

**THE IMPACT OF PARTY DOMINANCE ON THE ROLE OF PARLIAMENTARY
OVERSIGHT FOR THE PROTECTION OF HUMAN RIGHTS IN ETHIOPIA**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE LLM (HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA)**

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OCTOBER 2012

Plagiarism Declaration

I, Esete Berile Faris, hereby declare that this dissertation is my original work and has not been submitted to any other institution. Whenever other sources have been used, they have been duly acknowledged.

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Dedication

To my parents Ato Solomon Eshetu and W/o Belaynesh Berile, who sacrificed a lot to get me here. God bless you.

Acknowledgment

Above all, thanks be to God, whom I leaned on all my life through and who never let me down.

I am indebted to my supervisor, Dr Fessha, who has patiently guided me through his constructive comments and suggestions. His relentless effort and commitment to improve my work has been a great motivation for me.

I extend my gratitude to members and staffs of the Centre for Human Rights, University of Pretoria, and Community Law Centre, University of Western Cape, for all the support I received.

A special thanks goes to Gedion, who was there to encourage me to bring the best out of me. To my families, whose prayers paved every road I took. To my friend, Albab, I cannot imagine how different my experience in Pretoria would be if she were not there.

And to my friends, Abeba, Sam, Ashwanee, Benedicta, Seith, and all my class mates, thanks for everything.

Abbreviations

ANC	African National Congress
CoM	Council of Ministers
CoR	Council of Representatives
CUD	Coalition for Unity and Democracy
EDRM	Ethiopian Officers Revolutionary Movement
EHRC	Ethiopian Human Rights Commission
EIO	Institution of the Ombudsman
EPDM	Ethiopian People's Democratic Movement
EPRDF	Ethiopian People's Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
HOF	House of Federation
HPR	House of People's Representatives
ICCPR	International Covenant on Civil and Political Rights
MPs	Members of parliaments
NHRIs	National Human Rights Institutions
OHCHR	Office of High Commissioner on Human Rights
OPDO	Oromo People's Democratic Movement
TPLF	Tigray People's Liberation Front
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
WPE	Worker's Party of Ethiopia

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Chapter one

Introduction

1.1 Background

Parliaments in most legal systems have, at least, three major functions. First, parliaments, as representative of the people, are mechanisms through which people engage in the decision making process. Second, they are the principal law making bodies. Third, they oversee actions of administrative bodies.¹ These different functions of parliament contribute to the protection of human rights. In the law making process, parliaments pass laws that give human rights framework of a country. Through the oversight of the executive, parliaments examine whether executive actions meet the human right standards set by the law to ensure the protection of human rights.

In Ethiopia, the parliament, besides its legislative role,² has the power to approve general policies and strategies, question and investigate the conduct of the executive, and oversee the power of the executive.³ These are some areas in which it exercises its oversight role.

However, the effectiveness of an oversight is dependent on numerous factors, including the institutional and technical capacity of the parliament to exercise oversight, the nature of executive-legislative relation, and the independence of the parliament itself.⁴ The composition of the parliament has an impact on most of these factors as the capacity, power relation and independence of parliament are determined by assessing members of parliaments (MPs).

The Ethiopian parliament is characterised by single party dominance, where the ruling party, Ethiopian People's Revolutionary Democratic Front, currently, controls 99.6 percent of the seats in parliament. This is further complicated by the fact that the country follows parliamentary form of government,⁵ in which the executive is formed by the party that has the majority seat in the parliament.⁶

1.2 Statement of the Problem

In countries that have parliamentary form of government, legislative oversight over the executive highly relies on the nature of relation between the legislature and the executive.⁷ In such system, it is highly possible that the executive will have a significant political

¹ JD Barkan 'Progress and retreat in Africa: Legislatures on the rise?' (2008) 19:2 *Journal of Democracy* 124, 125.

² Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) art 55.

³ FDRE Constitution arts 55 (10, 15, 17&18).

⁴ D Beetham 'Parliament and democracy in the twenty-first century: A guide to a good practice' (2006) 13.

⁵ FDRE Constitution art 45.

⁶ FDRE Constitution art 73(2).

⁷ G Assefa 'Parliamentary oversight and constitutionalism in Ethiopia: An appraisal' (2010) 3 *Ethiopian Constitutional Law Series* 152, 174.

influence on the overall function of parliament. The single party dominance, coupled with parliamentary form of government, increases the difficulty on the parliament to carry out its oversight function. This dissertation seeks to assess the impact of party dominance on parliamentary oversight with specific reference to the role of parliament in protecting and enforcing human rights.

In order to address this objective, the research deals with the following questions:

- What is the significance of parliamentary oversight to the protection of human rights?
- How does the existence of party dominance influence the effectiveness of parliamentary oversight?
- To what extent has the party dominance in the parliament affected the role of the Ethiopian Parliament in overseeing the protection of human rights?

1.3 Significance of the study

This study seeks to analyse the impact of party dominance on the functioning of parliaments and their oversight role. It is believed that the study will contribute to the effort to strengthen Parliamentary oversight in Ethiopia. This is particularly important in countries like Ethiopia where other enforcement mechanisms such as judicial and constitutional reviews are weak. Judges in Ethiopia generally do not interpret the human rights provisions of the Constitution and the judiciary 'has abdicated its core function of reviewing acts and decisions of the executive'.⁸ The body that has the power to interpret the Constitution, including the human rights provisions, is a political body whose independence is questionable.⁹

1.4 Literature review

Since the overthrow of the military regime in 1991, party politics has been a point of discussion among many Ethiopian scholars. Whether the historically deep-rooted party dominant system in the country will continue or be replaced by multi-party system had been a subject of intense debate. As the party dominance continued in the country, writers shifted their attention to discussing the dominant party system and its implication on democracy and governance. However, except for some limited general assessments, there has not been sufficient examination of the implication of party dominance on the effectiveness of parliamentary oversight in Ethiopia.

⁸ A Fisseha 'Separation of powers and its implications on the judiciary in Ethiopia' (2011) 5:4 *Journal of Eastern African Studies* 702, 711.

⁹ C Mgbako et al 'Silencing the Ethiopian courts: Non-judicial constitutional review and its impact on human rights' (2008) 32:1 *Fordham International Law Journal* 256, 285.

Berhanu states that party dominance is a threat to the overall functioning of both houses of parliament in Ethiopia.¹⁰ He argues that party dominance creates ‘parliamentary dependence on party politics’ which reflects on the role of the parliament in making laws, designing the country’s policy and ensuring good governance.¹¹ Similarly, Assefa notes that the kind of relation that exists between the legislative and executive is decisive in determining the strength of legislative oversight.¹² He underscores the point that the opposition parties and the ruling party should work together to have an effective oversight.¹³ For him, party dominance is a threat only where such dominance is coupled with ‘high party discipline’.¹⁴ However, he did not proceed to examine the existing party dominance and its impact on parliamentary oversight.

Although there have been few writings on party dominance,¹⁵ the impact of party dominance on parliamentary oversight and human rights requires further study. This dissertation will examine the effect of party dominance on the effectiveness of parliamentary oversight and its implication on the protection of human rights in Ethiopia.

1.5 Methodology

A qualitative research methodology will be employed for this study. Analytical and prescriptive approach will be used. Reference will be made to legislation relevant to the topic. Academic writings and scholarly articles will be consulted.

1.6 Limitations of the study

The research paper focuses on examining the challenge of party dominance on the role of parliament to protect human rights through oversight in Ethiopia. It does not claim to develop a new theoretical dimension to party dominance and its relation to human rights or parliamentary oversight. It is also limited to the federal legislative organ in Ethiopia.

