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DEMOCRATIZATION IN DEVOLVED AND FEDERAL SYSTEMS OF KENYA AND ETHIOPIA: WHAT LESSONS FROM THE FORMER TO THE LATTER?

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Abstract

The aim of this study is to assess the state of democratization in devolved and federal systems of Kenya and Ethiopia, respectively. It specifically identifies the determinant factors that contributed for relative progress of democratization of Kenya. It then pinpoints lessons that Ethiopia could draw from the case of Kenya. In so doing, the study followed qualitative research approach with two purposively selected cases design. Apart from comparing the cases based on the existing literature on the determinants of democratization, some key informants' interviews were conducted. The finding of the study shows that democratization in devolved system of Kenya is relatively progressing than the one in Ethiopia. Multiparty system and independent institutions such as the Supreme Court, electoral commission and civil society organizations are contributing to the relative progress of democratization in Kenya. Different factors including family based and personalized politics, ethnic patronage and corruption are still the impediments to building democratic state of Kenya. In contrast, neither revolution nor non-violent popular protests led to transition to democracy in Ethiopia; and the country worryingly missed several opportunities for making progress in the democratization project. Informed by the case of Kenya, therefore, Ethiopia needs to prioritize political elites bargaining, multiparty system and let independent institutions of democracy operate in their own terms.

Key words: *democracy, democratization, devolution, Ethiopia, federalism, Kenya*

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1. Introduction

Federalism and devolution have been introduced as strategies for democratization of the African states such as Kenya and Ethiopia. In Kenya, though the demand was there since time of independence in 1963, the choice for devolution came for several reasons, including: as a solution to the violent outburst of ethnic violence in 2007/2008, postcolonial centralization of state power and inequality in delivery of basic services.¹ The 2010 Constitution of Kenya recognizes a national government and 47 Counties and distributes powers and resources between these two levels of government. The constitutional objectives of devolution among others include “recognizing the diversity of the Kenyan people and protecting and promoting the interests of minorities and marginalized communities” and to enhance the political and economic inclusion of previously excluded ethnic communities in the state.²

Devolution in Kenya is comprehensive in that it encompasses the political, administrative and fiscal dimensions. This system is said to be very new but has been relatively successful in diffusing ethnic tension and decentralizing state resources to rural Kenya. Since the vote for it in 2013, devolution has significantly changed fiscal and administrative organization³ and the country is pressed for generating a political system with a more robust set of checks and balances.⁴ For some scholars like Cornell and D’arcy⁵, Kenya could represent an exceptional case of meaningful decentralization in the Africa continent. For some others like Nyadera *et al*⁶, Kenya is a young nation with “radical devolution” and climbing a ladder of democracy. The more recent national 2022 election of Kenya proved that the electoral process upholds

¹K. Kanyinga, Kenya Democracy and Political Participation, A Review by AfriMAP, Open Society Initiative for Eastern Africa and the Institute for Development Studies (IDS): (University of Nairobi: 2014).

²Zemelak Ayele and C. Nyabira, *The State of Political Inclusion of Ethnic Communities under Kenya’s Devolved System*, Law, Democracy and Development(2016), Vol. 20, Issue 1.7, Pp131-153.

³ A. Cornell and M. D’Arcy, *Devolution and Corruption in Kenya: Everyone’s Turn to Eat?* African Affairs (2016), Vol. 115, No. 459, Pp. 246-273.

⁴ N. Cheeseman, G. Lynch and J. Willis, *Democracy and its discontents: Understanding Kenya’s 2013 elections*, Journal of Eastern African Studies (2014), 8 (1), Pp.2-24.

⁵ A. Cornell and M. D’Arcy, *Supra* note 3.

⁶ N. Nyadera, B. Agwanda and N. Maulani, *Evolution of Kenya’s Political System and Challenges to Democracy* in book: Farazmand A. (eds) *Global Encyclopedia of Public Administration, Public Policy, and Governance*: Springer (2020).

term limits and the peaceful transfer of power. The competitiveness of national election as well as uncertainty over the outcome prior to conducting election distinguishes Kenya from many of its neighbors, including Ethiopia.

In contrast, it is now over three decades since federalism was introduced in Ethiopia. Besides its constitutional objective of ensuring the self-determination rights of every ethnic group in Ethiopia, federalism was introduced as state building and democratization approach.⁷ Nevertheless, Ethiopia is still in search for democratization, as the country remained true to its tradition of exclusion, violence and centralization. Studies show that the challenge of implementing federalism has been due to clashing structures of governance. On the one hand, since 1991, it has built up a formal structure of democratic institutions to keep in line with the constitutional premises. On the other hand, the regime had built a party structure that retained a high degree of control to the extent that in practice was difficult for the democratic institutions to effectively to challenge the power of the ruling party.⁸ In this perspective, the competitive election in 2005, in which the opposition parties won significant number of seats, was hoped to realize the transition to democracy in Ethiopia. It rather went to the converse and Ethiopian People's Revolutionary and Democratic Front (EPRDF) vigorously controlled the seats and narrowed down the political space befitting to itself and its affiliates till the dominant party's death in 2019.

The popular protest which started in 2014 and ending up with the protest led change of EPRDF leadership in April 2018. As noted elsewhere, the underling protestors' dissatisfaction centers on democracy. They were chanting for lack of consent and participation in the government institutions and development policies, and the use of authority and inconsistency of government action with the rule of law and constitutionalism. The political change in April 2018 was the result of long-standing social grievances such as lack of political freedoms, land grabbing, widespread suppression of dissent and rampant federal mismanagement. With the coming of Abiy

⁷ Kidane Mengisteab, K. *New Approaches to state-building in Africa: The case of Ethiopia's ethnic-based federalism*, African Studies Review, (1997), 40 (3), 111–132.

⁸ A. Lovise and K. Tronvoll, *The End of Democracy? Curtailing Political and Civil Rights in Ethiopia*, Review of African Political Economy, (2009), 36:120, Pp.193-207.

Ahmed as a Prime Minister in April 2018, Ethiopia entered into a new phase of political history in terms of launching unprecedented political reforms much praised to induce the democratization processes in the country.

However, the opening up of political spaces, even more deep rooted political discontents and inter-political elites conflict resurfaced, and the much hoped transition to democracy became unattained, once again. Hence, it is fair to ask: Why Ethiopia remains true to its tradition of missing the chances for making transition to democracy? Though it is understandable that there could be no smooth transition to democracy, the institutional reforms since 2018 couldn't put the path in democratization in a right track. Five years after the initiation of the pro-democratic reforms, Ethiopia still faces political violence, identity polarizations and almost all forms of crises. Consequently, Ethiopia is now in between hopes and desperations of its political future. Moreover, despite some recent improvements and a general opening, in relative terms, of political space, Ethiopia suffers from other significant weaknesses that curtail her ability to deal with national tensions peacefully via normal democratic means. The country still does not have a solid foundation of democratic practice and has major gaps in terms of developing legitimate institutions of democracy. Compared to Ethiopia, Kenya appears to take devolution hand in hand with democratization processes, and the latter is making progress in democratization.

The main objective of this study is therefore to examine why the democratization process in the devolution system of Kenya is making progress as compared to the one in the federal system of Ethiopia. The Article specifically identifies the factors that have been contributing to the relative progress of democratization in Kenya. It then intends to draw some lessons from the achievements of democratization in Kenya that could inform issues of democratization reform in Ethiopia. In this way, the study responds to the following key questions: How did the devolution system contribute to the democratization process in Kenya? What are the factors that contributed for relative progress of democratization in Kenya? What are the challenges of democratization in the devolved system of Kenya? Why Ethiopia missed several chances for making transition to democracy? What lessons could be drawn from the relative progress of democratization in Kenya for Ethiopia?

This study follows qualitative research approach with deductive leaning. It compares two purposively selected cases- Kenya and Ethiopia. The democratization processes –achievements and impediments –in the two cases have been compared based on the existing literature on the determinants of democracy.⁹The study intends to draw comparative lesson from a non-western and young democracy i.e. Kenya. Both Kenya and Ethiopia represent divided societies of the Horn of Africa that started the process of democratization in the early 1990s. Both follow multilevel political system – devolution in Kenya, federalism in Ethiopia – as an approach for democratization, among others. These two countries brought federalism and devolution in the context of authoritarian political tradition and to fighting against over centralization and hegemonic elite control at the Center. The two countries are also different in terms of population size and number of ethnic groups. Kenya has over 47million population and 45 different ethnic groups,¹⁰ while Ethiopia has over 110 million population and more than 80 ethnic groups. Kenya has been labelled as one of the Africa’s more open and competitive political systems that somehow managed violent ethnic conflicts. Following the Constitutional reform in 2010, Kenya has got new government structures consisting of 47 Counties. In contrast, Ethiopia has formally experimented with multinational federalism with nine- which now became twelve - regional states for over three decades, but the country barely addressed root causes of violent conflicts.

This Article contains five sections. The first section is an introduction to the study. The second section sets conceptual and theoretical frameworks of the study. The third section examines the state of democratization in the devolved system of Kenya. This section gives account of not only the reasons for relative progress but also identifies the factors that have been constraining democratization processes in Kenya. The fourth section examines the state of democratization in the federal system of Ethiopia. It also identifies the major challenges of democratization processes in the case of Ethiopia. The last section compares democratization in Kenya and Ethiopia but with eyes on drawing lessons from the former to the latter.

⁹ R. Dahl, *Democracy and Its Critics*, New Haven, Connecticut, United States: Yale University Press (1989); S, M, Lipset, *Some Social Requisites of Democracy: Economic Development and Political Legitimacy*. *The American Political Science Review*(1959) No. 53, Pp.: 69-105.

¹⁰N. Nyadera, B. Agwanda and N. Maulani, *supra* note 6.

2. Conceptual and Theoretical Frameworks

As this study aims at comparing democratization in devolved system of Kenya with that of the federal system of Ethiopia, it is important to first provide operational definition of key terms, including democracy, democratization, federalism and devolution. This section then discusses the conceptual link between democracy and federalism/devolution.

2.1. Democracy and Democratization

Like other social science concepts, there is no universally agreed and a single definition of democracy. Widely referred scholars like Dahl¹¹, however, defines democracy as a political system that allows citizens to elect their leaders through free, inclusive, competitive and fair elections while enjoying basic freedoms (speech, association, assembly), to have a say and an influence policies. Seymour M. Lipset¹² defines democracy as not only a political system which supplies regular constitutional opportunities for changing the governing officials, but also as a social mechanism for the resolution of the problem of societal decision-making among conflicting interest groups which permits the largest possible part of the population to influence these decisions through their ability to choose among alternative contenders for political office. According to Njoroge, “the hallmark of democracy is characteristic of more than one political (at least two) parties competing in national elections, where the citizenry; belonging to different political parties with the right of participation in regular, and timely scheduled elections to elect leaders of their choice in both the executive and legislative docket”¹³.

Due to its diverse definitions, scholars have focused on what democracy contains rather than defining it as such. In this light, democracy is captured as a political system that embodies different principles. As for Boye, democracy is a system of government that meets three necessary conditions:

¹¹ R. Dahl, *Polyarchy: Participation and Opposition*: Yale University Press (1971).

¹² R. Dahl, *supra* note 9, P71.

¹³ H. N.Njoroge, *Political Parties' System in Democratization and Good Governance Entrenchment in Post-Colonial Kenya (1963-2021)*, Journal of CMSD (2021) Vol. 6 (5), P237.

