned the censorship of private media (Article 4.1), and the detention of journalists (Article 43.1). It also gave a right for government prosecutors to stop the publication and distribution of materials by invoking national security (Article 42.2).

The May 2005 parliamentary election (regional and federal) was the most contested multi-party election in the history of the country. Prior to the election, the NEBE issued media accreditation guidelines. According to these guide lines, the media people were requested to: *“strive for balance, accuracy and impartiality”, “avoid facilitating discrimination based on race, sex, language, religion, political or other beliefs, national or social origins”, “report only on credible and well-sourced facts.”* Moreover, they were requested not to *“hide key information or falsify documents.”* The guidelines also instructed the accredited media representatives not to:

“interview voters, candidates’ representatives, observers or election observers during registration or polling”; “film, photograph or interview any voters or election officials without their consent”; “film, photograph or copy the Electors’ Registers, voters’ registration identity documents or any other documents which would infringe on the privacy of voters.” ⁴⁴The guidelines also stipulated that all interviews should be conducted out side polling stations.

Proclamation no 532/07 under its Art 59 & 60 declare that political organizations and sections of the community that are in support of candidates shall be entitled to get access to free airtime and equal access to state owned mass media including radio, TV and newspapers. With a view to effectively carry out campaigning activities, government organs and officials at any level shall have the obligation to create a conducive condition to provide, both for candidates and their supporters, equal access to such facilities as radio station, meeting halls and newspapers that are under their respective authority.

Broadcasting law requires any broadcasting service provider to allocate free airtime for political organizations and candidates registered in accordance with the relevant law, to publicize their objectives and programs to the people or to transmit statements during election period. Any political organization or candidate may also transmit election campaign advertisements. This would assist in alleviating financial constraints political organizations and private candidates face in reaching the public with their political programs. The Broadcasting Service Operation Directive provides detailed information on the assignment of free air time during election. A broadcaster (a body carrying out radio and television transmission on the basis of the Broadcasting Service

⁴⁴ NEBE, “NEBE Media Accreditation Information and Guidelines on Election Coverage.”
<<http://www.electionsethiopia.org/Whats%20New17.html>>

Proclamation) is under obligation to assign free air time to candidates. The assignment of air time has to be just and reasonable for all political parties and private candidates.

6.4.3 Media and Election

There may be pressure on the election administration bodies from political or other powerful and interested bodies. The parties may try to do everything to win the election. It will be difficult for the election administration bodies to catch every trick and abuse that may occur. But, the election must be fair and honest if it is to have legitimacy with the people and the world. That is why a reliable media is needed as a watchdog against corruption and illegal activity in the election.

It is the role of the media to report problems and possible violations of the rules, as well as to inform voters about the issues and the political parties and candidates' policies. The media does not work for the commission or the political parties, but the media can shine its own spotlight on the election process and expose corruption or other illegal activities. The commission and the parties know that there will be public criticism of the commission and the parties if the abuse is not stopped.

Reporters need to be well aware of the election rules, how the election administration bodies operate and how the voting will be conducted. Also, there should be a policy and practice of equitable or fair news reporting about the political parties. This means, all parties receive some amount of news reports about them, but the amount of reporting about each party should reflect the

significance of the party in previous elections as well as their significance in the current campaign. One good indicator is the number of candidates. Bigger parties will receive more coverage. This is a policy that the news media should practice as part of reliable journalism.

But the election administration bodies may make rules to require the news media to do this, during the election campaign period. The election administration bodies may also require the news media to provide equitable or fair amounts of free advertising or free airtime for each political party. State media should accept all parties' advertising. Private media have a public responsibility. Private media should provide equitable or fair news reports on all parties as defined by the election administration bodies, and should treat all parties' advertising the same. When the election administration bodies advertises in the media to inform voters about election procedures, it should advertise it in all media. Reporters should not show any political preference in their news reports. Their news reports should be accurate, impartial and responsible.

The most important role of the media in an election campaign is to allow voters to be well-informed about their choices. Another role is to observe whether the election is free and fair. A third role for the media is to report on the strategies the parties are using to try to win votes. Voters deserve to know if a party is making different promises to different people. Voters need to know about party leaders, but also party policy and the party's past record. The media's roles in an election are many. The media serves to inform the voters. The media is a watchdog to prevent corruption and large errors in the election. The media is the voters' voice.

Nevertheless, there should also be monitors of the media, to ensure that the media meets its important responsibilities, and that the election is free and fair. Voters want to know if they are well informed by the media. The election administration bodies need to know that the media provides equitable and fair reporting for all parties. Political parties want the same assurance. International observers want to know that reporting is without interference by the government or powerful interests so that the election has legitimacy. All of this is called media monitoring. There need to be an independent organization or independent officials to monitor the media.