1.7 Chapter overview

The paper will have five chapters. Chapter two sets out the theoretical framework of the study. The relation between parliamentary oversight and human rights is established under this chapter. After defining parliamentary oversight, it discusses the nature of parliamentary oversight under different forms of governments. The effect of executive-legislative relation and party politics on oversight under parliamentary form of governments is analysed. The

¹⁰ K Berhanu ‘Parliament and dominant party system in Ethiopia’ in MAM Salih *Between governance and government: African parliaments* (2005) 176.

¹¹ As above 176-179.

¹² Assefa (n 7 above) 174.

¹³ As above 164.

¹⁴ As above 174.

¹⁵ Berhanu (n 10 above).

role of parliamentary oversight in protection of human rights and the oversight tools that can be used to this end are considered.

Chapter three analyses the impact of party dominance on the oversight role of parliaments. It explores the nature of party systems to identify their diverse impact on parliamentary activities. Detailed overview of the features of party dominant systems is made. It examines the challenges of party dominance to an effective parliamentary oversight and its impact on human rights.

Chapter four focuses on the impact of party dominance on the Ethiopian parliament's oversight role and its implication for the protection of human rights. It commences the discussion by providing historical overview of the Ethiopian parliament and party system. Whether the party dominance in Ethiopia is affecting the parliament's ability to protect human rights through oversight is the main issue that the chapter seeks to address.

The last chapter concludes the discussion and provides few recommendations.

Chapter two

Parliamentary oversight and the protection of human rights

2.1 Introduction

The principle of separation of powers is an important principle that limits the powers and functions of the three branches of government. According to this principle, each organ is entrusted with particular powers and functions.¹⁶ Simply put, the legislature makes laws; the executive implements them; and the judiciary interprets the same. The principle aims at curtailing maladministration and abuse of power by the government. Each organ has a role 'in holding the other to account'.¹⁷ As the government's role in the society has increased through time, the responsibility of each organ has also evolved and moved beyond the tasks mentioned above.

Legislation is the oldest role that parliaments have. Parliaments formulate rules and regulations to guide the executive on its law enforcement and the judiciary on adjudicating cases.¹⁸ They adopt policies, set up institutions, and establish implementation procedures. It is through these rules, policies and institutions that they lay the foundation to protect public interest and promote democracy, accountability, good governance, human rights and justice.¹⁹ However, the role of the legislature has, through time, expanded from law making to overseeing the executive, debating on public matters, designing public policy, legitimising the government through representation, budgeting, and promoting justice.²⁰ This makes parliament a 'multi-functional' organ that, directly or indirectly, engages in many of the principal tasks of government.²¹ This research paper focuses on one of these roles of parliaments, namely parliamentary oversight.

Parliamentary oversight involves the scrutiny of executive actions to hold it accountable.²² It is one of the important tools of the legislature to carry out its responsibility as representative of the people. The interest and concern of the people is an important consideration in overseeing the actions of the executive.²³ Though parliament cannot directly enforce the public interest enshrined in the laws it promulgates, it does so indirectly by ensuring their

¹⁶ BC Smith *Good governance and development* (2007) 102.

¹⁷ R Masterman *The separation of powers in the contemporary constitution: Judicial competence and independence in the UK* (2011) 13.

¹⁸ V Herman *Parliament of the world: A reference compendium* (1976) 571.

¹⁹ Assefa (n 7 above) 155.

²⁰ Inter-Parliamentary Union (IPU) 'Making reconciliation work: The role of parliaments' (2005) 11.

²¹ M Rush *Parliament today* (2005) 59.

²² As above 64.

²³ Canadian International Development Agency (CIDA) 'African parliamentary index: A report for seven African countries' (2011) 10 <http://www.parlcent.org/en/wp-content/uploads/2011/09/API-African-Parliamentary-Index.pdf> (accessed 19 October 2012).

proper implementation through oversight. Thus, an effective oversight guarantees accountable and transparent government.

Parliaments have numerous powers and functions they can use to exercise oversight. This may include exerting financial control, redressing grievance, and examining and approving legislation.²⁴ These powers and functions are interrelated and mutually reinforcing. Consequently, the effectiveness of the oversight is reliant on the overall strength of the parliament to carry out its functions.

2.2 Parliamentary oversight

Scholars interpret parliamentary oversight differently depending on the scope of oversight power the parliament enjoys. The scope of power may, in turn, vary based on the substantive content of the oversight or the bodies subjected to the oversight. In relation to the subject matter of oversight, legislative oversight can be defined as the 'legislative supervision' of the implementation of policies and programs by the executive.²⁵ This is, however, a narrow understanding of oversight according to which the legislature engages only with the aftermath effect of the executive action to check on the conformity of such act with policies and procedures. The American view of congressional review²⁶ adopts this approach. Abernach defines congressional review, in the American context, to include only the review of 'program and policy implementation' and subsequent actions, excluding consideration of 'proposals for new programs or even the expansion of current programs'.²⁷

In the broader sense, legislative oversight is defined to include the power to overview the executive's legislative and policy proposals and their implementation.²⁸ According to this view, all actions of the legislature, both before and after implementation of policies, are regarded as the subject matter of oversight. Pelizzo elaborates on this approach by underlining that such power can only be exercised in situations where the executive has the power to come up with laws and where such power is subjected to the control of the parliament.²⁹ Such a broad construction of parliamentary oversight is criticised based on the ground that it frustrates the whole purpose of oversight by dividing the attention of the legislature. Parliaments, in such cases, tend to give more emphasis to the adoption of legislation than monitoring the implementation.³⁰

²⁴ Rush (n 21 above) 64.

²⁵ A Schick 'Congress and the details of administration' (1976) 36 *Public Administration Review* 516, 518.

²⁶ Parliamentary oversight is referred as congressional review in America. See JD Abernach 'Changes in the congressional oversight' (1979) 22 *American Behavioral Scientists* 493, 493.

²⁷ As above 494.

²⁸ Maffio (2002) Cited at R Pelizzo et al 'Parliamentary oversight for government accountability' (2006) 8.

²⁹ As above 8.

³⁰ C Murray & L Nijzink *Building representative democracy: South Africa's legislatures and the constitution* (2002) 88.

As indicated above, another way to define parliamentary oversight is by referring to the institutions that are subjected to it. For instance, in South Africa, legislative oversight is defined as any form of scrutiny over all organs of government.³¹ Accordingly, it is not only the executive but also the judiciary that is subjected to legislative control. In most legal systems, however, it is only the executive that is subjected to legislative oversight.³² In those countries, legislative oversight is simply defined as ‘monitoring of the executive’s actions by the representatives of the citizens’.³³

The difficulty in defining legislative oversight is finding a definition that encompasses all aspects of oversight. In this regard, Ogul rightly points out that the understanding of legislative oversight is conditioned by what one views as oversight.³⁴ Most definitions face jurisdictional and contextual limit in the sense that they cannot govern oversight as practiced in all legal systems. Taking this into account, Lees defines legislative oversight in a more general term as a ‘behavior by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behavior’.³⁵ This is a purposive understanding of oversight, which broadly includes all types of legislative measures that have an effect on actions of government. Such definition is relevant because it focuses on the outcome of oversight than on its procedural dimension. This particular understanding of oversight can be applicable to all types of legislative oversights, irrespective of differences in the scope of power and their administration.

This study is concerned with legislative control of the executive, suggesting a narrower approach to parliamentary oversight. Parliamentary oversight is used here to refer to the power of the legislative branch of the government to supervise the conduct of executive before, during and after implementation of laws.

2.2.1 The nature of parliamentary oversight

The nature of parliamentary oversight varies depending on the form of government a country follows. More specifically, the oversight role of parliament in presidential form of governments varies from oversight in parliamentary form of governments. Our main concern, in this paper, is the nature of oversight under parliamentary form of government. However, the implication of the form of government on oversight cannot be fully appreciated without seeing oversight under the presidential system.