*(I) the real existence of competition between individuals or groups of individuals organised into political parties to gain power and public office, at regular intervals and according to peaceful procedures which are pre-established and generally accepted; (ii) the right of citizens to participate in the choice of leaders through the holding of free, transparent and fair elections. (iii) recognition and the juridical guarantee of the exercise of civil and political freedoms and rights which are recognized under international conventional law as an integral part of human rights: freedom of expression, freedom of association, freedom of the press, right to security of the person and property against any form of arbitrary infringement, etc.*¹⁴

Democracy is also understood as a political formula that contains two sets of leaders: one group of political leaders in office and the other group of leaders outside office. One barely thinks of democracy without competitive political party system that connects the citizen and government as it is a channel of expression and tool of representation as well as a driver and an agent of democratization.¹⁵In this sense, there cannot be functional and robust democracy without political parties. In addition, Robert Dahl underscores that elected executive, elected legislature and independent judiciary are hallmark of true democracy.¹⁶Based on Dahl's theoretical understanding of democracy, there are some major determinants or set of criteria for assessing democracy, including: management of social diversity and polarization, the existence of robust statehood, the existence of a vibrant civil society, press freedom and social media, and culture of democracy and economic progress.¹⁷That said, democracy include quite wide range of elements such as plurality of opinions, freedom of expression, multi-party political system, political competition, free and fair elections, respect for human rights, rule of law and accountability of the rulers to the ruled.

¹⁴ K. A. Boye, 'Some Important Problems and Aspects of Democracy in the Context of the Black African States' in *Democracy: Its Principles and Achievement* edited by the Inter-Parliamentary Union (1998), Pp.37-46.

¹⁵ H. N. Njoroge, *supra* note 13, P244

¹⁶ R. Dahl, *supra* note 9

¹⁷ *ibid*

The literatures on democracy in 1980 and 1990s capture two perspectives of understanding democracy: procedural and substantive democracy. First, procedural democracy entails that democracy is a method for the choice of rulers and the procedure that can establish how political leaders should be chosen.¹⁸ This minimalist conception of democracy centers on procedures for contestation in election and free speech¹⁹ with an ultimate objective of formation of government through democratic procedures.²⁰ Procedural democracy, otherwise called Schumpeterian or minimalist democracy, has been criticized because it; 1) reduces popular sovereignty to the electoral procedures and process²¹; 2) focuses on competition and economic rationality of political elites that tend to look democracy as a market where voters are conceived as consumer goods²²; 3) primarily focuses on election as a foundation for democratic reform, which is not only a deterministic view but also a minimalist conception of democracy.

The criticisms against procedural conception of democracy gave rise to maximalist understanding of democracy, i.e, substantive democracy that stands for regular electoral contestation combined with strengthening of independent institutions within the state and civil society.²³ As the name indicates, substantive democracy goes beyond mere ceremonies of voting and elections to maximalist ideals such as popular sovereignty, autonomy and equality. In this way, the central focus is on the “more substantive commitment to the core values of democracy that regard individual citizens as free and equal members of society”.²⁴ Deliberative democracy is, for example, particular put forth as a predominant form of substantive democracy²⁵ that entails reasonable pluralism, multiple commitments, obligations and beliefs about the observable reality and condition of behavior

¹⁸ J. Schumpeter, “*Capitalism, Socialism and Democracy (new edition)* (New York: Routledge, 2006).

¹⁹ R. Dahl, *supra* note 11

²⁰ Mebratu Kelecha, M. Protests, Development and Democratization in Ethiopia, 2014-2020 (PhD Thesis, UK, University of Westminster, 2021).

²¹ A. Melucci and L. Avritzer, "Complexity, Cultural Pluralism and Democracy: Collective Action in the Public Space." *Social Science Information* 39, no. 4 (2000): 507-527, Pp 511-15

²² R. Dahl, *supra* note 19, P 271.

²³ N. Cheeseman, G. Lynch and J. Willis, *supra* note 4.

²⁴ Mebratu Kelecha, *supra* note 20, P34.

²⁵ J. Cohen, "Deliberative democracy" in *Deliberation, Participation and Democracy*, Pp.219-236. Palgrave Macmillan, London, 2007.

and reasoning of individuals in society.²⁶Such democracy centers on achieving common goals and make public policy decisions through rational debate with ultimate goal for the observance and practice of democratic values- like constitutionalism and rule of law- and in which the people have real decision making powers beyond the realm of voting.²⁷

The concept of democratization, on the other hand, refers to a move towards multi-party democracy and a move away from single-party political system.²⁸ It stands for a process of political change that moves the political system of any given society towards a system of government that ensures peaceful competitive political participation in an environment that guarantees political and civil liberties.²⁹ The progress of democratization depends on important elements including: credible opposition; a strong civil society, strong economies, separation of state and ruling party, regime change through democratic elections, addressing the challenges of ethnic mobilization, dealing with the threat of the military, and establishing political culture) shared political ideas, attitudes and belief that underlie a society).³⁰

The type of democracy being put in place determines the democratization process and its progress. In this regard, in the multi-ethnic states of Africa, Osaghaenotes, in liberal democracy, political parties, which are the main contestants for power, are assumed to have an equal opportunity to gain power in free and fair elections even where the groups they represent are unequal.³¹ This sort of democracy comprises fundamental human rights, rule of law and free competition, but these tenets of liberal democracy are blind to group differences and inequalities. Osaghae cautions that, in Africa's multi-ethnic states, where political parties are organized along ethnic lines, it would be dangerous for democracy to operate solely on the basis of free

²⁶ A. Thomson, *An Introduction to African Politics* (London: Routledge, 2007).

²⁷ *Ibid.*

²⁸ P. Chabal 'A Few Considerations on Democracy in Africa', *InternationalAffairs* (1998), 74 (2), P290.

²⁹ S.W.Samarasinghe, *Democracy and Democratization in Developing Countries Series on Democracy and Health*, (Sri Lanka: International Centre for Ethnic Studies Kandy 1994), P14.

³⁰ A. Thomson, *supra* note 26, Pp236–344.

³¹ E. Osaghae, *Democracy and National Cohesion in Multi-ethnic African States: South Africa and Nigeria Compared*, *Nations and Nationalism*, (1999), 5(2), 259–280, Pp261–262.

competition since free competition increases the likelihood that powerful groups would perpetually predominate over weaker ones.

Instead, Osaghae contends, pluralist democracy a difference-accommodating and balance-oriented democracy effected through such strategies as power-sharing or federalism – prevents, or minimizes the effects of, political domination and exclusion by way of constitutionally guaranteed rights for minorities or marginalized groups. That in turn promotes, among all groups, both a sense of belonging as well as access to power and distributive justice. Pluralist democracy can reduce the inherent dangers – zero-sum competition and exclusionary politics – that unrestricted liberal democracy pose to national cohesion in multi-ethnic states.³²

Studies identify three major phases of democratization, namely: 1) the liberalization phase, when the previous authoritarian regime opens up; 2) a transition phase, when the first competitive and foundational elections are successfully held; and 3) the consolidation phase, when democratic practices are expected to become more firmly established and accepted by most relevant actors.³³ These phases of democratization could not always run in a linear way inasmuch as many regimes ended up ‘getting stuck’ in transition, or reverting to more or less authoritarian forms of rule, and may restart a process of transition once again. Thus, it is safe to argue that the path of democratization zigzags like the ‘course of a river.’

2.2. Federalism, Devolution and Democracy: The Nexus

Federalism may be defined as a “territorial organization of a political community in which there are two spheres of government that combine the principles of “self-rule” (which concerns the self-governance of the federating units) plus “shared-rule” (which relates to federal concerns) or, in other words, the principles of self-government and shared government.”³⁴ It

³² J. McGarry and O’Leary, B., *Must Pluri-national Federations Fail?* Ethnopolitics (2009),8 (1), 5–25, P15.

³³ J. Linz and A. Stepan, *Toward Consolidated Democracies*, Journal of Democracy 7, No. 2 (1996): 14-33. L. Rakner, A. R. Menocal, A.R. and V. Fritz, *Democratization’s Third Wave and the Challenges of Democratic Deepening: Assessing International Democracy Assistance and Lessons Learned*. Working Paper 1 (2007).

³⁴ F. Requejo, *Multinational Federalism and Value Pluralism: The Spanish Case*(London: Routledge, 2005), P44.

entails a constitutional and territorial dispersion of power among different government units,³⁵ and is thus in essence a territorial expression of power³⁶, and a partnership among territorial communities.³⁷ Elazar distinguishes federalism from decentralization by characterizing the former as “non-centralization” that constitutionally diffuses and shares powers as well as resources among multitude of centers.

Devolution, on the other hand, is expressed as ‘new federalism.’ It lawfully transfers powers, responsibilities, resources, decision making, and revenue generation to state and local level governments that are autonomous and independent of the devolving authority over matters granted to them.³⁸ Like federalism, devolution is a political decentralization that involves territorial distribution of power as well as lawful transfer of finances and responsibilities to state and local governments.³⁹In devolved systems, levels of government have got clear and legally recognized territorial boundaries over which they exercise political power and perform public functions.⁴⁰ Devolved system, like federal system, provides constitutional/legal powers to the levels of government in order to make decisions on issues affecting them and bring decision closer to the people. That said, the adoption of federalism or devolution is a matter of contextual choice; otherwise, the two systems are substantively the same.

Federalism/devolution and democracy are mutually constitutive and thus work in tandem with each other. Federalism or devolution is a territorial dimension of democracy and democratization process, and genuine federalism exists where there is democracy. That is why McGarry & O’Leary argue that authentic multinational federations are democratic.⁴¹

³⁵D. J. Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press,1987).

³⁶ L. Thorlakson, *Comparing Federal Institutions: Power and Representation in Six Federations*, West European Politics (2003), 26 (2), 1–22.

³⁷L.D. Duchacek, ‘*External and Internal Challenges to the Federal Bargain*’, *Publius: The Journal of Federalism*, (1975), 5 (2), Pp. 41-76.

³⁸Robert Tannenwald, *Come the Devolution, Will States be able to Respond?*, *New England Economic Review* (1998), Pp53-73

³⁹L. Bresser-Pereira, *Democracy and Public Management Reform: Building the Republican State*, Oxford University Press (2004), Pp 213-218.

⁴⁰ D. Rondinelli, J. Nellis, and G. Cheema, *Decentralization in Developing Countries a Review of Recent Experience* World Bank Staff Working Papers Management and Development Series Number 8 (1983).

⁴¹J. McGarry and O’Leary, B., *supra* note 32, Pp18–21.

Similarly, Bermeo finds that democracy is essential for sustaining federations and that “no violent separatist movement has ever succeeded in a federal democracy.”⁴² Moreover, Filippov and Shvetsova underscore that federalism can only develop into stable and effective form of government in the context of well-functioning democracies- that is to say successful practice of federalism is inconceivable under nondemocratic system.⁴³

In this perspective, democracy and federalism/devolution are said to be mutually complementary, compatible and contingent on each other. On the one hand, democracy allows the multiple national political communities to engage in dialogue and bargaining in regard to the interests, grievances and aspirations of the group they represent. On the other hand, federalism/devolution provides the institutional set-up facilitating democratic participation, separation of powers, checks and balances, representation, accountability and respect for diversity. Federalism/devolution also entails non-centralization of government in that powers are divided among levels of government, an arrangement that contributes to preventing the arbitrary use of such power against the people constituting the federation.⁴⁴ Osaghae emphasizes that, in the multi-ethnic states of Africa, national cohesion and accommodation of diversity cannot be achieved in the absence of democracy.⁴⁵ In Africa, the introduction of federalism and devolution have been made along with popular elections for local councils, mostly on a multiparty basis, and most important determinants of federalism /decentralization in Africa is, therefore, an introduction of democracy at the same time.

Simply put, a number of values that undergird federal political systems equally fit with democratic principles.⁴⁶ Hence, federalism enhances democratic progress since it ensures power sharing, pluralism, accountability, mutual recognition and popular legitimacy. Democratic

⁴²Bermeo, N., *A New Look at Federalism: The Importance of Institutions*, Journal of Democracy (2002), 13 (2), P108.