Media monitoring must be done by respected and non-partisan persons or organizations with no personal gain or vested interest in who wins the election. Monitoring requires professional direction and trained persons to measure the accuracy, fairness and freedom of media coverage in an election. It can be done by a university or non-governmental organization or by an association of the media or a press council. Media monitoring can be paid for by the election commission or by other independent interests. There can be more than one organization doing media monitoring. But monitoring must be respected as non-partisan.

Monitoring should cover all significant media, including regional media with a strong influence on voters' opinions. It should measure not just the number of stories of each party, candidate or leader receives in the media, but also the accuracy and fairness of the stories. The monitoring should include measurements of the advertising, and how well it conforms to the election commission rules. The findings of the media monitoring, if possible, should be

made public, and reported in the media during the campaign as well as afterwards.

The best kind of monitoring is supported and respected by all the major media, both state and private. This approach means the media organizations and individual journalists agree to a code of media conduct, and agree to be guided by the advice and the public reports of the monitoring organization. Using a code of conduct creates media accountability.

To be accountable, the media must be willing to publish or broadcast the reports of the monitoring commission and to correct mistakes discovered by the monitoring organization. The election administration bodies can take the advice of the monitoring organization and direct the media, the government or the parties to correct mistakes or stop unfair reporting and advertising.

Media monitoring is not a substitute for a system of laws and regulations, which would guarantee journalists' freedom from government interference, freedom of information, and media owners' freedom. The legal system should protect journalists from censorship, intimidation or arbitrary arrest. It should also protect citizens from media libel and slander, or malicious or irresponsible journalism. But, the legal system itself must be honest and competent, and not be used by powerful interests to interfere with media freedom.

6.5. Election Observers and Election

Election Observation is one of the methods by which the transparency of an election can be ensured. Neutral, independent and conscientious observation of the electoral process can also help ensure the credibility and impartiality of all elections. Election observation is not concerned with any particular election result, but is concerned with electoral outcomes only to the degree that they are reported honestly and accurately in a transparent and timely manner. In addition to providing credible information on an electoral process, the presence of election observers builds voter confidence in the integrity of the process as well as the integrity of an electoral management body. Election observation also helps to deter or expose violence or intimidation, as well as cheating or manipulation of the vote or election results.

6.5.1 Historical Background

The first monitored election was that of a *plebiscite* in Moldavia that was monitored by most of the major European powers. Election monitoring was uncommon until after World War II. Election observation activities have expanded significantly following the end of the Cold War, along with the development of international standards on the conduct of democratic elections.

In the 1990s, international election observation focused on elections in countries with weak democracies or democracies in transition. In recent years, however, there has been an increasing number of observer mission monitoring elections in long-standing democracies, including the United States, France, the United Kingdom and Switzerland.

International organizations such as the Organization for Security and Cooperation in Europe, the European Union, the Council of Europe and the African Union regularly deploy monitoring teams. The United Nations no longer provides monitoring services, instead, it focuses on electoral assistance. Individual governments also participate in monitoring efforts, generally under the umbrella of an international organization. These national efforts are normally managed by the local electoral commission. International observation is complemented in many countries by domestic observer groups.

Standard international election observation missions, as deployed by, for example, the European Commission or Office for Democratic Institutions and Human Rights (ODIHR), monitor the entire electoral process. Election experts and long-term observers begin their work weeks before the actual Election Day, looking at candidate registration, the legal framework, the media situation, the work of the election administration and the campaign environment. On Election Day, short-term observers monitor the opening of polling stations, the vote cast and the counting and tabulation of results. After Election Day, observers remain in the country for another few weeks to monitor how possible election-related shortcomings and complaints are dealt with by the election administration and the judiciary. The findings of the observers are made public in reports issued after election day.

There are commonly two types of election observers - Long Term Observers (LTO) and Short Term Observers (STO). LTO's observe all aspects of the election process including, but not limited to, voter registration, logistic support, nomination of candidates, campaigning, polling, counting, announcement of

results, and processing of complaints and disputes. Most observation missions send a small number of long-term monitors for a period of six to eight weeks.

The STO's observe the election process on the polling day. A larger number of short-term observers then join the mission for the final week of the campaign. STOs provide mostly quantitative observation of polling station and count procedures, with LTOs supplying qualitative analysis and contextual information about the wider political situation.

Specifically, national and international observers will need to know whether freedom of movement, assembly, association and expression have been respected throughout the election period; whether all parties have conducted their political activities within the law; whether any political party or special interest group has been subjected to arbitrary and unnecessary restrictions with regard to access to the media or generally with regard to their freedom to communicate their views; whether parties, candidates and supporters have enjoyed equal security; whether voters have been able to cast their ballots freely, without fear or intimidation; whether the secrecy of the ballot has been maintained; and whether the overall conduct of the ballot has been such as to avoid fraud and illegality.