³¹ Parliament of the Republic of South Africa ‘Oversight and accountability model’ (2008) (Parliament SA) 15.

³² H Yamamoto *Tools for parliamentary oversight* (2007) 9.

³³ CIDA (n 23 above) 18.

³⁴ Ogul cited at BA Rockman ‘Legislative-executive relations and legislative oversight’ (1984) 9:3 *Legislative Studies Quarterly (LSQ)* 387, 417.

³⁵ JD Lees ‘Legislatures and oversight: A review article on a neglected area of research’ (1977) 2:2 *Comparative Legislative Research Center* 193, 193.

Oversight in presidential form of governments

The presidential form of government is characterised by the strict application of the principle of separation of powers.³⁶ Under such system of government, there may not be any fusion of power between the executive and the legislature as a person who is elected to the executive branch cannot seat in parliament and vice versa.³⁷ The separation of power keeps each branches of government free from being influenced by other branches, thereby helping them to act independently.³⁸ Thus, under the presidential system of government, the parliament serves as a strong source of 'check and balance of power on the executive branch'.³⁹

The legislature has the power to scrutinise the actions of all branches of government.⁴⁰ It has the option of conducting oversight either directly by engaging with executive or indirectly by overseeing the judiciary through the outcome of the judicial review over the executive.⁴¹ Often parliamentary oversight over the executive in presidential systems is very comprehensive especially when the parliament is held by a different party than the party controlling the executive.⁴² Even in situations where the same party holds both the executive and the legislature, there is no guarantee that the parliament would adopt the cabinet's view.⁴³ This is because the relation between the parties and the parliament, in presidential system, is 'less cohesive' and 'cross cutting' votes are common among parties.⁴⁴ Consequently, the political environment and the executive-legislative relation are less relevant in determining the effectiveness of oversight in presidential form of governments.

Oversights in parliamentary form of governments

In a parliamentary form of government, there is fusion of power between the executive and the legislature. The government is formed from the party that has a majority seat in parliament or as a result of the coalition of parties. Ministers have an overlapping membership in the executive and the parliament.⁴⁵ The head of the executive branch is the head of government with the actual power.⁴⁶ There is also a head of state, president or

³⁶ DV Verney 'Parliamentary government and presidential government' in A Lijphart *Parliamentary versus presidential government* (1994) 45.

³⁷ There are exceptions in practice. For instance, though Norway follows a parliamentary form of government there are laws prohibiting executive members from sitting in the parliament. See Lijphart (as above) 4.

³⁸ T Rahman *Parliamentary control and government accountability in South Asia: A comparative analysis of Bangladesh, India and Sri Lanka* (2008) 89.

³⁹ As above.

⁴⁰ CO Jones *Separate but equal branches: Congress and the presidency* (1995) 4.

⁴¹ As above 15.

⁴² Yamamoto (n 32 above) 81.

⁴³ Rush (n 21 above) 23.

⁴⁴ As above.

⁴⁵ R Hague, et al. *Comparative government and politics: An introduction* (1992) 320.

⁴⁶ Lijphart (n 36 above) 2.

monarch, who merely has a symbolic power.⁴⁷ The head of government and other members of the executive are, directly or indirectly,⁴⁸ appointed by the parliament. As a result, they remain in power only as long as they continue to enjoy the vote of confidence of parliament. This can be used as a control mechanism by parliament over the executive. However, the practicability of such vote of confidence is unlikely as the prime minister comes from the dominant party in parliament.⁴⁹

As a result of the fusion of power between the cabinet and the assembly, legislative oversight in parliamentary system is highly influenced by executive-legislative relation. The effectiveness of oversight is dependent on keeping the balance of power between the executive and the legislature or securing a stronger legislative branch. This is particularly a challenge in parliamentary systems where one party is controlling both the parliament and the executive. Oversight could be slowed down by the party in control or it would be passively administered as MPs may keep critiques confidential to protect their party.⁵⁰ This results in executive dominance over parliament. There are, of course, instances where the legislature has dominated the executive in countries like Germany, where the majority party is formed by a coalition,⁵¹ or in Sweden, where stronger committee systems are established even though it is characterised by a dominant party system⁵².

Nonetheless, strong parliaments rarely occur in parliamentary systems that usually resort to Westminster model of parliament. The Westminster model is a system of governance in which the 'winner takes all' situation persists.⁵³ In such system, there is a close tie between political parties and parliament that results in greater party cohesion.⁵⁴ Peele, in his writing on the parliament in United Kingdom (UK), explained the impact of party politics on the effectiveness of oversight process as follows:

*The independence influence of individual MPs and peers, and indeed of the House of Commons and the House of Lords as a whole, is inevitably limited by subordination of most legislative activity to the dynamics of party politics and the control to which the government can exert over Parliament through its disciplined party majority.*⁵⁵

In parliamentary democracies, the parties and party systems play an important role in determining the strength and efficiency of oversight. As a result, the overall nature of

⁴⁷ As above.

⁴⁸ In some countries, the parliament only appoints the prime minister who will, in turn, appoint other ministers.

⁴⁹ M Laver and KA Shepsle *Cabinet ministers and parliamentary government* (1994) 129-130.

⁵⁰ Yamamoto (n 32 above) 81.

⁵¹ Rockman (n 34 above) 407.

⁵² See D Arter 'The Swedish *Riksdag*: The case of strong policy-influencing assembly' in P Norton *Parliaments in Western Europe* (1990).

⁵³ K Storm & T Bergman *The Madisonian turn: Political parties and parliamentary democracy in Nordic Europe* (2011) 10.

⁵⁴ As above.

⁵⁵ G Peele *Governing the UK* (2004) 231.

oversight in parliamentary systems is linked to the executive-legislative relation and the interparty environment in parliament.

2.3 The role of parliamentary oversight

As Herman stated, the fundamental principle in bringing the executive under the control of parliament is that:

*'[p]arliament embodies the will of the people and must therefore be able to supervise the way in which public policy is carried out so as to ensure that it remains consonant with the aspiration of the Nation as a whole.'*⁵⁶

Three basic underlying objectives of executive control can be derived from this principle. First, oversight aims at protecting the will of the people by putting the executive branch under their guidance. Secondly, through oversight, the parliament attempts to guarantee implementation of public policy by supervising actions of the executive. Thirdly, by exercising oversight, it seeks to promote the core values of modern society, such as democracy and good governance, accountability and transparency, and fundamental rights and freedoms.

In order to achieve its objectives, parliamentary oversight assumes different roles. Yamamoto classifies these roles into four principal functions. First, parliamentary oversight helps 'to detect and prevent abuse, arbitrary behaviour, or illegal and unconstitutional conduct on the part of the government and public agencies'.⁵⁷ The main reason why oversight has developed to be an important function of parliaments⁵⁸ is that it contributes to the protection of fundamental rights of citizens from administrative abuses.⁵⁹ Administrative bodies have responsibility to protect, fulfil and respect human rights as the realisation of human rights is the primary obligation of the government. They, directly or indirectly, have more contact with citizens than any other body, which makes the risk of violation of rights likely. Preventing violation of rights through its supervisory power is the primary role of the legislature.

The second role of oversight pertains to ensuring financial accountability of the executive.⁶⁰ Usually, parliaments have the power to approve and control the executive budget, which is referred as 'power of the purse'.⁶¹ The financial control extends from monitoring the executive spending to preventing wastage and assuring efficiency.⁶² Through oversight,

⁵⁶ Herman (n 18 above) 801.

⁵⁷ Yamamoto (n 32 above) 9.