⁴³M. Filippov, and O. Shvetsova, (2011), *Federalism, Democracy, and Democratization* (Filepath: d:/womatfilecopy/0001646429.3D168) <Accessed on :17/8/12>

⁴⁴D. J. Elazar, *supra* note 35.

⁴⁵ E. Osaghae, *supra* note 31, Pp261–262.

⁴⁶ J. Fossum and M. Jachtenfuchs, *Federal Challenges and Challenges to Federalism, Insights from the EU and Federal States*, Journal of European Public Policy(2017), 24(4),Pp467–485.

values and principles - constitutionalism, rule of law, popular participation, and vibrant civil society- in turn serve as springboard for strengthening and sustaining federalism; and a federation without democracy is doomed to fail.

3. Devolution or *Ugatuzi* of Kenya

After securing its independence from British rule in 1963, Kenya conducted first general election and Kenya African National Union (KANU) won it.⁴⁷The KANU led government changed Westminster model to a presidential system,⁴⁸ and Jomo Kenyatta, the first President of Independent Kenya, abolished the *Majimbo*- a semi-federal type constitution that was meant to accommodate ethnic minorities and to devolve significant powers to eight regional assemblies. On the one hand, Kenyatta considered *Majimbosm* as a roadblock to unity and nation-state building project of Kenya, while centralization of power and resources in the hands of the executive was supposed to promote national unity and the desired nation-state building.⁴⁹ On his side, Daniel Arap Moi- who ruled Kenya for 24 years from 1978 to 2002- had managed to consolidate the Office of the Presidency through several amendments of the constitution and presidential decrees to control over parliament, judiciary and electoral commission.⁵⁰In 2002, Mwai Kibaki under his National Rainbow Coalition(NaRC) became the President of Kenya by defeating the KANU led government that ruled Kenya for over four decades.

Until post-election violence in 2007, Kenya was perceived as one of the most peaceful and stable countries in the continent of Africa. Following 2007 election, however, over 800 people had lost their lives, more than 2000 were internally displaced (IDPs), and properties of disproportionate value were

⁴⁷ N. Nyadera, B. Agwanda and N. Maulani, *supra* note 6.

⁴⁸ G. Muigai, Jomo Kenyatta and the Rise of the Ethnonationalist State in Kenya in Berman B, Kymlicka W, & Eyoh D (eds) *Ethnicity and Democracy in Africa*. (Boydell & Brewer, 2004), Pp 201–203.

⁴⁹ Zemelak Ayele and C. Nyabira, *supra* note 2; N. Cheeseman, *The Kenyan Election of 2007: An introduction*, *Journal of Eastern African Studies*, 2 (2008), Pp. 166–84.

⁵⁰ N. Nyadera, B. Agwanda and N. Maulani, *supra* note 47; S. Nepstad, *Kenya's Struggle against the Moi Dictatorship in Non-violent Revolutions: Civil Resistance in the Late 20th Century* (Oxford University Press), Pp.95-109.

destroyed.⁵¹ This situation brought political will for constitutional reform under the leadership of the grand coalition government that was formed in the aftermath of a serious post-electoral crisis including widespread violence in 2007.⁵² Studies showed that the major causes for the 2007 violence include elite fragmentation and centralization of power in the executive.⁵³ This post-election violence revealed that the demands for decentralization and inclusion of diverse communities and access to power and resource could no longer be ignored.

The violence was short-lived after a Kofi Annan and US-led brokered peace deal that led to the formation of a coalition government. The crises opened doors for serious political negotiations and comprehensive constitutional reform agenda. It also resulted in establishing Truth, Justice and Reconciliation Commission (TJRC) in 2009. This Commission was established to gather views on pressing issues concerning historic injustices regarding land grabs, political assassinations, ethnic violence and ethnically based use of state resources. The post 2007 election violence was therefore a turning point for Kenya in the sense that the country was ripe for change and a strong wave for a new constitutional era came out.⁵⁴ Though it was initially thought as the most violent periods in the history of post-independence Kenya, the 2007 election violence led to several discussion and solution seeking events including power-sharing agreement and coalition government in 2008 and drafting and passing of new constitution in August 2010.⁵⁵

The 2010 Constitution was therefore a landmark step in the Kenya's democratization process. The constitution followed the strategy of breaking up the large ethnic groups through creating a number of small counties which became 47 in number— devolving the executive and the legislature except for

⁵¹ M. Roberts, Conflict Analysis of the 2007 Post-election Violence in Kenya, In A. G. Adebayo (Ed.), *Managing Conflicts in Africa's Democratic Transitions* Lanham: Rowman & Littlefield Publishers, (2012), P142; S. Derconand R.Gutiérrez-Romero, *Triggers and Characteristics of the 2007 Kenyan Electoral Violence*, World Development, Vol. 40, Issue 4 (2012), Pp738–740.

⁵² H. Amadi, *Kenya's Grand Coalition Government — Another Obstacle to Urgent Constitutional Reform?* Africa Spectrum (2009), Vol.44, No.3, Pp 149- 164.

⁵³ K. Kanyinga, Kenya Democracy and Political Participation, A review by AfriMAP, Open Society Initiative for Eastern Africa and the Institute for Development Studies (IDS): (University of Nairobi: 2014); *supra* note 49.

⁵⁴ N. Nyadera, B. Agwanda and N. Maulani, *supra* note 47.

⁵⁵ *Ibid*

the judiciary. This established a county government with county administration as the executive arm and the county assembly as the legislative arm. The 2010 Constitution of Kenya recognizes the ethnic plurality of the Kenya's society. But, the Constitution does not boldly recognize ethnic diversity. It does not give an official status to the languages of the various ethnic communities both at national and county levels.⁵⁶ Kenya's Constitution focuses on the determination to "live in peace and unity as one indivisible sovereign nation" and the Constitution is said to be vague when it comes to institutional accommodation of ethnic diversity.⁵⁷ However, there are clear constitutional principles regarding inclusion and representation of minority communities, women, youths, and persons with disabilities.⁵⁸ Moreover, the 2010 Constitution is progressive in that it increased the level of freedoms in Kenya, especially freedoms of expression and association; and Kenyans' perceptions of their "freedom to say what they think" and "freedom to join any political organization."

In August 2022 election, in contrast to past elections, Kenya started to utilize legal channel rather than resort to the use of force to manifest grievances over election results. Odinga's decision to pursue legal channels to address his grievances was motivated, in part, by a renewed sense of confidence in the judicial system. This judicial trust is said to be necessary for courts to play a similarly stabilizing role across Africa. In addition, the key informants⁵⁹ consulted in this regard describe that the 2022 August election of Kenya was pressed for several new observations, including: 1) Ethnicity need not define voter motivations- as voters started to vote for their choices, not for their respective ethnic identities; 2) incumbent presidents do not always secure their preferred successor: undermining the 20 years of working together as political allies, Uhuru turned against Ruto when it comes to endorsing the latter's candidature for precedency. As many competitors put it, Uhuru Keniyatta was humiliated because his preference, Raila Odinga couldn't win Ruto;3) in fact the elephant in the room was the covert design

⁵⁶Zemelak Ayele and C. Nyabira, *supra* note 2.

⁵⁷*Id*, P135.

⁵⁸ For example, the constitution grants 47 special seats for women in the National Assembly to ensure that the 2/3 gender rule.

⁵⁹Interviews conducted with Prof G. Khadhigala, University of Witwatersrand, September 2022, Casablanca, Morocco; Dr. A. Lilian, University of Nairobi, October 2022 at Casablanca, Morocco.

to reinstate Building Bridges Initiatives (BBI)⁶⁰, once Raila could win the election. In fact, it was in 2018's 'handshake' that Kenyatta put aside the enmity between Uhuru and Odinga. Following their "handshake", the two further isolated William Ruto. Some say that the voting patterns were an attempt by voters to hold Kenyatta and Odinga accountable for trying to institute BBI, an initiative that proved to be hugely unpopular; and 4) "Ruto ticket pushed a narrative that the veteran opposition leader was merely Kenyatta's "project."

3.1 Political Party System

During the colonial period prior to 1963, political party was prohibited in Kenya. In the early days, from 1963 to 1967, Kenya had started multiparty political party. Daniel Arap Moi established Kenya African Democratic Union (KADU)⁶¹ to compete with Jomo's Kenyatta's Kenya African National Unity (KANU).⁶² This was, however, abandoned due to merging of KADU, and Jomo Kenyatta put Daniel Arap Moi as his Vice president and KADU dissolved voluntarily and merged with KANU.⁶³ Consequently, Kenya became a single party state and democratization process stopped from the get goes up until 1991.⁶⁴

The party system in Kenya from 1964 to 2002 was one-party system and the independence party, KANU had remained in power without any other party ever taking over leadership of the country. This has been attributed to the above dictatorial tendencies that ensured opposition parties could not win an election.⁶⁵ In Kenya, organized political parties removed authoritarian ruler in 2002. To this effect, Democratic Party (DP) of Mwai Kibaki, National Alliance Party of Kenya (NAK), belonging to Charity Ngilu, and Ford

⁶⁰ The case in point being the proposal for constitutional amendment through Building Bridges Initiative (BBI) had aimed to create 3 to 15 counties or creation of regional block as well as an attempt to extend presidency tenure through executive decision. It therefore attempted to recentralize the state power and resources by other means.

⁶¹ KADU was composed of numerically smaller ethnic communities by then.

⁶² KANU's membership comprised some of the large ethnic groups, the Kikuyu and the Luo

⁶³ Kenya African National Unity (KANU) ruled Kenya as a one-party state from independence until defeated by National Rainbow Coalition (NaRC) in 2002.

⁶⁴ H. N. Njoroge, *supra* note 13.

⁶⁵ N. Nyadera, N. B. Agwanda and N. Maulani, Evolution of Kenya's Political System and Challenges to Democracy in Farazmand A. (eds), Global Encyclopedia of Public Administration, Public Policy, and Governance: Springer, 2020.

Kenya Party of Michael Wamalwa Kijana joined forces and defeated the ruling party, KANU or its candidate- Uhuru Kenyatta in 2002. This marked huge wave of change in that a coalition of opposition parties (NARC) won the 2002 general election and became the first opposition leading the government of Kenya after four decades one party rule.

The 2007 general election led to a power-sharing deal between the government and the opposition after a disputed election. Under the 2010 constitutional framework of Kenya, a political party cannot be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis.⁶⁶ The same Constitution further requires political parties, among others, to respect the right of all persons to participate in the political process, including minorities and marginalized groups.⁶⁷

The 2013, 2017 and 2022 elections were again won by a coalition of parties, most of which were part of the 2002 and 2007 coalition governments.⁶⁸ That said, elections conducted between 1964 and 2012 required a presidential candidate to win a simple majority to form a government. There was no condition to form a coalition government. Since 2013, however, the constitution requires a candidate to at least win a majority of 50% plus one of the votes cast at the national level and also at least 25% of votes or in 24 counties out of the 47 Counties. In this way, Kenya has moved from one party to multiparty politics.

3.2. Independent Institutions

The case of Kenya shows that credibly contested election can only be conducted by having independent institutions. The role of courts and electoral commission are worth discussing below.

3.2.1. Supreme Court and Judicial Independence

In Kenya, courts have delivered subsequent landmark rulings since the Supreme Court's call for rerunning the 2017 polls. The High and Supreme Courts blockage of Building Bridges Initiative (BBI) revealed that judiciary

⁶⁶ The 2010 Constitution of Kenya, Art. 91 (2)

⁶⁷ The 2010 Constitution of Kenya, Art 91(2) (a & e).