The essential human rights dimension to many political and electoral rights should not be ignored, so far as some of those applicable in the elections context may not be subject to any derogation whatsoever, while others may only be restricted in accordance with law and, among other limitations, to the extent reasonably necessary in a democratic society.⁴⁵

⁴⁵ See the 1966 Covenant on Civil and Political Rights, for example, in particular Art. 12(3) – freedom of movement; Art. 19(3) – freedom of expression; Art. 21 – freedom of assembly; Art. 22(2) – freedom of association.

6.4.3 Ethiopian Electoral Law and Election Observation

It is the constitutional obligation for the National Election Board of Ethiopia to hold free, fair, credible and transparent elections.⁴⁶ Article 38 of the constitution provides that every citizen, who has attained the age specified by the law, shall have the right to elect and be elected in periodic elections. To ensure the transparency of elections, Procl.532/2007 vested the power to the government to invite foreign observers and the board to grant a license to interested domestic election observers to observe election process in Ethiopia.⁴⁷ Article 79, 80 and 81 of the said proclamation envisages licensing, rights of election observers and duty of election observers.

Procl.No.532/2007 under its article 80 provides :

1. a representative of an organization who is issued with an election observation license has the right to monitor the election process and request and obtain appropriate information, and
2. election observers may report to the secretariat of the board any irregularities they observed or encountered related to the election process.

⁴⁶ Art. 102 of the FDRE constitution.

⁴⁷ Art. 78 of Procl. No 532/2007- Election Observers (1) Interested domestic election observers may observe the election process upon the issuance of license from the Board. (2) Without prejudice to the international conventions to which the country is a party, the government may invite foreign observers as deemed necessary.

Criteria for an organization to observe election

According to art 78 of procl.No.532/2007, the national election Board of Ethiopia has the power to issue license for organization to observe elections to be conducted in the country. The Board may issue election observation license and ID card where the requesting organization⁴⁸:

- is legally registered and operating domestic organization;
- is independent of any political partnership;
- has made preparations that create a conducive atmosphere for free, free and peaceful election: and
- upon investigation by the board of the capability of the election observers deployed by the organization to observe the election impartially, and where the organization and its observers sign the election observers code of conduct issued by the board.

The observer licensed by the Board shall have the following duties;

- carry and display her election observation license;
- respect the orders given by the electoral officer;
- to refrain from any act that may obstruct the proper and efficient conduct of the election process;
- respect the code of conduct for observers issued by the board
- refrain from making assertion about the election within or outside the country before the official declaration of results; and
- to submit detailed report to the Board.

Observers are expected to enjoy freedom of movement and access to all stages of the electoral process, to examine factors ‘impinging on the credibility’ of the process, and to determine whether, in their judgment, ‘the conditions exist for a

⁴⁸ Art. 79/2007 Procl. No.532/2007.

free expression of will by the electors', and whether 'the result of the elections reflects the wishes of the people'.

Specifically, national and international observers will need to know whether freedom of movement, assembly, association and expression have been respected throughout the election period; whether all parties have conducted their political activities within the law; whether any political party or special interest group has been subjected to arbitrary and unnecessary restrictions with regard to access to the media or generally with regard to their freedom to communicate their views; whether parties, candidates and supporters have enjoyed equal security; whether voters have been able to cast their ballots freely, without fear or intimidation; whether the secrecy of the ballot has been maintained; and whether the overall conduct of the ballot has been such as to avoid fraud and illegality.

According to art 3(7) of directive no. 3/2009 ⁴⁹“Public Observer” shall mean an impartial resident of each constituency or polling station elected by the people to observe elections. Each polling station shall have 5 public observers. The public observers shall be directly elected by the residents of the polling station. The candidates who are to be elected as public observers shall fulfill the following criteria:

- A. be an Ethiopian national;
- B. be loyal to the constitution;
- C. be non-partisan;
- D. be resident of the polling station for at least 6 months;
- E. be 18 years old and above; and
- F. be a person who has earned the trust of the local people.⁵⁰

⁴⁹ Directive concerning the procedure for the activities of public observers and representatives of political parties and private candidates number 3/2009

⁵⁰ Ibid Art..9.

The principle for having public observers to observe election is to promote the public's fundamental right to closely follow the electoral process through its representatives. Only those people who are non-partisan and neutral who are elected by the people, and who are accountable to them can follow the electoral process as public observers.