⁵⁸ Rockman (n 34 above) 414.

⁵⁹ Yamamoto (n 33 above) 9.

⁶⁰ As above 9.

⁶¹ R Stapenhurst et al *Legislative oversight and budgeting* (2008) 79.

⁶² Yamamoto (n 32 above) 9.

parliament checks whether budgetary programs are directed at bringing economic growth and are enforced properly.

The third role of oversight has to do with ensuring the implementation and deliverance of policies adopted by the executive.⁶³ While the parliament sets out goals through legislation, the government comes up with detailed plans for their implementation. Monitoring the execution of these legislative goals and administrative plans is the responsibility of parliament.⁶⁴

The fourth and final role of oversight is dependent on the effective implementation of legislation. Here, oversight serves as a tool to 'improve transparency and enhance public trust in the government'.⁶⁵ Public trust on the government and its institutions cannot be achieved without the satisfaction of public interest through the delivery of promises.

As it is clear by now, the focus of this paper is on the impact of party dominance on the protection of human rights through parliamentary oversight. As a result, our discussion will emphasise only on the role of parliamentary oversight for the protection of human rights.

2.3.1 Protection of human rights

The protection of fundamental rights and freedoms is a role shared by all branches of government.⁶⁶ Parliaments are suitably placed for protecting human rights.⁶⁷ Through legislation, parliaments provide the legal framework for the protection of human rights in a country.⁶⁸ In their budgetary power, they ensure the provision of adequate funds to enforce rights guaranteed by law.⁶⁹ These works of the parliament to protect human rights can be realised only when they are properly implemented. And it is through their oversight role that parliaments ensure organs of government and their officials observe their human rights obligations.⁷⁰

However, the role of parliaments in the protection of human rights had not received the attention it deserves. This is partly related to the lack of guidance on how parliaments can enforce rights and how their performance can be evaluated.⁷¹ Feldman identifies two mechanisms through which parliaments can carry out their obligation to protect human

⁶³ As above 9.

⁶⁴ Rockman (n 34 above) 414.

⁶⁵ Yamamoto (n 32 above) 9-10.

⁶⁶ OD Schutter *International human rights law* (2010) 729.

⁶⁷ National Democratic Institutions for International Affairs (NDI) 'Parliamentary human rights committees' (2005) *Rule of Law Series 7*.

⁶⁸ As above 8.

⁶⁹ As above 8.

⁷⁰ As above 8.

⁷¹ C Evans and S Evans 'Evaluating the human rights performance of legislatures' (2006) 6:3 *Human Rights Law Review* 545, 547.

rights.⁷² First, using parliament sessions of legislation, debates, and inquiries, parliamentarians can create awareness among government officials on human rights.⁷³ This parliamentary human right awareness programs serve dual purposes. On the one hand, they alert the parliament to be conscious of its human rights mandates. On the other hand, they promote human rights among government officials and the public at large. Second, parliaments, by using human rights standards to monitor executive actions, can ensure that actions taken by government are in line with its human rights obligations.⁷⁴ Using 'human-rights standards require politicians and officials to justify their decisions and actions by reference to previously established and publicly articulated criteria set out in relevant human-rights instruments'.⁷⁵ This specifically relates to the oversight role of parliaments. In overseeing the executive, parliament can contribute to the protection of human rights by using human rights standards for assessment. The Committee on the Rights of the Child has noted that parliaments can play a role in the protection of children's rights by using mechanisms such as legislative review, budgetary review, monitoring actions, capacity building and formation of independent national human rights institutions (NHRIs).⁷⁶

This suggests that parliaments have wide range of oversight mechanisms, they can use for the protection of human rights. The following section discusses the most common legislative tools parliaments can use to protect human rights.

2.4 Tools of parliamentary oversight

Parliaments use a variety of tools to undertake oversight. This includes questions, debates, hearings, committee systems, interpellation⁷⁷, motions, no confidence votes, impeachment, and dismissal. These are internal parliamentary procedures that parliament can use to exercise oversight. However, there are also external oversight tools that parliaments can use to control the executive such as auditor generals and NHRIs.⁷⁸ More than one type of tool can be used in a country depending on the adoptability of the tool to the capacity of the parliament. Even though numerous tools are recognised, some of them are used more frequently than others. Thus, our discussion will only emphasise on those tools which are regularly used by parliaments in most countries and can best serve in the protection of human rights.

⁷² D Feldman 'The roles of parliaments in protecting human rights: A view from the UK' (2006) 2 <http://www.law.cam.ac.uk/faculty-resources/summary/the-roles-of-parliaments-in-protecting-human-rights--a-view-from-the-uk/3391> (accessed 10 June 2012).

⁷³ As above 11.

⁷⁴ As above 5.

⁷⁵ As above.

⁷⁶ Committee on the Rights of the Child General Comment No. 5, (2003) para 18. See also Committee of Ministers of the Council of Europe, Recommendation Rec (2004)5 Annex I para 21.

⁷⁷ Interpellation is a procedure by which clarification on government policy is requested.

⁷⁸ R Staphenurst and M Alandu 'The accountability function of the parliament of Ghana' 10 <http://www.american.edu/sis/africacouncil/upload/Paper-5-Alandu-Staphenurst-Ghana.pdf> (accessed 20 August 2012).

2.4.1 Parliamentary committees

Currently, the effective administration of parliamentary functions is shouldered by parliamentary committees, which is why they are characterised as the “engine rooms” of parliament.⁷⁹ Parliamentary committees are ‘a group of parliamentarians appointed by one chamber (or both chambers, in the case of joint committees in a bicameral parliament) to undertake certain specified tasks’.⁸⁰ The organisation of parliamentary committees differs depending on the task they will engage in.⁸¹ The most common type of committees are standing committees, joint committees and *ad hoc* committees.⁸² Standing committees are permanent committees established for the life span of the parliament. Joint committees are committees comprising of members from two houses in bicameral parliaments that undertake shared roles both houses have. *Ad hoc* committees are temporarily established committees to carry out a specified task.⁸³

Depending on the organisation of a parliament, the composition of the committee varies from one to the other. However, by and large, it is a replica of the composition of the parliament.⁸⁴ Political parties will have a proportional seat to the ‘numerical strength’ they have in the chamber.⁸⁵ In Brazil, for instance, when committee members are appointed, it is bearing in mind the number of seats each political party has in the house.⁸⁶ However, in some countries like South Africa, there is a special procedure to represent parties with insignificant number of seats to ensure the inclusiveness of the committees. Thus, unless it is practically impossible, each party would have at least one representative in a committee.⁸⁷ Otherwise, the composition of parties in parliament and committees are directly related.

Generally, the day-to-day activities of the parliament that require in-depth and extensive work are left to the committees.⁸⁸ Committees undertake different functions the parliament has such as drafting a bill, reviewing financial proposals, and administration of the parliament.⁸⁹ At the end of each task, the committees prepare reports to be presented to the house for discussion. The committee’s aim, in undertaking various functions and preparing

⁷⁹ NDI (n 67 above) 8.

⁸⁰ Yamamoto (n 32 above) 15.

⁸¹ As above.

⁸² As above.

⁸³ As above.

⁸⁴ As above 16.

⁸⁵ As above.

⁸⁶ Herman (n 18 above) 472.

⁸⁷ Murray (n 30 above) 65.

⁸⁸ As above 13.

⁸⁹ G Barnhart *Parliamentary committees: Enhancing democratic governance* (1999) 13-18.

reports, is to assist the house to reach at an informed decision on matters.⁹⁰ One of the most important functions of committees is, however, conducting oversight.