⁶⁸ The 2010 Constitution of Kenya, Arts.8-9.

is becoming independent and fearless than it was during the Moi and Kibaki administrations.⁶⁹ The “Hand-shake” between Raila Odinga and Uhuru Kenyatta in 2018 speculated that Odinga would win next election after Kenyatta’s rule and the BBI would end up having the latter as a Prime Minister. To the contrary, the High Court’s unanimous decision by its seven members to throw away the BBI case further confirmed that a president cannot anymore temper with the constitution through his/her executive decisions. Had it been approved, BBI could have brought back the “imperial presidency” model of the Daniel Arap Moi era, which the 2010 Constitution abolished. As the key informant⁷⁰ underscores, if a President tries to amend the Constitution from the backdoor, the people of Kenya would protest, opposition parties would let their voices out, and the civil societies would do the same. These all foreclose executive initiatives not to attempt BBI like game in Kenya.

Under Article 257 of the 2010 Constitution, one needs to make a draft of the proposed constitutional changes and submit it to the Independent Electoral and Boundaries Commission (IEBC), which will then approve the collection of at least one million registered voters’ signatures to support the amendment. The proposed amendment will then be submitted to all the 47 county assemblies where it will be debated and voted by at least 24 of the county assemblies. From there, it is forwarded to the National Assembly, where it needs to be passed by a majority before being sent to the Senate for approval. A nationwide referendum can be then held and the people will vote for or against it. The constitutional court also serves as an arbitrator when two parties dispute over the interpretation of the constitution, making the constitution much more ridged to unnecessary changes.⁷¹

The 2010 Constitution was therefore seen as an enduring solution to executive dominance of other arms of government as well as abuse of state power by a few individuals. Other important issues that the new constitution of 2010 sought to address include the president’s power to appoint public office holders as well as issues of electoral justice as the previous

⁶⁹Kenyan Elections-Another Test in the Country’s Democratic Journey;available at: <https://reliefweb.int/report/kenya/kenyan-elections-another-test-countrys-democratic-journey> <Accessed on 11 October 2022 >

⁷⁰ Interview conducted with Dr. Alexxe K., Univerity of Machakos, Nairobi, October 2022.

⁷¹N. Nyadera, N. B. Agwanda and N. Maulani, *supra* note 65.

constitution failed to provide proper mechanisms, and guarantees of fair resolution of disputes arising from elections. Under the new constitution, opposition parties were able to file a petition with the Supreme Court about the fairness of the 2013, 2017 and 2022 presidential elections.

Moreover, Judicial Review is a new concept that was introduced with the passing of the 2010 Constitution wherein the Constitutional Court and the Supreme Court are provided by. Today, any laws or decisions passed by the executive and/or the legislature will be subject to review by the judiciary. Previously the judiciary had no power to carry out judicial review. In 2017, a landmark ruling was made by the Supreme Court of Kenya when it nullified the presidential election. Based on the evidence presented to it, the Supreme Court had found election irregularities and ordered for a fresh election. Much of this heightened trust in the courts can be traced to Article 160 of the 2010 Constitution which strengthened the independence of Kenya's judiciary and other oversight institutions.⁷²

The recent court decision for Ruto and the decision of Odinga to be ruled by the decision of the Court show the relative increase of trust in rule of law and independence of the Judiciary in Kenya. Moreover, since the public could access to all the Independent Electoral and Boundaries Commission (IEBC) polling data, citizens are in a better position to assess the court's performance than they were in the past.

3.2.2. Independent Electoral and Boundaries Commission (IEBC)

From the time of independence in 1963 up until 2007, a winner-takes-all electoral system was in a place in Kenya. This system only required a presidential candidate to win a simple majority to form a government,⁷³ while losers of an election were not involved in forming the government, making it a disproportional system, and there was no condition to form a coalition government even if the party with the highest number of votes got 30%.⁷⁴

⁷² Interview conducted with KII November 2022, Nairobi.

⁷³ *Ibid.*

⁷⁴ M. Wrong and M. Williams, *It is Our Turn to Eat: The Story of a Kenyan Whistleblower*, 4th Estate, London (2009).

The 2010 Constitution of Kenya establishes an Independent Electoral and Boundaries Commission.⁷⁵ Under this Constitution⁷⁶, unlike the previous constitutions of Kenya, the President-head both the state and the government is required to secure “more than half of all the votes cast in the election” and “at least twenty-five per cent of the votes cast in each of more than half of the counties” This design makes smaller parties to be absorbed by the dominant ones⁷⁷ and the president is compelled to form coalition government.

IEBC works a lot in updating the public about election results. Prior to the run up for 2022 election, for example, both- Odinga and Ruto- complained that the IEBC is unprepared for the 2022 polls, raising alarm bells that the candidates might not accept the results. At a meeting with European diplomats on June 2, 2022, William Ruto also complained that up to one million voters from his strongholds had disappeared from the voter rolls. The Chairman of IERC, Mr. Chebukati dismissed this as "rumors," saying that the missing names are those of voters who applied to vote from different polling stations.⁷⁸ In 2017 a serious crisis erupted when 2.5 million manually registered voters were disenfranchised due to system failures. In June 2022, seven NGOs took the IEBC to court arguing that millions will again be disenfranchised if the system fails like it did in 2017.⁷⁹

3.3. Civil Societies

Several studies show the pivotal roles of civil society in the democratization processes in Kenya. In the period between the early 1990s and the 2002 general elections, civil society was even synonymous with the democratization process in Kenya.⁸⁰ From the early 1990s as they fiercely fought against one-party repression in the country and led intense struggles for bringing multi-party democracy. It was during this period that the Kenya

⁷⁵ The 2010 Constitution of Kenya, Art.88

⁷⁶ The 2010 Constitution of Kenya, Arts. 131 (1(a) , 138 (4 (a and b))

⁷⁷N. Nyadera et al, *supra* note 65, Pp 9-10.

⁷⁸ Kenyan Elections-Another Test in the Country’s Democratic Journey; available at: <https://reliefweb.int/report/kenya/kenyan-elections-another-test-countrys-democratic-journey> < Accessed on 11 October 2022 >.

⁷⁹*Ibid.*

⁸⁰ M. Mutua, *Kenya's Quest for Democracy: Taming Leviathan*. Boulder, CO: L. Rienner 2008; K. Kanyinga, *supra* note 53.

Human Rights Commission (KHRC) and the Citizens Coalition for Constitutional Change (4Cs) were formed to provide leadership in the struggle for democratic reforms. Many political activists joined with civil society to articulate demands for change but later competed for elective posts to become MPs. The first leaders of opposition politics in the 1990s had a strong civil society background. Some were members of the National Conventional Executive Council (NCEC), formed in the earlier 1990s by different groups to front the struggle for constitutional reforms, and it was alliance of parties and civil society that won the December 2002 general election and toppled KANU regime.

In Kenya, CSOs are heterogeneous and comprised of non-governmental and autonomous groups organizing outside of the control of the state. Operating in this space are non-governmental organizations (NGOs) undertaking development work, community based organizations (CBOs), religious or faith-based organizations (FBOs), trade unions, professional associations, self-help and numerous other voluntary organizations.⁸¹

A civil society-led petition introduced ahead of the 2017 election by legal scholar Maina Kiai. In agreeing with it, the High Court issued a ruling that overhauled Kenya's electoral laws by introducing groundbreaking standards of transparency, ownership, integrity, and accountability—the outcomes of which were visible in the recently concluded polls.⁸² Kenya's civil society has persistently engaged in the democratic process. In this case, the Election Observatory Group (ELOG), for example, has been monitoring the entire process and has issued statements to the stakeholders at every stage, reminding them of their constitutional obligations and educating the public about the electoral process and their rights. Notably, ELOG deployed long-term observers at the county level and put in place an alternative voter tabulation system to independently verify the results. Thirteen partner organizations are part of this system, which will escalate the crowd sourced data for response and action. Kenya's media agencies, which have provided extensive coverage and analysis since the campaigns started, were also

⁸¹K. Kanyinga, *supra* note 1.

⁸²P. Nantulya, P., Seven Takeaways from Kenya's Consequential Election, available at: <https://africacenter.org/spotlight/seven-takeaways-from-kenyas-consequential-election/> <Accessed on September 7, 2022>.

participated in this project. This vigilance and engagement will create a valuable forensic record and reminded political actors that they were being observed at each step.⁸³

Interestingly, Kenyans for Peace with Truth and Justice (KPTJ) undertook neutral and objective analysis of post-election violence and shared it broadly. The KPTJ - a grouping of over 30 organizations and individual academics and researchers- began by observing that sustainable peace could be obtained only when the country resolved the question of justice and truth about the election result, violence and victims of police brutality and the prevalent militia. The KPTJ provided strategic leadership on how to articulate the relationship between peace, justice and truth. Other civil society initiatives like the “Center for Multiparty Democracy” formed the National Salvation Forum to advise and buttress the political parties’ efforts.⁸⁴ In this way, CSOs have been contributing in the democratization process of Kenya.

3.4. Major Challenges of Kenya’s Democratization

Despite its relative progress, there are still roadblocks to Kenya’s democratization process. In what follows, the study discusses the major factors impending Kenya’s democratization.

3.4.1. Politics of “Our Turn to Eat” and Ethnic Patronage

Prior to the adoption of devolution in 2010, the ruling elites followed ethnic patronage politics and they felt like serving their kinsmen interests. In this way, the precedency entrenched the politics of “it’s our turn to eat” in the sense that whoever came to presidency followed ethnic favoritism and kinsmen appointments.⁸⁵ This politics of “it’s our turn to eat” made election a matter of life and death for every ethnic community during general elections. To this cause, devolution cum democratization in the post 2010 is arguably countering the hitherto story of “it’s our turn to eat” to “every one’s turn to eat.” Nevertheless, the key informant underscores that *the more*

⁸³ Kenyan Elections-Another Test in the Country’s Democratic Journey; available at: <https://reliefweb.int/report/kenya/kenyan-elections-another-test-countrys-democratic-journey> < Accessed on 11 October 2022 >

⁸⁴ K. Kanyinga, *supra* note 1.

⁸⁵ M. Wrong and M. Williams, *supra* note 74

things change the more they remain the same holds truth in Kenya.⁸⁶The same informant notes that the parties are organized for winning votes or as “election parties” but not as offering alternative policies.⁸⁷The recent 2022 election however shows that politicians cannot anymore take the voters for granted. That is why the Kikuyu voted for William Ruto (a Kalenjin), while they supposed to have voted for Raila Odinga (a Luo).

The key informant also states that Kenyans are apparently tired of voting for ethnicity *per se*.⁸⁸One of the major reasons for which William Ruto (from Kalenjin) won Raila Odinga (from Luo) was because of the turning away of many voters with Kikuyu ethnic background from voting for Odinga. Had it been up to the traditional *modus operandi* of the Kikuyu elders who were king makers, all Kikuya would have voted for Raila, whom Uhuru Kenyatta endorsed for Presidency. In this way, the informant puts that “Uhuru Kenyatta betrayed William Ruto but people betrayed Uhuru.”⁸⁹Likewise, Nantulya states that “the old politics of undisputed ethnic kingpins and dominant political families seems to have lost resonance among Kenyan voters.”⁹⁰

Like many African states, ethnicity is not only a strong motivation for individual voting behavior but also a functioning device to control votes at the group level. The 2010 Constitution does not expressly provide that ethnicity should be a factor that informs the demarcation of the boundaries of the counties. Contrary to the constitutional requirement to have national outlook and restriction to organize politics along ethnic lines, Kenya’s politics is organized around prominent political figures whose core political support bases are the ethnic communities to which they belong.⁹¹Kenyans had a recent history of ethnic party that led into interethnic violence in the 2007 post-election.

⁸⁶ Interview conducted with Prof. Gilbert K. Casablanca, Morocco, September 2022.