Check Your Progress

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1. Discuss the role of political party in election/democratization/ of a country.
2. Discuss the role of media in election.
3. Discuss the legal frame work in Ethiopia governing media regulations during election.
4. Discuss the role of election observers in election.
5. Explain the main functions of political parties.
6. Discuss the legislations in Ethiopia governing Financing the Electoral Campaigns of Political Parties
7. Discuss the code of conduct that needs to be adhered by political parties and private candidates during election.
8. Explain the meaning of the following key terms of the unit.
 - Political party
 - Media
 - Election Observers
 - Party system
 - Short term observers
 - Public observers
 - Election observer
 - Long Term Observers

REFERENCE MATERIALS

- Alexander H. (ed.) Political Finance(Beverly Hills, CA and London: Sage, 1979)
- Austin R, Governing: An Introduction to Political Science, (Prentice Hall, Englewood Cliffs, 6th ed., 1993).
- Beyond(Bologna: Cooperativa Libreria Universitaria Editrice Bologna,1999)
- Bjornlund, E. C, Beyond Free and Fair: Monitoring Elections and Building Democracy, (Washington D.C.: Woodrow Wilson Center Press; Baltimore: Johns Hopkins University Press, 2004).
- Burnell, P. & Alan W. (eds.) Funding Democratization. (Manchester: Manchester University Press, 1998).
- Chang S. Updating the Electoral College: The National Popular Vote Legislation. *Harvard Journal on Legislation* ,Vol **44** , 2007).
- Colin T.; British government and the Constitution: Text, cases and material (4th ed.)
- Dionne E.J. Jr. and Kristole W. (eds.); Bush V Gore: the Court Cases and the Commentary, (Brookings Institution Press, 2001)
- Ewing, K. D. (ed.) The Funding of Political Parties: Europe and
- Gunlicks A. B. (ed.) Campaign and Party Finance in North America and Western Europe (Boulder, Colorado: West view Press, 1993)
- John H. Overview of Current Electoral Law Developments in the United States,(2005) available at <http://www.usdoj.gov>.last visted April 2010.
- Jowell J. & Oliver D.; The changing constitution, (2nd ed.)
- Lintott A., The Constitution of the Roman Republic, (Oxford University Press, 1999)

- Maisel L.S. The Parties Respond ,changes in the American system (westview Press , Oxford, 1990).
- Marthoz J.P. (ed). : Election Reporting Handbook, A Media for Democracy (Handbook. London: IFJ International Federation of Journalists, 2000).
- Marthoz, J (ed). Election Reporting, A Media for Democracy Handbook (London: International Federation of Journalists, 2000).
- Martin H. and William L. M, Elections and Voters: A comparative introduction,(Macmillan, Basingstoke, 1987).
- Michelman F.I.; Brennan and Democracy, (Princeton University Press, 1999)
- Monshipouri M. *et al* (eds.), an article entitled "The consequences of a Constructed Universal: Democracy and Civil Rights in the Modern State on the book "Constructing Human Rights in the Age of Globalization, (Prentice-Hall of India, 2004)
- Nino, C.S.; The Constitution of Deliberative Democracy, (Yale University Press, New haven & London, 1996)
- Robert M.J., *et al*; Bush V Gore: the fight for Florida's Vote, (Kluwer Law International, 2001)
- Samuel *et al* (eds.); The Internal Governance and Organizational Effectiveness of Labor Union, (Kluwer Law International, 2001)
- Samuel J. Political parties : A Behavioral science,(1966, Rand McNally & company ,Chicago).
- Sorauf F.J. Inside Campaign Finance: Myths and Realities(New Haven, Connecticut: Yale University Press, 1990).
- Thompson, D. Election Time: Normative Implications of Temporal Properties of the Electoral Process in the United States,(2004)(*American Political Science Review*, 98(1)).

- Whitehead L. (ed.), The International Dimensions of Democratization: Europe and the Americas Expanded Edition - Oxford Studies in Democratization, (Oxford University Press, 2001)
- Wonwosen Teshome B: International Election Observers in Africa: The Case of Ethiopia (*Alternatives: Turkish Journal of International Relations*, vol. 7, No.1, pp. 119-137, 2008).

Laws

- Electoral law of Ethiopia Amendment proclamation No. 532/2007 .
- International Covenant for civil and Political Rights *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), UN. GAOR, 21st Sess., Supp. No. 16, at 52, art. 2, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered in to force* Mar. 23, 1976).
- The Revised Political Parties Registration Proclamation Proclamation No. 573/2008
- The Amended Directive on the Code of Conduct of Election Officials to be Recruited at various Levels Directive No. 4/2009.
- Regulation Concerning the Procedure for Determining the Aporsionment of Government Financial Support to Political Parties Regulation No. 5/2009.
- Organization and Procedure of Grievance Hearing Committees Established By the Board at Every Level during Elections Regulation No. 1/2009.
- Directive on the Registration of Candidates No.1/2009.

- Directive concerning the procedure for the activities of public observers and representatives of political parties and private candidates No. 3/2009