Oversight by parliamentary committees is the most commonly used tool of oversight. It involves comprehensive scrutiny of a particular matter or institution.⁹¹ Committees use different techniques to examine the executive action including questioning, holding a hearing with ministers, calling for witnesses, asking for and seizure of documents, or on-site visits.⁹² The oversight by committees is always wide-ranging and intense compared to procedures administered by the house. One of the reasons for this is because they can make thorough investigation of any matter with lesser 'political complication' unlike the plenary.⁹³ The inclusive nature of the committees also enhances their ability to consider different interests.⁹⁴ As a result, they are also the most appropriate forum to carry out the role of parliaments in protection of human rights.⁹⁵

Protecting human rights requires the incorporation of human rights into the day-to-day activities of parliament.⁹⁶ Using parliamentary committees, parliaments can ensure the integration of human rights in their works. Parliamentary committees can be organised in two different ways to incorporate human rights. The first approach is by viewing human rights 'as a cross-cutting issue' that each committee has to take into consideration.⁹⁷ This means each committee serves as "human rights committee".⁹⁸ South Africa, in general, uses this approach except in situations where committees dealing with specific human rights issue are instituted.⁹⁹ For example, a 'Joint Monitoring Committee' was established in 1999 to supervise the enforcement of women's rights.¹⁰⁰

The other alternative is to establish a separate human rights committee that only monitors the proper enforcement of human rights.¹⁰¹ Many countries, including Canada, UK, Philippines and Ghana, have established such kind of human rights committees.¹⁰² It is agreed that establishing separate committees is a more effective way to deal with concerns related to human rights as it provides for a more centralised approach. It also serves 'a strong political message' to all concerned bodies.¹⁰³

⁹⁰ Yamamoto (n 32 above) 16.

⁹¹ Agora 'Parliamentary function of oversight' <http://www.agora-parl.org/oversight> (accessed 20 August 2012).

⁹² As above.

⁹³ AM Arkins 'Legislative and executive relation on the Republic of Ireland' in Norton (n 42 above) 96.

⁹⁴ Murray (n 30 above) 91.

⁹⁵ See A Sakaria and S Aiyagari 'The parliamentary committee as promoter of human rights: The UK's Joint Committee on Human Rights' (2007) 3.

⁹⁶ NDI (n 67 above) 8.

⁹⁷ As above.

⁹⁸ As above.

⁹⁹ As above.

¹⁰⁰ Yamamoto (n 32 above) 23.

¹⁰¹ As above.

¹⁰² See NDI (n 67 above).

¹⁰³ As above 8.

Irrespective of the existence or nonexistence of a specific human rights committee, it must be noted that the 'institutional, personal, and party sense, and the priorities of individual legislators' contribute to the effectiveness of oversight by the committees.¹⁰⁴ Another problem faced by committees is the weakness in ensuring the implementation of their recommendations. In practice, after they present reports on their findings, the parliament takes a vote on it for adoption. Usually, the political nature and composition of the plenary will determine the enforcement of their findings and recommendations.

2.4.2 Questions and debates

Questioning of ministers and consideration of executive proposals through debates is another mechanism through which the parliament can exercise oversight.¹⁰⁵ Generally, the legislature has power to call and question ministers. Countries have a regular time schedule for questions.¹⁰⁶ A question time will usually be there after presentation is made by the prime minister or ministers to introduce new policies or fiscal year plans.¹⁰⁷

There are three forms of questions that can be forwarded for a response: 'oral question, written question and private notice question'.¹⁰⁸ The answers can also be presented either orally or in writing. The purpose of oral answers is either to clarify on matters or in order to bring a certain matter to the attention of the ministers.¹⁰⁹ Where detailed information is required, written answer is used. Often, parliaments publish information submitted to them in writing.¹¹⁰ Private notice questions are questions to be presented with prior notice to ministers where the speaker of the house approves them.¹¹¹

Debates, on the other hand, are sessions whereby selected important matters are discussed by the parliament.¹¹² Matters that affect public interests will be identified and tabled for debate. Regular sessions are assigned for debates in most parliaments. Special debate sessions, following short questions fired at the minister to instigate further discussion, are also a typical character of many parliaments including France, Switzerland and Ireland.¹¹³ The form of debates varies from one parliament to the other depending on the procedures of the parliament.¹¹⁴ In countries like Ireland, where the Westminster style of parliament is followed, the debate takes the adversarial form in which matters are harshly

¹⁰⁴ Rockman (n 34 above) 196.

¹⁰⁵ RM Punnett *British government and politics* (1994) 262.

¹⁰⁶ For instance in England there is a question time that will be assigned for parliaments to ask questions and debate on matters that requires clarity (half an hour usually) each time the parliament is adjourned. As above 267.

¹⁰⁷ Yamamoto (n 32 above) 45.

¹⁰⁸ Peele (n 55 above) 235.

¹⁰⁹ Punnett (n 105 above) 265.

¹¹⁰ Peele (n 55 above) 236.

¹¹¹ Stabenhurst (n 61 above) 138.

¹¹² Murray (n 30 above) 95.

¹¹³ P Norton *Parliaments and governments in Western Europe* (1998) 65.

¹¹⁴ IM Rautenbach & R Malherbe *Constitutional law* (2009) 152.

‘argued on the floor’.¹¹⁵ In countries like South Africa, on the other hand, the speakers prepare a speech and the debate will be conducted in the form of question and answer.¹¹⁶

Questions and debates are important tools to review the policies and actions of the executive and their implementation. Oversight is about bringing the executive to account for the actions it has taken.¹¹⁷ By putting questions to ministers and administrative officials, ‘the parliament holds the executive accountable’.¹¹⁸ The measures taken by the executive to implement legislation and policies are examined. Executive programmes and plans are assessed through questioning. Besides, questions and debates help to gather relevant information for further scrutiny by the legislative committees. These features make them appropriate sessions to policy considerations in light of different standards including human rights. Questioning and debate provide MPs an opportunity to ensure transparency and accountability of the executive. By forwarding questions to ministers, parliaments can identify the rationale behind administrative decisions, notify the public on such decisions and bring to the attention of officials important but ignored matters.¹¹⁹ Through which human rights concerns can be addressed.

Human rights standards that are used to evaluate administrative action can also be developed in question times and debates.¹²⁰ Questions addressing the measures government has taken, to protect, fulfil and respect its human rights obligations can be integrated in the question time. Furthermore, questions and debates are useful to know how the government has intended to act, in order to identify and recommend better proposals and plans to avert possible violations of human rights before they materialise.¹²¹ The main challenge to using questions and debates for the protection of human rights is that they tend to be ‘party battle’ grounds for political parties.¹²² Though this can be considered as an advantage as it attracts media coverage and public attention,¹²³ it can only be utilised when human rights concerns are given priority.

2.4.3 Oversight through national human rights institutions

Countries establish different institutions as external control mechanisms on government bodies. NHRIs, anti-corruption commissions, and the auditor general are some of them. Initially, the auditor general, which engages in financial control, and the ombudsman, who investigates maladministration by administrative bodies, were the most commonly used

¹¹⁵ As above.

¹¹⁶ As above 153.

¹¹⁷ Murray (n 30 above) 87.

¹¹⁸ SA Parliament (n 31 above) 32.

¹¹⁹ Feldman (n 72 above) 3.

¹²⁰ As above.

¹²¹ The British Parliament Great Britain Central Office of Information Reference Division, May 1971 P.29 cited at Ahmed ‘Parliamentary oversight its role in ensuring accountability and constitutionalism’ (2011) 47.

¹²² Peele (n 55 above) 236.

¹²³ Punnett (n 105 above) 265.

institutions.¹²⁴ However, with the current recognition given to NHRIs, human rights commissions and anti-corruption commissions have increased in number.