⁸⁷ Interview conducted with Dr. Alexxis K. September 2022, Casablanaca, Morocco.

⁸⁸*Ibid.*

⁸⁹*Ibid.*

⁹⁰ P. Nantulya, P., *supra* note 82.

⁹¹Zemelak Ayele and C. Nyabira, *supra* note 2.

In sum, rampant corruption as well as politics of ethnic patronage is still obstructing the progress of democratization in Kenya.⁹²

3.4.2. Politics of Succession and Dominant Personalities

The other challenge of democratization in Kenya, as informants from Kenya underscore, is related to the continuity of domination of Kenya's electoral politics by old leaders and personalization of politics. Kenya's political sphere has been shaped by families, dynasties, and networks of elites that belong to the upper social and economic class since independence. This is because the same elites dominated the Kenyan politics since the Daniel Arap Moi era but under different banners remained in the scene. In Kenya, the old and dominant political leaders at national level were sometimes friends, sometimes bitter adversaries (e.g Uhuru & Odinga).

From the outset, Kenya's politics has been organized along prominent political figures whose core political support bases are ethnic communities. Jaramogi Oginga (Raila's father) and Jomo Kenyatta (Uhuru's father) were comrades who led Kenya to independence and were considered as co-founding fathers until they fell out in the mid-70s over Jaramogi's demand for multiparty politics. Jomo Kenyatta, first president of Kenya from 1963 to 1978, had Daniel Arap Moi as vice president. Moi-longest serving president of Kenya from 1978 to 2002-picked up Uhuru Kenyatta as vice president. In 2002 election, Moi, who was retired and barred from running for election, selected Uhuru Kenyatta as his successor. However, Uhuru didn't succeed Moi. Though Kibaki was a vice president under Moi from 1978 to 1988, Moi didn't choose Mwai Kibaki for presidency in the run up for 2002 election. Kibaki, however, won the 2002 election and became a President of Kenya in 2002. He served for two terms from 2002 to 2013. In the run up for 2022 election, Uhuru did similar thing Moi did in 2002 in that Uhuru didn't select his vice president William Ruto. Instead, Uhuru endorsed Raila Odinga and requested his supporters to cast their ballot for the latter.

⁹² A. Cornell and M. D'Arcy, *Devolution and Corruption in Kenya: Everyone's Turn to Eat?* African Affairs(2016), Vol. 115, No. 459, Pp.246-273.

In this regard, the recent election shows that new politicians are not coming forward in Kenya national election. For example, the two politicians who competed for precedency in the 2022 election, namely Mr. Raila Odinga and Dr. William Ruto- had been working as senior government officials. During President Daniel Arap Moi, they were on opposite sides. They were on the same side during Mwai Kibaki opposing the latter in the infamous 2007 poll that ended in catastrophic violence. Moreover, they became on opposite sides again in the August 2022 election, which made the contestation more about personalities than policies, the two front runners-Odinga and Ruto were accusing each other based on their personalities in having unfair advantages rather than alternative policy positions.⁹³

Against the expectation of many, the outgoing President, Uhuru Kenyatta backed Raila Odinga's candidacy following their famous "handshake" reconciliation in 2018.⁹⁴ This handshake was viewed as a cause for ending a two decade old partnership dubbed as "Uhuruto".⁹⁵ William Ruto was campaigning for ending⁹⁶ "a continuation of the dynastic politics of the Odinga and Kenyatta families that loomed large since independence." William Ruto's *Kenya Kwanza* alliance ("Kenya First") assembles nine parties, and he framed his election around the slogan of "Hustler Nation" (aimed at those who are at the bottom of the social pyramid) and has depicted the elections as a struggle between "hustlers" and "dynasties."

4. Democratization in Federal System of Ethiopia

After the down fall of Derg regime in 1991, Ethiopia conducted six national and periodic elections in 1995, 2000, 2005, 2010, 2015 and 2021. Three major opportunities for democratization were however created: during the transition period from 1991 to 1995, 2005 election and popular protest led political change in 2018. The subsequent sections first discuss the chances

⁹³Kenyan Elections-Another Test in the Country's Democratic Journey; available at: <https://reliefweb.int/report/kenya/kenyan-elections-another-test-countrys-democratic-journey> <Accessed on 11 October 2022>

⁹⁴*Ibid.*

⁹⁵In Kenya political alliances and strategies are fluid – eg Uhuruto were enemies in 2007, but when they faced charges from ICC, they became friends under 2013 election.

⁹⁶Kenyan Elections-Another Test in the Country's Democratic Journey; available at: <https://reliefweb.int/report/kenya/kenyan-elections-another-test-countrys-democratic-journey> <Accessed on 11 October 2022 >.

for and attempts at democratization. It then identifies the major challenges of democratization in Ethiopia.

4.1. Chances and Attempts at Democratization

4.1.1. Transition Period and the 1995 Election

Following the collapse of the Derg regime, different ethnically-based groups come together and established the Transitional Charter which created the Transitional Government of Ethiopia. This Charter gave “recognition to the self-determination of every ethnic group, or ‘nations, nationalities and peoples.” A leading victor group, Tigray People Liberation Front (TPLF), Ethiopian People’s Revolutionary Democratic Front (EPRDF), went for the ethno-territorial based federalism as the best means to retain the Ethiopian state. This group was, however, criticized for excluding other ethno-national forces like the Oromo Liberation Front (OLF) from the transition.⁹⁷

In 1995, the first election was conducted to close the transitional period. EPRDF and its affiliates won 484 (88.5%) of the total seats (547). The remaining seats (11.5%) were occupied by independent individuals or opposition parties.⁹⁸ In this way, the election was conducted to legitimize the rule of TPLF/EPRDF; and it was this very first election that gave rise to “electoral authoritarianism”.⁹⁹ The major opposition parties boycotted participation in the election, and EPRDF/TPLF created the rules of the game by excluding others, and invited other parties to play according to the rules set by the former.¹⁰⁰

⁹⁷A. Lovise, Institutionalizing the Politics of Ethnicity: Actors, Power and Mobilization in Southern Ethiopia under Ethnic Federalism (Dissertation Submitted for the Degree of PhD in Political Science, University of Oslo, 2007).

⁹⁸T. Lyons, *The puzzle of Ethiopian Politics*(Lynne Rienner, 2019).

⁹⁹ Merera Gudina, *Ethiopia at the Cross Roads: Federalism, Democracy and Popular Protests*, in Assefa Fiseha eds. *Emerging Issues in Federalism and Governance in Ethiopia* (2018), Pp. 251-279.

¹⁰⁰ Merera Gudina, *Elections and Democratization in Ethiopia, 1991–2010*, *Journal of Eastern African Studies*(2011), Vol 5 (4), Pp 664-680.

4.1.2. The 2005 Election

Many considered 2005 election as a leap forward in terms of attempts at free and fair election.¹⁰¹ EPRDF was initially pressed in the pre-2005 election landscape for its plans to make multiparty democracy a reality in Ethiopia. This was because of the fact that political parties were allowed to make campaign freely and openly in the run up for the 2005 election. There were also clear steps taken to attract the voters to participate in the competitive election,¹⁰² and electoral debates were broad casted live on state TV which was unprecedented in Ethiopia's political landscape.

There were also wide political spaces encouraging different political parties' registration and campaigns. In this way, the evidence from National Election Board of Ethiopia (NEBE) shows thirty-seven parties nominated candidates for the May 2005 election. The unique side of this election was the emergence of two major coalitions of opposition parties. The first was the Union of Ethiopian Democratic Forces (UEDF) which was in turn composed of twelve (12) opposition parties, including the Oromo National Congress (ONC) and the Southern Coalition. The second was the Coalition for Unity and Democracy (CUD) composed of four opposition parties by then. There were also opposition parties outside these coalitions. Both ruling and opposition parties had conducted peaceful rallies. The joint political parties' forum also played a meaningful role in terms of resolving disputes in relation to campaign and other challenges. In fact, as there was no clear separation between the ruling party and government functions, EPRDF was criticized for utilizing state institutions and resources for campaign purposes.¹⁰³ This election was also pressed for large number of local and international election observers.¹⁰⁴ There was mixed assessments from the major observers of the 2005 election. In this regard, the team from AU confirmed that it was fair

¹⁰¹ Ibid; A. Lovise and K. Tronvoll, *supra* note 8.

¹⁰² T. Lyons, T. "Ethiopia in 2005: The Beginning of a Transition?" *CSIS Africa Notes* 25, 2006.

¹⁰³ Carter, *Observing the 2005 Ethiopia National Elections Final Report*, Dec. 2009, P16.

¹⁰⁴ The latter category consists of the African Union Election Observation Mission, the Carter Center, the EUEOM and the Arab League.

election, while Carter Center generally accepted the result of the election. The team from EU however questioned the credibility of the processes.¹⁰⁵

On the positive side, more than 20 million people went to cast their vote on 15th of May 2005,¹⁰⁶ and the turnout was estimated between 80% and 90% of those registered to vote.¹⁰⁷ Moreover, the Election Day was peaceful, orderly and the delivery of voting material was generally sufficient.¹⁰⁸ Later, the result of this election as announced by NEBE in September 5 came out to be as follows: EPRDF won 327 seats (55% of votes); CUD won 109 seats (26% of votes); UEDF won 52 seats (9% of votes) while others won 57 seats (10% of votes) (NEBE, 2005). Nearly 300 complaints of vote rigging and other irregularities were submitted.¹⁰⁹ Only 31 cases were found worthy of a re-election.

Thus, the 2005 election had brought good opportunity to the people of the country to participate in the elections in large numbers. It was also one of the rare instances in which poorly organized political organizations outside state power mounted a considerable electoral challenge. The opposition won 30% of the seats in parliament which was also considered as a good move forward in terms of democratization process. Some opposition parties like CUD claimed that they were denied election victory and EPRDF was accused of tempering with vote counting through its loyal election managers.¹¹⁰ The government, however, refused to allow any concessions to such a claim which led to civic demonstrations that was later suppressed by police and other special forces.¹¹¹ This revealed that the ruling party was not ready for

¹⁰⁵The EPRDF government on its part responded to the reports, especially to reports of the EUEOM in a hostile manner. The then Prime Minister of Ethiopia, Meles Zenawi issued a series of statements in response to the report, to ridicule the assertions of the Head of the Mission, Ms. Ana Gomes of the European Parliament (Ethiopian Herald, 29-31 August, 2005).

¹⁰⁶Carter, *supra* note 103.

¹⁰⁷ NEBE, National Election Board of Ethiopia, 2005.

¹⁰⁸EUEOME, Report of the European Union Election Observation Mission in Ethiopia, 2005.

¹⁰⁹NEBE, *supra* note 107; Merera, *supra* note 99.

¹¹⁰Merera, *supra* note 99.

¹¹¹J. Abbink, *Discomfiture of Democracy? The 2005 Elections in Ethiopia and Its Aftermath*, African Affairs 105 (419) (2006): Pp 173-99.

sharing power with opposition.¹¹² Thus, the 2005 election became a “democratic practice” under authoritarian rule.¹¹³ No doubt, this election result sent a shock wave to the dominant party, EPRDF. The post-election events could not change the political landscape of Ethiopia and ended up in manipulation and violence, and in this way Ethiopia missed the opportunity towards making transition to democracy- by successfully conducting the first competitive and foundational election that could have laid a level ground for future democratization in Ethiopia.

After 2005 election and before the 4th round national election in 2010, EPRDF came up with a number of legal and policy frameworks to narrow down the political space, including: Amendment of Electoral Law No.532/2007; Political Parties Registration Proclamation No. 573/2008; Freedom of Mass Media and Access to Information Proclamation No. 590/2008; Anti-terrorism Proclamation No. 652/2009; Registration and Regulation of Charities and Civil Societies Proclamation No. 621/2009 and Electoral Code of Conduct for Political Parties Proclamation No. 662/2009. Within these legal frameworks, in the run up for 2010 election, only one seat was won by opposition party, while 99.6% was occupied by EPRDF and its affiliate parties. In short, the legislative measures were designed and applied to restrict the media space and CSOs influence and thereby prevent any electoral challenges onto EPRDF’s grip on power. The measures further marked EPRDF’s continued authoritarian rule by putting more repressive tools.

4.1.3. Popular Protests from 2015 to 2018 and the Sixth Election

Popular protests, mainly in Oromia and latter on in Amhara regional states, were sparked after the 2015 general election in which EPRDF won 100% of the political seats. The Public protest was the reaction to the top down-development policy and the narrowing down of political spaces for peaceful political opposition. Initially, the Oromo protest was ignited for the specific resistance against the so called “Addis Ababa Integrated Master plan.” However, the popular protests continued even after the plan was shelved-

¹¹²Merera, *supra* note 100; S. Brown and J. Fisher, *Aid Donors, Democracy and the Developmental State in Ethiopia, Democratization* (2020), Vol. 27, No.2, P192.

¹¹³ *Ibid*; A. Lovise and K. Tronvoll, *supra* note 8

pointing against political restrictions and human rights abuses¹¹⁴ and for the pursuit of ‘freedom’.¹¹⁵ Two flagships were said to be in order for the protesters in Oromia (*Qeerroo* struggle): authentic regional self-rule and equitable federalism.¹¹⁶

The issues that drove protestors to streets were not limited to “Addis Ababa Master Plan”, but connected to other pressing matters, including: lack of government accountability, absence of democratic space, and suppression of political dissent, persecution of political opponents and opposition groups, stage managed electoral processes, grievances in systematic violation of human rights. According to Rene Lefort¹¹⁷, there were two crises in Ethiopia: One was within the ruling power, illustrated by the storm revolving around the apex of the leading coalition; and the other was the crisis arising from external opposition to the broader system of power by some of those excluded from it, spearheaded by the *Qeerroo*- Oromo youth who quested for authentic self-rule and equitable federalism. EPRDF initially vowed that protests were threats that must be quashed and controlled rather than entertaining the demands out. The government reverted to coercive measures against protests. It labeled protestors as “anti-peace” and “anti-development” forces. At that point in time, EPRDF government lacked modalities for responding to democratic demand articulations from the popular protestors. Instead, EPRDF government declared state of emergencies twice to control the popular protests from 2015 through 2017.

Failed to withstand the popular protests, along with intra-EPRDF party political fatigue, the EPRDF government entered a forced leadership change. Sources show that many peaceful protestors –over 5000 in Oromia alone– were killed by the security forces by then. Later in February 2018, the then Prime Minister, Hailemariam Dessalegn announced his resignation to be part of the solution for the crises and to open better chance for reform. EPRDF held emergency meeting that led to selection of Abiy Ahmed as chairman of

¹¹⁴T. Gardner, In Ethiopia’s bushlands promised riches of a railway boom turned to dust, the Guardian (March, 2018), Available at: <https://www.theguardian.com/global-development/2018/may/12/ethiopia-railway-boom-promises-turn-to-dust/>.

¹¹⁵*Ibid.*

¹¹⁶R. Lefort, *Two Fold Crises in Ethiopia: The Elites and the Street*, Open Democracy (April 2018), <https://www.opendemocracy.net/en/twofold-crisis-in-ethiopia-elites-and-street/>.

¹¹⁷*Ibid.*

EPRDF replacing Hailemariam Dessalegn. In April 2018, Abiy Ahmed became the Prime Minister of Ethiopia.

At the time when Abiy Ahmed came to power, widening political spaces and setting in legal and political reforms were required. Towards this end, during his first inaugural speech to address the parliament, Abiy Ahmed apologized for victims of torture, state terrorism, and other human rights abuses.¹¹⁸ The Prime Minister rapidly reshuffled the Cabinet positions with 50% women. The opposition political parties such as Oromo Liberation Front (OLF) that were labelled as ‘terrorist organization’ and forced to operate from exile were then invited back home and to running their politics peacefully and partake in domestic political dialogues. Repressive laws of EPRDF on election, CSOs, political parties and anti-terrorism were revised in a bid for widening political spaces. The state of emergency was repealed. Thousands of political prisoners (roughly over 60,000 people) were released.¹¹⁹ Armed opposition groups were also decriminalized from the designation of terrorist organizations.¹²⁰ Maekelawi- the infamous torture and political prisoners center- was promised to shut down, and the restriction on internet and media was also lifted.

Moreover, electoral law reform was conducted to address the major issues of democratic election including the independence of the electoral management body. This also includes the clarity and fairness of the rules that are applicable to conduct of elections and regulation of political parties, and due process in the electoral dispute resolution mechanisms. Birtukan Mideksa – a former opposition leader who was in exile- was selected as a Chairperson of NEBE. Cognizant of the opening up measures at home and the measures taken to find peace with Eritrea after two decades of stalemate, Prime Minister Abiy was awarded the Noble Peace Prize by Norwegian Noble Committee in 2019. Several institutions were also brought to the fore in order to address the gaps in the extant governance structure and respond to popular demands raised during the protest time, including: Ministry of Peace, the Reconciliation Commission, the Administrative Boundary and Identity

¹¹⁸ Yonas Ashine and Kassahun Berhanu, *Implications of Protest and Reform for Domestic Governance in Ethiopia*, Journal of Asian and African Studies (2021), Vol. 56(5), P998

¹¹⁹ J. Temin and Y. Badwaza, *Aspirations and Realities in Africa: Ethiopia's Quite Revolution*, Journal of Democracy (2019), Vol 30 Issue 3, Pp.139-153.

¹²⁰ Mebratu, *supra* note 20.

Affairs Commission and later National Dialogue Commission. The inclusion of representatives of political groups from the “peripheral regions” that were previously excluded from the EPRDF coalition was also considered as good step forward.¹²¹That said, the above measures were taken as part of the opening up of political spaces in 2018/19.

Unfortunately, on February 13, 2020, Ethiopia confirmed its first case of COVID-19 (Ministry of Health, 2020). In order to mitigate the Pandemic, Council of Ministers proposed a law, Proclamation 3/2020, also known as the State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact, made its passage through the House of Peoples’ Representatives on April 10, 2020. It became clear that the election could not be held before the expiry of the term of the Parliament and the State Councils, October 5, 2020. This contributed to raise the constitutional issue of whether the election could be postponed and who would govern after the expiry of the term. Leaving the heated debate and controversies during the time regarding constitutionality of postponing election, it was later postponed through constitutional interpretation by the House of Federation. Against the planned election in August 2020, the COVID-19 pandemic came to add fuel on the burning political fire in the country. TPLF- the ex-dominant political group took unilateral decision on key political issues including regional election confronting constitutional mandate of the federal government.

In December 2019, all ethnic political parties¹²²constituting EPRDF except TPLF were dissolved and merged together with affiliated parties of EPRDF to form prosperity party (PP). The ruling parties over regional states then reduced to regional branches and political autonomy of their own.¹²³Nobody

¹²¹Yonas and Kassahun, *supra* note 118.

¹²² The EPRDF was a coalition of four ethnic based political organizations: The Tigrean People’s Liberation Front (TPLF); the Amhara National Democratic Movement (ANDM); the Oromo People’s Democratic Organization (OPDO), and the Southern Ethiopia Nations, Nationalities and Peoples Democratic Movement (SNNPDM). The TPLF was the dominant political force within the EPRDF

¹²³ Zemelak Ayele, ‘Constitutionalism and Electoral Authoritarianism in Ethiopia’ in Fombad, C. and Steytler, N. (ed.) *Democracy, Elections, and Constitutionalism in Africa* (Oxford University Press, 2021), P191.

was sure where the federal government and TPLF and the consequence of postponing election would lead except anticipating that it would bring security complication which in turn undermines the country's hope of democratization. Later, war broke out between the TPLF and the Federal Government in November 2020.

Sadly, the assassination of prominent Oromo freedom singer and artist, Hachalu Hundessa on 29 June 2020 led to another major crackdown on the opposition parties in Oromia. Following this incident, prominent OFC leaders like Jawar Mohammed, Bekele Gerba, Hamza Borana and many more were arrested and detained. They served for one year and later released. Balderas Party figures including Eskinder Nega and Sintayehu Chekol; and TPLF officials including Tewolde Gebre Tsadikan, Berihu Tsigie; and Lidetu Ayalew, a founding member of the Ethiopian Democratic Party and others faced similar fate. As for opposition parties from Oromia, the detention of opposition figures and inter-communal conflicts across Ethiopia were tactics used by the Prosperity Party in a bid to run non-competitive election.¹²⁴

Different measures were taken to limit the activities of opposition political parties, including shutting down offices, detention of prominent opposition political figures and restricting free mobility of opposition leaders; and the two main opposition political parties in Oromia- OLF and OFC- were victims of these acts.¹²⁵ Prominent political figures like Professor Merera Gudina from Oromia were calling for having national consensus and clear political roadmap for the post EPRDF regime prior to conducting the sixth national election. Accordingly, Ethiopians need to agree on fundamental issues and the future direction of the state rather than repeating previous mistakes of EPRDF by conducting sham election and further entrench “electoral authoritarianism.” These opposition figures were calling for postponing the preparation for election in a bid to prioritize national dialogue and bringing national consensus on fundamental issues of Ethiopia. Accordingly, the transition to democracy by conducting competitive, free,

¹²⁴ Betru Dibaba, *Electoral Continuity and Change since 1995: The Past Experience and the New Departure* (MA Thesis, PSIR, Addis Ababa University, 2022).

¹²⁵ *Ibid*; Mebratu, *supra* note 20.

inclusive and fair election is possible only after having national consensus on fundamental issues.

The sixth national election was, however, held on 21 June 2021, delayed by one-year constitutional time table for five-year periodic election. This election was conducted amidst of the war between the TPLF and the Federal Government, and widespread clashes in western Oromia. The National Electoral Board of Ethiopia (NEBE) declared that Prosperity Party (PP) won the majority of seats in both the federal parliament and regional councils in a landslide victory. PP then secured a five-year term in the first round by claiming 410 out of 436 contested seats in the federal parliament.¹²⁶ True to the electoral tradition during EPRDF regime, the ruling elite were criticized for the following behaviors: tampering with voter registration lists, creating obstacles to candidate registration, intimidating voters during the election, intimidating candidates, voting multiple times, and voting by those who are ineligible, such as minors, were observed during the election processes.¹²⁷ Thus, contrary to the popular expectations from the reformist group, the sixth national election ended up reinforcing the extant electoral autocracy.

4.2. Major Challenges of Democratization in Ethiopia

As shown in the preceding discussions, Ethiopia has missed different chances for democratization and the search for democracy is still unfulfilled. Time and again, certain attempts for democracy appeared in the horizon but got away without taking root. In some cases, it remained rhetoric without sincerity and arrested in words, in others it remained a ‘paper tiger.’ Subsequent sections discuss the major reasons hindering the move towards democratic transition in Ethiopia.

4.2.1. History of the State and Clash of Visions

Ethiopia's move forward in terms of democratization has been tied up due to contradictory interpretation of history on the bases of which political legitimacy of a given group is to be claimed. The political discourse of the country is very much occupied by polarized ideological rhetoric as well as

¹²⁶Betru, *supra* note 124, P78.