NHRIs are formally established 'state-funded' institutions that act independently from the government and have a mandate to ensure the promotion and protection of human rights at the national level.¹²⁵ NHRIs are established with different titles and models in different countries. For instance, the NHRI in France is established in the form of a "Committee" comprising of numerous civil societies while in European Nordic states they are formed as 'ombudsman institutions'.¹²⁶ Their mandate also varies greatly, ranging from those that only have promotional mandate to those that enjoy protective mandate through investigation of complaints on human rights violations.¹²⁷ The common denominator in all of them is that they have internationally established role in ensuring the national enforcement of human rights.¹²⁸

Under most legal systems, these institutions are established by parliament and are accountable to it.¹²⁹ They report to the parliament directly on their activities, same as any other administrative bodies. The parliament can use such reports to indirectly assess the performance of the executive. Thus, these institutions can efficiently serve as an alternative tool of oversight in countries. For instance, in Argentina the Ombudsman is recognised as separate tool of oversight for the Parliament.¹³⁰

NHRIs have autonomous power to monitor whether legislations, policies and proposals are in conformity with national and international human rights instruments.¹³¹ They are better positioned, than even parliamentary committees, to independently oversee the executive's action without a political pressure. Such institutions also have the advantage of closely working with the people which provides them a better understanding of public interests. However, their effectiveness is largely affected by the ability of a parliament to work in cooperation with them.¹³² As a result, the international community has emphasised on the need for strengthening the relation between parliaments and NHRIs.¹³³ The understanding is that they can reinforce the institutional effectiveness of one another. Parliaments can use

¹²⁴ Herman (n 18 above) 922.

¹²⁵ Schutter (n 66 above) 781.

¹²⁶ As above.

¹²⁷ For instance the Indian Human Rights Commission can entertain complaints while the 'Danish model' only has education and informative role. As above.

¹²⁸ See the UN GA Resolution 48/134 on Principles relating to the Status of National Institutions (Paris Principles) (20 December 1993) art 1.

¹²⁹ Herman (n 18 above) 922

¹³⁰ LB Lemos 'Legislative oversight of the executive branch in six democracies in Latin America' (2010) 17.

¹³¹ Schutter (n 66 above) 782.

¹³² Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna (25 June 1993) art 13.

¹³³ UN Council OHCHR 'Strengthening the bond between parliaments and national human rights institutions' (April 2012) <http://www.ohchr.org/EN/NewsEvents/Pages/ParliamentsAndNHRIs.aspx> (accessed 10 October 2012).

NHRIs to oversee the executive. Namibia has the best practice in this regard. It has established a separate standing committee to investigate and act upon the report of the Ombudsman.¹³⁴ NHRIs also need parliament's substantive and procedural protection to function independently and without government intervention.

2.5 Conclusion

Parliaments have obligation to protect and promote human rights. Parliamentary oversight is one of the mechanisms they can use to carry out this obligation. Through oversight, parliaments can ensure constitutionally guaranteed rights of citizens are enforced by the executive and redressed by appropriate remedies when violations occur. Parliaments have numerous tools of oversight, at their disposal, to effectively undertake their human rights obligation. Among which parliamentary committees, questions and debates, and NHRIs are the most commonly used tools in many countries. Parliaments have also been creative in coming up with new tools to protect rights. Using informally established groups to raise human rights issues in parliament, working with non-governmental organisations, and preparing human rights awareness and education programs¹³⁵ are some instances of such creative programs.

¹³⁴ NDI (n 66 above) 13.

¹³⁵ As above.

Chapter Three

Challenges to protect human rights through parliamentary oversight in party dominant systems

3.1 Introduction

In the preceding chapter, we have discussed the role of parliamentary oversight in the protection human rights. It has been established that parliamentary oversight can be used as a means to ensure the implementation of international and national obligation a country enters in to respect human rights. Parliaments can use different oversight tools for such purposes. However, the effective use of oversight tools and proper monitoring of actions of executive are determined by numerous factors.

Rosenthal summarises factors influencing oversight into four categories, namely 'legislative climate, legislative posture, legislative capacity and legislative mission'.¹³⁶ Legislative climate is about the atmosphere the parliament is operating in, which includes external expectation of the public and internal motivation of MPs to monitor the executive.¹³⁷ Legislative posture represents the party composition in the parliament and the party structure.¹³⁸ Parliaments that are composed of various political groups with diverse political interests creates conducive environment for oversight. Legislative capacity indicates the institutional ability of the parliament to monitor the executive.¹³⁹ Adequate facilities, including experienced, educated, and sufficient number of staff and fully equipped offices, are essential for MPs to carry out their oversight function effectively. Finally, the legislative mission refers to the scope of power the legislature has to oversight.¹⁴⁰ Parliaments with broader mandate of oversight have more flexibility to effectively use various tools to oversight.

The focus of this paper is on party dominance and its impact on parliamentary oversight. Consequently, the discussion will focus on legislative climate and legislative posture as the two factors that explain the effect of party dominance on parliamentary oversight.

3.2 Nature of party systems and parliaments

The role and actions of government organs are greatly affected by the political dynamics of the party system in a country. Justice Jackson, in *Youngstown Sheet & Tube Co, V Sawyer*, a case dealing with determination of the President's executive power in the US Constitution,

¹³⁶ A Rosenthal 'Legislative behaviour and legislative oversight' (1981) 6:1 LSQ 115, 116.

¹³⁷ When there is a public pressure on MPs to supervise the executive a more conducive environment can be created for parliamentary oversight. MP's priority also affects legislative climate. See Lees (n 35 above) 204.

¹³⁸ Rosenthal (n 136 above) 124.

¹³⁹ As above.

¹⁴⁰ As above 125.

pointed out the significance of the party politics in delimiting the President's powers and that of other branches of government.¹⁴¹ He noted:

*'Rise of the party system has made a significant extra constitutional supplement to real executive power... Party loyalties and interests, sometimes more binding than law, extend his [the President's] effective control into branches of government other than his own, and he often may win, as a political leader, what he cannot command under the Constitution.'*¹⁴²

This supports the view that the effectiveness of government organs is not solely reliant on the existence of separation of powers or checks and balances of powers. Rather what is equally important is what Levinson and Pildes referred to as, 'separation of parties'.¹⁴³ Separation of parties is about the composition of political parties in the legislative and executive organs. When the legislature and the executive are dominated and controlled by the same political party, there is no separation of parties.¹⁴⁴ In such a case, even if there is separation of power in theory, it is not actually realised on the ground as the same party undertakes both responsibilities. The composition of parties will influence the relation between the executive and the legislature. It would either bring legislative efficiency and 'executive accountability' or legislative weakness and executive dominance.¹⁴⁵ The influence of political parties extends to each branches of government since the institutional capacity of organs of the state is highly influenced by the party competition.¹⁴⁶

Party competition, which goes a long way in explaining or determining the relation between the legislature and the executive, is inversely affected by the party system a country adopts. Until the recent development of party dominant system, there were three types of party systems, namely, one-party system, two-party system and multi-party system.¹⁴⁷

In one-party system, a single party has 'monopoly of power through the exclusion of all other parties'.¹⁴⁸ The ruling party is designed to stay in power permanently and is entangled with each government organs.¹⁴⁹ Parliament's role is limited to approving executive proposals instead of supervising the performance of the executive.¹⁵⁰ The oversight role of the parliament is set aside as one party/person is controlling both the legislature and the executive. A good example of this system is communist regime of China, where the

¹⁴¹ *Youngstown Sheet & Tube Co. V Sawyer* 343 US 579 http://www.law.cornell.edu/supct/html/historics/USSC_CR_0343_0579_ZC2.html (accessed 3 September 2012).

¹⁴² As above.

¹⁴³ See DJ Levinson & RH Pildes 'Separation of parties, not powers' (2006) 119:8 *Harvard Law Review* 2311.

¹⁴⁴ As above 2341.

¹⁴⁵ As above 2341-2.

¹⁴⁶ *Youngstown* (n 142 above).

¹⁴⁷ R Doorenspleet 'Political parties, party systems and democracy in Sub-Saharan Africa' in MAM Salih *African political parties: Evolution, institutionalisation and governance* (2003) 175.

¹⁴⁸ A Heywood *Politics* (2007) 283.

¹⁴⁹ As above.

¹⁵⁰ DW Brady & CS Bullock 'Party and factional organization in legislatures' (1983) 8:4 *LSQ* 599, 607.

Chinese Communist Party monopolises both governmental and non-governmental institutions through a single party ideology.¹⁵¹

In two-party systems, there are two competitive parties in parliament, with equal chance of winning a majority to dominate the legislature or/and to form the government.¹⁵² Depending on the form of government, different parties may control the legislature and the executive or a single party may dominate both. The two best examples to understand such system are Britain and United States of America (USA). In Britain, which is a typical parliamentary form of government, the party that has the majority seat in the parliament will form the executive. In USA, both the congress and the Presidency are voted on separately. Thus, the executive and legislative control may fall under different parties. In two-party systems, the existence of two equally competent parties facilitates party competition compared to the one-party system. This is attributable to different reasons. To begin with, the two parties would have different political ideologies, policy measures, and executive plans which give substantive alternative ideas in any matter raised in the parliament. Second, although one of the parties will win a slight majority to get legislative control, the other party would always have considerable number of seats to influence and have a say on the matter.¹⁵³ Third, the MPs in two party systems stay longer in office and acquire more experience, which makes them more efficient in monitoring executive actions.¹⁵⁴ This last point is often mentioned as advantage of two-party systems over multi-party systems, which as discussed below, tends to be responsible for unstable government.

The other party system that characterises many countries is multi-party system. Multi-party systems are characterised by power sharing among a number of parties.¹⁵⁵ At times, one party may have a close majority, while in other times, none of the parties will have the majority to form a government, in which case they will form a coalition government.¹⁵⁶ Multi-party systems encourage more party participation in parliaments than any of the other party systems. The increased number of parties involved means more interest groups with diverse policy proposals. In addition, all parties have equal stand in the parliament as none of them have an absolute majority. This facilitates party competition in the parliament. It is agreed that parliaments with high party competitions are more active in their overall performance, especially oversight, as the legislature would assume more role in setting policies and supervising the executive because of opposition pressure.¹⁵⁷ However, this does not always secure a fair party competition or a long lasting effective parliament. In the

¹⁵¹ Heywood (n 148 above).

¹⁵² P Mair *The West European party system* (1990) 420.

¹⁵³ As above 422.

¹⁵⁴ R Trapp *The debatabase book* (2009) 214.

¹⁵⁵ Brady (n 150 above) 607.

¹⁵⁶ D Carmani 'Party systems' in D Carmani *Comparative politics* (2008) 330.

¹⁵⁷ Brady (n 150 above) 607.

contrary, studies show that multi-party systems, especially coalition governments, have the tendency to create unstable parliament and a weak government.¹⁵⁸ Of course, there are exceptions. Effective and well-functioning multi-party systems with strong parliaments are created in countries like Germany where parties are willing to work for the common good.¹⁵⁹

In addition to the party systems discussed above, we are recently witnessing the emergence of a new party system referred as party dominant system. This particular party system has mostly emerged in newly established democracies found in developing countries.¹⁶⁰ There is a confusion as to whether it should be taken as a 'classification of party systems' or 'form of democratic rule' as it can emerge in any party system.¹⁶¹ Since party dominance is the main concern of the paper, the following section specifically deals with the notion and practice of party dominance.

3.3 Party dominance

Party dominance occurs in situations where the politics of a country is controlled by one party for a very long time without the likelihood of transfer of power to another party in the near future.¹⁶² Freedom House defined dominant party systems as 'systems in which the ruling party (or front) dominates government, but allows other parties to organise or compete short of taking control of government'.¹⁶³ Party dominant states are not characterised by the non-existence of other parties but by the fact that the political landscape of the country is dominated by one party. In Sartori's approach of party systems, this fits with what he characterises as 'predominant party system' in which there exists 'a party that outdistances all the others, this party is dominant in that it is significantly stronger than the others'.¹⁶⁴ Normally, the absence of strong and competitive rivalry parties is the reason for the existence of the dominancy. Often party dominant systems are confused with one party system because they sometimes show similar features.¹⁶⁵ But in one party system there is no political competition against the ruling party while in a party dominant system numerous parties compete through elections but elections are won for 'prolonged time' by one party.¹⁶⁶

Although the above definitions of party dominant systems seem clear and straightforward, distinguishing party dominated political systems, from other systems, by applying these

¹⁵⁸ As above 615.

¹⁵⁹ C Barrington *Comparative politics: Structures and choices* (2011) 273.

¹⁶⁰ H Giliomee and C Simkins *The awkward embrace: One-party domination and democracy in industrialising countries* (2005) XI.

¹⁶¹ As above.

¹⁶² V Ferim 'Flaws in Africa's dominant one-party democracies: The case of Cameroon and South Africa' (2010) 4:1 *Cameroon Journal on Democracy and Human Rights* 28, 29.

¹⁶³ Freedom House *Freedom in the world: The annual survey of political rights and civil liberties 1993–1994* (1994) 101.

¹⁶⁴ G Sartori *Parties and party systems: A framework for analysis* (2005) 193.

¹⁶⁵ Heywood (n 148 above) 285.

¹⁶⁶ As above.

definitions is difficult. Unlike its definitional understanding, the practical aspect of identifying party dominance is always a subjective exercise that has to be determined through practice than by using commonly applicable objective criteria.¹⁶⁷ That is why despite numerous differences in their state structure and party organisation, a wide range of countries, including Japan, Sweden, Italy, Israel, India, Ireland, South Africa, Mexico, Taiwan and Malaysia, were or are listed as party dominant states.¹⁶⁸

Nonetheless, the following two factors are agreed upon as minimum factors that have to be taken into account to classify a certain system as party dominant system. The major determinant factor in identifying whether a system is party dominant or not is the length of time a dominant party has stayed in power. The longer a party stays in power, the more likely it is party dominant system. Scholars have provided different range of time to determine how long should a party stay in power to regard the system as a party dominant system. For instance, Doorenspleet puts it at 20 to 25 years.¹⁶⁹ He also argues that staying in power for not more than 10 years cannot imply party dominance.¹⁷⁰ Another important consideration is the percentage of seats the party has in the parliament in comparison to other parties. Higher number of seats usually indicates dominance in a system.¹⁷¹ White takes greater than 75 percent control as a sign of dominance.¹⁷² However, when we see the current composition of party dominant states, this argument fails to stand. For instance in South Africa, the dominant party, African National Congress (ANC), usually has less than 70 percent (presently 66) of the seats in parliament. The remaining seat is shared by 12 opposition parties. The insignificant percentage of seats opposition parties has and the length of time ANC has stayed in power is what makes it a dominant party. Thus, the strength of parliamentary seats the party has should be taken in conjunction with the seats the opposition parties have. Both of these factors should be read together.

In most African countries, party dominant systems emerged under multi-party systems. South Africa, Mauritius, Tanzania, and Namibia are good examples.¹⁷³ Party dominant systems are more common in African countries than Western democracies.¹⁷⁴ This is due to the fact that the emergence of party dominance is more prevalent in less industrialised states where civil societies and institutional challenges are not strong.¹⁷⁵

¹⁶⁷ G White 'One-party dominance and third parties: The Pinard theory reconsidered' (1973) 6:3 *Canadian Journal of Political Science* 399-421, 400.