¹²⁷*Ibid.*

contradictory understanding of the past, the present and vision for the future. There is still “*battle over historical interpretation*” in the sense that even the “indisputable accomplishments of Ethiopia -such as Adwa victory over colonial power in 1896- do not yield a shared sense of pride. Myths about the past are conjured up in order to bolster or undermine the legitimacy of the new political vision.¹²⁸

Ethiopia is still in search of state and nation building approaches. The center-periphery dichotomy still persist, political distance is compounded by cultural distance between the center and periphery (both the highland and lowland periphery).¹²⁹ So far the desire for democratization and development has been aspired by controlling political power in the hands of certain elites who happened to come from specific ethnic group. During its regime, EPRDF lamented a party and a state in an inseparable manner. Whoever was not a member or affiliate to EPRDF was excluded from governmental/state functions. The culmination of such a process was proved when it controlled 100% seats in the parliament in 2015.

Let alone democratization project, there is a clash over conception of the Ethiopian state. For those who confidently speak of belonging to Ethiopia and having Ethiopian identity first, the federal political vision diminishes the past. To the contrary, those who feel included and recognized after the adoption of federalism, the present federalism is seen as redeemer of past injustices.¹³⁰ Andreas Eshete underscores that the “clash of conceptions of Ethiopia are a subject of everyday contention because of a widespread conviction that the uncertainties surrounding the country’s self-identity are rooted in the past.” Put differently, the clashes over the conception of unity and diversity arise from competing vision of the Ethiopian State. Those who stress on ideals of unity largely imagine Ethiopia as ‘a single national community’, and refrain from conception of Ethiopia as multinational state. In contrast, those who view Ethiopia as a multinational state with “deep diversity” focus on equality and self-rule of nations, nationalities and

¹²⁸ Andreas Eshete, *Ethnic federalism: New Frontiers in Ethiopian politics*, Ethiopian Journal of Federal Studies(2013),1(1),Pp57–102.

¹²⁹ J. Markakis, *Ethiopia: The last two frontiers* (United Kingdom: James Currey, 2011).

¹³⁰ Andreas, *supra* note 128.

Peoples (NNPs). In this sense, nation-building project for the former is nation-destroying for the later.

Furthermore, contending ethno-nationalisms are reinforcing each other in opposite way: the narrative of one group becomes a recipe for another to create counter narratives to dominate the political discourse and mobilize their political base, which often leads to violence. For example, since 2018, tensions between different ethnic communities have increased more than ever for various reasons, but they also stem from contradictory narratives that are aggressively pursued by contending nationalisms over the country's federal system.¹³¹ In a sharp contradiction to democratization, some ethno-national political elites give credit to essence of being Ethiopian to a specific ethnic group, which not only excludes the big chunk of the population but also depicts the unequal social relationships. That said, the contradiction between Pan-Ethiopian and ethno-nationalist views of Ethiopia's past and future, explains Ethiopia's deficit of democratization.

Presumably, along history and rich experience in 'stateness' is an important asset for political development such as to establish a democratic form of government. This is primarily so because the long years of stateness imply a better chance to anchor a democratic root of government through long years of exploration and experimentation, for democratization by its very nature demands so.¹³² Secondly, the sovereign status that Ethiopia is assumed to enjoy for centuries was a matchless chance for the country to democratize as the autonomy could offer it a better chance to choose and adopt a relevant paths of democratization. It is certain that state sovereignty enables people to make choices, according to their own ambitions, possibilities, sensitivities, and contexts. Paradoxically, that has not been the case in Ethiopia.

4.2.2. Federal Design and Implementation

One of the promises of federalism in Ethiopia is arguably to democratize the state and pacify the relationship between state-ethnic groups and between the ethnic groups as such. Yet, the nexus between federalism and democracy is a subject of debate in Ethiopia. In fact, democracy is not a substitute for

¹³¹Mebratu, *supra* note 20, P202.

¹³² Micheal Lipset notes that 'democracy has never developed anywhere by plan, but in a piecemeal fashion.'

federalism inas much as federalism is a form of state and democracy is a form of government. In Ethiopia, though federalism ushered in democratic principles, it has been shying away from giving autonomy to regional states and ensuring their deserved representation in the federal or shared government. On the one hand, the constitution grants extensive rights for nations, nationalities and peoples to self-determination in economic, cultural and political matters even to the extent of secession. This constitution also provides the power to levy a wide range of taxes on economic activities for the ethnic groups that established regional states. On the contrary, the ruling regimes remained true to centralized policy and planning. Part of the reason for the protest against EPRDF regime way back in 2015 through 2018 was because the constitutional and democratic rights for public participation in policy making were violated. The mix of state and party business and the dominance of executive branch blurred the separation of power, and checks and balance between the executive and legislature.¹³³ In this sense, the federalization project has barely been considered as part and parcel of democratization project in Ethiopia.

4.2.3. Political Party and Electoral System

During EPRDF regime, there were more than one hundred active political parties in the phase of which democracy suffers. In all the five elections- 1995, 2000, 2005, 2010 and 2015- conducted, EPRDF won or claimed to have won. Although there were many fragmented opposition parties without clear and joint strategies to win EPRDF,¹³⁴ it was EPRDF and its affiliates that ruled at all levels: local, regional and federal. In this way, EPRDF ruled the country as a *de facto* one-party state for over 27 years.¹³⁵

EPRDF had two categories of opposition parties. The first category was those opposition parties created by EPRDF for conveying false multiparty democracy messages, not for winning elections. It was EPRDF itself that even put fake leadership for some of the opposition parties by then. The second category was the real ones competing for winning elections, but for

¹³³Merera, *supra* note 99 and 100

¹³⁴ Asnake Kefale, *the (Un)making of Opposition Coalitions and the Challenge of Democratization in Ethiopia, 1991–2011*, Journal of Eastern African Studies, (2011), 5(4), Pp681–701.

¹³⁵ Merera, *supra* note 100.

the latter group, EPRDF had different tags such as “chauvinists” and “narrow nationalists” and those without clear policy and direction to lead the country.¹³⁶In fact, the contending opposition parties with some level of clear political agenda and policy direction were labelled as “anti-peace”, “anti-development” and “anti-constitutional order.” As hinted above, during its regime, EPRDF lamented party and the state in an inseparable manner in that whoever is not a member or affiliate to EPRDF was excluded from governmental/state functions. The culmination of such a process was proved when it controlled 100% seats in the parliament. That said, one of the key problems of the lack of progress in the democratization project under EPRDF was the hegemonic aspiration of the party to control everything and crown itself as all-knowing for the people.¹³⁷

Despite the opening up efforts in the protest led reforms in the early 2018, the post 2018 reformist groups turned the gear and different forms of repression and violent conflicts including violent and war resurfaced in Ethiopia. Liberalization phase of democratization is tactically used for offsetting public discontents for a time being so that the ruling elite buys time and got the leverage to consolidate its political party structure and security apparatus.¹³⁸ In short, from 1991 to 2019, the political process was closely controlled by EPRDF. Post 2019, PP took similar position of dictating the political process in Ethiopia, and the trajectory shows the deficit of the role of political parties for making clear progress in the democratization ventures of Ethiopia.

The FDRE Constitution under Article 102 and electoral legislation embraced the National Election Board of Ethiopia (NEBE) as an electoral body to manage and conduct elections. NEBE is accountable to the House of People Representative and the latter allocates budget for the former. Electoral law provides the nomination of members of the NEBE to the Prime Minister, and in this way the electoral law of Ethiopia leans to serve a mixture of proper constitutionally intended purposes and partisan ends of the incumbent party.

¹³⁶*Ibid.*

¹³⁷Merera, *supra* note 99.

¹³⁸Mebratu, *supra* note 20.

The Federal Constitution establishes majority democracy and First Past the Post electoral system, which does not go with the call for proportional representation of ethnic groups at federal and regional state levels, though the latter are constitutionally provided for as well. Many observers criticize that NEBE's independence. Inasmuch as it is the majority party having in the parliament that approves the members of election board, and the Prime Minister continues to nominate that the members of the Board, the head of the executive holds full opportunity to influence the management of election board. Notably, one of the well-known opposition Leader, Professor Merera Gudina often criticizes the ruling regimes (EPRDF and now PP) in terms of their links with election board as they used this institution as a guarantor for skewed outcome of the election towards the incumbent. He says as long as this institution remains the making of ruling party, there would not be fair and free election in Ethiopia.

4.2.3. Civil Society

During the EPRDF regime, Civil Society's Organizations (CSOs) were suppressed by force of law. The case in point being that infamous repressive Proclamation No 621/2009 on Registration and Regulation of Charities and Societies. It was virtually impossible to operate for CSOs except those associated with the ruling party. Under this framework, foreign Charities were not allowed to work on political issues related to democracy, good governance and human rights, but allowed to work on social and economic development issues. In particular, the local charities with more than 10% funds coming from abroad were not allowed to work on democracy, and the CSOs were not allowed more than 30% of their budget for administrative costs. As it might be recalled, CSOs did not join the recent citizen's mobilization against the EPRDF's rule, nor did they actively participate in the political reforms in the early 2018. The capacities, roles and contributions of CSOs to democratization were severely undermined.¹³⁹ Hence, the ruling regimes see CSOs as partners in democratization to the extent the latter conform to the partisan thinking of the former.

In February 2019, Organizations of Civil Societies Proclamation No.1113/2019 came up to reverse the situation of civic space, and CSOs are

¹³⁹*Id.*, P157.

now permitted to advance the cause they believe in. In this vein, both the ruling and opposition parties have got “newfound freedom and right of assembly guaranteed by the constitution to create and affiliate civil societies to promote their political agendas among the communities.”¹⁴⁰ Among the most notable changes in the new legislation are the removal of 10 percent restriction on foreign funding and licensing and freedom to CSOs operation. This in turn permits activists to join CSOs and put pressure on the regime and expands political reforms. The new legal framework is believed to facilitate political struggle from streets to constructive participation in formal civil society groups. The framework has also spurred the creation of other competing CSOs having partisan thinking. Thus, the deficit of the role of CSOs in the democratization journey of Ethiopia remains unabated.

4.2.4. Media

Article 29 of the Federal Constitution of Ethiopia guarantees the institutional independence of Media and legal protection to enable the accommodation of differences. The Constitution also guarantees the freedom of expression and access to information as inalienable human rights. However, Proclamation No 590 which was enacted in 2008 regarding freedom of mass media and access to information was severely criticized for restricting the independence of media in Ethiopia and for narrowing down democratic and political spaces. In the context of Ethiopia, the media sector was one of the enabling devices that brought the possibility of conducting competitive election back in 2005. However, EPRDF went to the reverse direction and used the force of legislation by enacting Proclamation No 590/2008 to foreclose the possibility of winning election for the opposition political parties. According to this Proclamation¹⁴¹, prosecutors were allowed to stop any publications deemed a threat to public order or national security. Besides, this proclamation restricts media ownership by preventing non-Ethiopian citizens from owning a media outlet.¹⁴²

The particular role of social media in the recent non-violent popular movements against the repressive regime of EPRDF is a recent history of

¹⁴⁰*Id.*, P199.

¹⁴¹Proclamation No.590/2008, Art. 42.

¹⁴² A. Lovise and K. Tronvoll, *supra* note 8, P200.

Ethiopia. In fact, the social media was used because of the state restrictions on media and access to information by the EPRDF regime. Social media therefore came as alternative channels for sharing critical information about the ruling regime, TPLF/EPRDF. This was particularly reacted to in the early days of the 2018 in that the bans were lifted from several websites as well as media designated as terrorist. Later, a new media Proclamation No 1238/2021 has been enacted. Nevertheless, some of the independent media are recently closed by the same government -on the claim that they instigated ethnic conflicts- that lifted the ban as they became critical of the way the government is managing the transition.¹⁴³

4.2.6 Antithetical Political Culture

Part of the reason for lack of progress in the democratization process of Ethiopia pertains to the political tradition. Ethiopian state is characterized by entrenched habits of authoritarianism, and the culture of statehood in Ethiopia has long been hierarchical and 'intolerant of dissent'¹⁴⁴, and remains true to this tradition. The continuation of Ethiopia's political culture that puts a premium on hegemonic control of power is antithetical to federalism.¹⁴⁵ In addition, Ethiopia, *albeit* federal in form, has not rid itself of the old thinking to do with hierarchical pyramids of powers and center-periphery relations, notions which are antithetical to federal political culture. The center-periphery dichotomy still persist, political distance is compounded by cultural distance between the center and periphery (both the highland and lowland periphery).¹⁴⁶

In Ethiopia, the political elites' uncompromising and lack of consensus building behaviors are hardly helping for making progress in the democratization process. The political culture remained true to its unitary, authoritarian antecedents. It is likely for countries with democratic seeds and cultures to democratize than those without democratic ingredients. Micheal

¹⁴³Mebratu, *supra* note 20.

¹⁴⁴C. Clapham, *The Horn of Africa: State Formation and Decay*. Oxford University (2017).

¹⁴⁵Ezkiel Gebisa, *Review: The Making, Unmaking and Remaking of Ethiopia*, *The Journal of African History*(2008), Vol. 49, No. 2, Pp. 335-338.

¹⁴⁶Markakis, *supra* note 129.

Lipsetlong underscored that ‘democracy requires supportive culture.’¹⁴⁷In this light, it has been said that democratic history of the ancient Greek-cities laid a foundation for the emergence and blossoming of democracy in Europe. Ethiopia is also the birth place of an indigenous and culture practice of democracy (e.g *Gadaa* system, otherwise called the Oromo democracy, named after the Oromo nation who invented and used it for centuries).¹⁴⁸Nonetheless, the defining features of political culture of Ethiopia include: lack of mutual trust, weak culture of cooperation, intolerance towards opposing views, authoritarianism (unrestrained power), conspiracy, zero-sum game (winner takes all), polarized stances, violence, and rigidity. Thus, democracy is still strange to Ethiopia, despite its long held practices.

5. Comparative Conclusion

In Kenya, the devolution project is going hand in hand with democratization project and the latter is progressing to electoral democracy. After adoption of devolution in 2010, political party system of Kenya shifted from one party to multiparty. All the elections held in 2013, 2017 and 2022 were won by coalition of parties.¹⁴⁹The existence of legal channel was able to address grievances related to election processes and outcomes. Supreme Court of Kenya, for example, nullified and decided rerunning of 2017 election. Opposition parties were able to file a petition with the Supreme Court about the fairness of presidential elections in 2013, 2017 and 2022. The court also blocked executive amendment proposals like Building Bridges Initiatives (BBI)¹⁵⁰ for creating Prime Minister Position by amending the Constitution. In addition, Odinga’s use of legal channel to complain about the election

¹⁴⁷ S. M. Lipset, *Some Social Requisites of Democracy: Economic Development and Political Development*, American Political Science Review (1959), 53 (1), Pp69–105.

¹⁴⁸ Asmarom Legesse. *Gada: Three Approaches to the Study of African Society* (New York: Free Press, Macmillan, 1973).

¹⁴⁹ Nyadera and etal, *supra* note 6, Pp 8-9.

¹⁵⁰ This was a proposal for creating 3 to 15 counties or regional blocks as well as an attempt to extend president’s tenure beyond two-term limit by amending the 2010 Kenya’s constitution. The initiative therefore attempted to recentralize the state power and resources through executive decision, but failed.

results in recent 2022 further affirms sense of confidence and trust in the judicial system of Kenya.

From the early 1990s, civil societies not only fiercely fought against one-party repression but also led intense struggles for realizing multi-party democracy in Kenya; and CSOs acted as the training ground for opposition politics and political leadership, and many members of CSOs leaders became MPs. The groupings of CSOs for peace with truth and justice played key roles for Kenya to address post-2007 crises and to go for comprehensive reform afterwards that culminated with constitutional reform in 2010.

Despite relative progress of democratization, Kenya's democracy is not entrenched. Old political leaders and their personal networks and ethnic patronage still dominate Kenya's politics. Political parties in Kenya are dubbed as "election parties" as they target winning votes by making coalitions rather than presenting alternative public policies. In Kenya, ethnicity is an informal institution for political mobilization and access to state power is ethnified. Even today, ethnicity is a symptom of the structure and use of political power, and the interplay of ethnicity and the competition for executive power have constrained public participation and the democratization in the polity. In sum, three major factors hinder the process of democratization in Kenya, including: ethnic polarization and patronage, personalized politics, and corruption.

The federalization project promises multiparty democracy but delivered dominant or single party system in practice, and the political leaders-both in the ruling and opposition parties-remain true to authoritarian and hegemonic political tradition. Federal Ethiopia has been ruled under dominant party or one party system that followed one ideology and centralized policy decision; and a simple majority vote is enough to form a government. Kenya learned from post 2007 election failures and pitfalls, while Ethiopia failed to learn from repeated chances for better democratization and remained true to conduct periodic elections without competition and freedom.¹⁵¹ Following the 2005 election, Ethiopia had applied the legislative forces to inhibit the capacities and role of opposition political parties, CSOs and media in the

¹⁵¹Merera, *supra* note 99.

democratization process. The following subsection deals with comparative lessons that could be drawn from Kenya to that of Ethiopia.

5.1. Lessons from Kenya to Ethiopia

This study revealed a number of lessons that could be drawn from the democratization processes of Kenya to that of Ethiopia. To this end, the following five points are worth noting:

i. Democratization Should Go Hand in Hand with Federalization

Compared to federal system of Ethiopia, devolved system of Kenya is short-lived but sought positive judgement in terms of its contribution to becoming a solid base for democratization. Both the devolution and the 2010 constitution were agreed among majority of leaders from different political backgrounds as fair and balanced system. In addition, devolution system of Kenya is increasingly shifting the long held history of “our turn to eat” by the ethnic political elites who ascended to the center of state power to “everyone’s turn to eat”, or “one man one Shilling.” Compared to Kenya, wherein democratization project is part and parcel of the devolution project, Ethiopia, though federalism ushered in democratic principles, has been shying away from giving autonomy to regional states and ensuring their deserved representation in the shared or federal government. Federalism is still a subject of political debate. It therefore lacks consensus to serve as a comprehensive strategy for democratization of the Ethiopian Polity. Hence, Ethiopia needs to find solution and make national consensus on contentious issues of federalism.

ii. Institutional Building and Rule of Law

In the post 2010, Kenya’s court has delivered subsequent landmark rulings. All presidential elections since the adoption of devolved constitution were challenged at Kenya’s Supreme Court. For instance, the Supreme Court of Kenya nullified the 2017 election stating that it was not run competently. Relatedly, Kenya case hints that an independent Electoral Board with the solid working procedure on the basis of rule of law matters. In this vein, Kenya has relatively institutionalized constraints on power of the leaders in that there is a term limit for the president and independent judiciary is taking

root. The comparative lesson from Kenya therefore shows that Ethiopia has not invested well in those institutions that could give solid base for democracy. That is why Ethiopia remained relapsing into violent conflicts, lacking institutions which could address grievances. Consequently, the case of Kenya informs that Ethiopia should pay attention to building institutions of democracy and rule of law for making progress in its democratization endeavors.

iii. Multiparty Politics and Forging Alliances

In Kenya, you cannot do politics without forging political alliance¹⁵², which is the essence of multiparty politics in divided societies. This requirement is constitutionally provided for and there are clear rules in Kenya as to how to inter into coalition, and political parties in Kenya have been able to work across ethnic lines because coalition is mandatory. Following the 2010 Constitution and devolution system, Kenyan's politics has become more of county-based, and politicians must also create alliances at the municipal, village, and town levels. For the last 12 years' devolution system of Kenya has been able to flourish different voices from different counties. Of the 47 Counties, half of them have been run by opposition parties, and this depicts multiparty democracy and lack of one party system in Kenya.¹⁵³ Recent developments showed that, unlike Ethiopia, Kenya has no armed rebel groups in and outside the country and power transfer is only through the 'ballot' not 'barrel of the gun.' Thus, one could contend, political and democratic space is getting better in Kenya.

Like Kenya, the contextual reality of Ethiopia calls for multiparty politics. However, the majoritarian democracy-which barely fits to the divided societies like Ethiopia- and the associated electoral design have resulted in winners take all politics in Ethiopia. In this way, politics of exclusion and centralization persisted in Ethiopia. The mere existence of many political parties did not bring democratization in Ethiopia, and the country has no semblance of a political party system.¹⁵⁴ The war in Tigray as well as

¹⁵² William Rutos case in recent election proves that conglomeration of small parties, forcing them to make alliances could help winning election in Kenya.

¹⁵³ Interview conducted with Prof Gilbert K., September 2022, Casablanca, Morocco.

¹⁵⁴ H. N.Njoroge, *supra* note 13.

military confrontations between federal government and ethno-nationalist rebel groups in Oromia and Amhara reveal lack of transition to democracy. To move forward, Ethiopia therefore needs to make political settlements and solid rules for forging political alliances and multiparty politics.

iv. The Role of Civil Society Organizations, Media and Citizenry

In Kenya, CSOs and media agencies have been persistently engaged in democratization process of the polity, particularly since 2007 crises. Kenya's media agencies, for example, often provide extensive coverage and analysis that reminds political actors that they are being observed at each step.¹⁵⁵ At individual level, people like, Maina Kiai played key roles in democratization of Kenya. Maina Kiai, a legal scholar who revamped a civil society led petition in 2016, for example, submitted petition to high court for ground breaking standards of transparency, ownership, integrity, and accountability. This shows individuals could lay foundation for civic and professional societies to influence democratization processes in their country. In Ethiopia, despite recent changes, CSOs were suppressed through the force of law, and there is still a deficit of the role of CSOs in the democratization processes.

v. Learning from Past Pitfalls

Studies show that Kenya managed to respond to demands for political inclusion and economic non-discrimination since 1970s through 2010 constitutional reform. Besides, the introduction of the 1991 multiparty politics in 1991 and the 2007 post-election violence and Mwai Kibaki's wise decision to go for coalition government and comprehensive constitutional reform helped Kenya's democratization.¹⁵⁶ The year-2007 post-election was the turning point for Kenya as the country was able to change the violent crises-with the support of western leaders and international community-into

¹⁵⁵ Kenyan Elections-Another Test in the Country's Democratic Journey; available at: <https://reliefweb.int/report/kenya/kenyan-elections-another-test-countrys-democratic-journey><Accessed on 11October 2022 >.

¹⁵⁶ Mwai Kibaki promised to rewrite the constitution in 100 days if he wins the run up for 2002 election. He won that election but declined from keeping his promise. Following the 2007 ethnic violence and crises, Kibaki took up that long awaited promise, entered into political negotiation with his opponent, established coalition government and went for comprehensive constitutional reform which came out to the 2010 constitution and devolution system of Kenya.

opportunities that led to establishment of devolved constitutional system as of 2010. Kenya had somehow learnt from its mistakes and flawed election in 2007, and conducted at least three elections (2013, 2017 and 2022) which showed good progress towards democracy. In contrast, the year 2005 could have been the turning point in the case of Ethiopia. One notable opportunity to exercise multiparty democracy had happened because of the landslide victory of opposition parties in this round of national election. Following the post-election crises, Ethiopia went to the reverse direction of further narrowing democratic political space in the post 2005 election, culminating even 100% control of the seats in parliament in 2015. Ethiopia failed to learn from 2005 failure and remained true to conduct periodic elections without competition and freedom, or *electoral authoritarianism*. The lesson from Kenya, therefore, informs that Ethiopia should learn from its pitfalls so as to move forward in its democratization processes.

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