¹⁶⁸ S Thackrah 'Unpacking one-party dominance' on *Annual Conference of the Australasian Political Studies Association* (October 2000) <http://apsa2000.anu.edu.au/confpapers/thackrah.rtf> (accessed 20 September 2012).

¹⁶⁹ See White (n 167 above).

¹⁷⁰ As above.

¹⁷¹ M Pinard *The rise of a third party: A study in crisis politics* (1971) 285.

¹⁷² White (n 167 above) 141.

¹⁷³ Doorenspleet (n 147 above) 177.

¹⁷⁴ As above 176

¹⁷⁵ C Simkins 'Stability and competitiveness in the political configurations of semi-developed countries' in Giliomee (n 160 above) 50.

3.4 Party dominance as a challenge to protect human rights through parliamentary oversight

Party dominant system, like the other systems discussed earlier, has its own advantages and disadvantages. The major advantage of party dominance is that it enhances 'legitimation and stability', which is especially important in newly emerging democracies.¹⁷⁶ A good example is South Africa. After the fall of the apartheid regime and the establishment of the first representative government, the existence of one dominant party has helped in stabilising the political environment of the country.¹⁷⁷ It is also argued that it minimises unnecessary cost of bureaucracy and promotes centralised economic policy resulting in government efficiency and economic development.¹⁷⁸ This is related to the fact that the system allows the government to adopt and implement policies without challenges for prolonged time. However, it is doubtful whether the government can act in the best interest of the people in the absence of regulatory mechanisms.

When it comes to parliamentary functions, particularly oversight, the negative impacts of party dominance seems to outweigh its benefits. First, party dominance creates a risk that can damage the political system and its institutions. The dominant party in such system uses its state control and resources to guarantee public support and to weaken opposition parties, which will result in diminishing party competition.¹⁷⁹ This will damage the institutional strength of parliaments and, as a result, holding officials accountable to their acts will be difficult.¹⁸⁰ The outcome of this is the creation of parliaments with weak party competitions and opposition parties, which is not an ideal environment to carry out an effective executive control.

Furthermore, in party dominant systems, power is usually accumulated in the head of the executive, which results in centralisation of power.¹⁸¹ Ferim gives Cameroon as an example whereby the head of the executive has assumed excessive power through amendment of laws.¹⁸² This brings us to the second threat of the system, which is related to executive dominance.¹⁸³ Where the executive gets more power and control, the executive-legislative balance will be shaken. Normally, the lack of balance of power between the branches of government impacts parliamentary control over the executive and other branches. Where

¹⁷⁶ C Spiess *Democracy and party systems in developing countries: A comparative study of India and South Africa* (2009) 152.

¹⁷⁷ H Giliomee & C Simkins 'The dominant party regimes of South Africa, Mexico, Taiwan and Malaysia: A comparative assessment' in Giliomee (n 160 above) 7.

¹⁷⁸ See J Lipford and B Yandle 'Exploring dominant state governments' (1990) 146:4 *Journal of International and Theoretical Economics* 561.

¹⁷⁹ Simkins (n 175 above) 50.

¹⁸⁰ As above.

¹⁸¹ Ferim (n 162 above) 35.

¹⁸² As above.

¹⁸³ Levinson (n 143 above) 2342.

there is executive dominance, parliaments become powerless and the implementation of their recommendations relies on the positive response of the executive.¹⁸⁴

Third, the internal functioning of the parliament will be affected by the composition of the parliament resulting in lack of institutional effectiveness to supervise the executive.¹⁸⁵ MPs will take their oversight role lightly because of the party discipline expected of them. They will be encountered with choices between their political interest as party members and the public interest as parliamentarians. Thus, party dominance also affects parliament's representational role and compromises the independence of MPs.

We will see each of the impacts of party dominance, discussed above, in detail by looking at its effect on the role of opposition parties in parliaments, the executive-legislative relations and independence of MPs and its implication for the protection of human rights.

3.4.1 Diminished role of opposition parties in oversight

As a representative body, parliament should embody the diverse opinions and interests in the society. It should not be a homogeneous institution in which the ideology of a particular group is reflected on.¹⁸⁶ Parliaments need to be established on a 'party-based system' with fierce party competition.¹⁸⁷ In this regard, the function of opposition parties is paramount. It is the encounter between the majority party and the oppositions that brings in the required competitive nature. The Council of Europe¹⁸⁸ rightly pointed out that the role of opposition parties in parliaments is to initiate alternative policies, propose better implementation mechanisms and tools for proposed ideas, and scrutinise the implementation of adopted legislations and plans by the executive.¹⁸⁹ Although they cannot rule, minority parties shall represent their voters and minority interests by actively participating on legislative actions,¹⁹⁰ including oversight. Parliamentary oversight in most cases is understood as a job left for opposition parties.¹⁹¹ Though this line of thinking is criticised greatly, the deep rooted practice of leaving critic and questioning of government actions to opposition parties is prevalent in parliaments. Thus, the responsibility of parliaments to oversee executive action mainly rests on MPs belonging to opposition parties. The strength of opposition parties is, therefore, crucial for parliament to exercise its oversight role effectively.

The strength of opposition parties varies depending on the party system. Certainly, the party system cannot be the sole determinant factor to the existence of strong or weak opposition

¹⁸⁴ Rockman (n 34 above) 430.

¹⁸⁵ G Padró & M Snyder 'Legislative effectiveness and legislative careers' (2006) 31:3 *LSQ* 347, 348.

¹⁸⁶ RA Dahl *Political opposition in Western democracies* (1966) XIII.

¹⁸⁷ Assefa (n 7 above) 163.

¹⁸⁸ Council of Europe Resolution 1601 'Procedural guidelines on the rights and responsibilities of opposition in a democratic parliament' (2008).

¹⁸⁹ Resolution 1601 para 3.

¹⁹⁰ *Oriani-Ambrosini, MP v Sisulu*, (CCT 16/12) [2012] ZACC 27 para 73.

¹⁹¹ Murray (n 30 above) 89.

parties. However, the role and functioning of opposition parties is, to a greater extent, influenced by the party system than any other factors.¹⁹² This is where the problem with party dominant systems comes to picture. In party dominant system, the opposition members usually have limited number of seats, which affects their negotiating capacity compared to the majority party.¹⁹³ Thus, they can influence actions of the executive only where the ruling party gives them the chance to be heard. Of course, no matter how much effort they put in the debating or drafting stage of policies and proposals, the final decision to accept or change the policies, lies in the hands of the majority. This makes cross-party voting essential.

There are, however, two major problems that make cross-party voting difficult, if not impossible, in party dominant systems. On one hand, party dominant systems are often advocates of 'strict party discipline'.¹⁹⁴ MPs representing the dominant party act as a protectorate of their political party than supervising the executive.¹⁹⁵ This leaves the sole obligation of conducting oversight to the opposition members only. Thus, their role becomes more imperative than it can be in any other systems. On the other hand, dominant party systems are built based on the principle of weakening the development of opposition parties in order to diminish political competition.¹⁹⁶ Smooth transaction of activities between the dominant party and the opposition parties is a rare phenomenon.¹⁹⁷ Thus, opposition parties are generally fragile and unproductive in party dominant systems.¹⁹⁸ The hostile environment they work in affects their motivation to take action. The disinclination of the ruling party to work with them cripples their supervisory role together with their weak composition in parliament.

The impact of party dominant system on the oversight power of oppositions in parliament extends to all roles parliamentary oversight plays, including the protection of human rights. First, opposition parties cannot influence government policy or its implementation. This includes policies relevant to the promotion of human rights. To deal with such problem, Sweden, whose parliament is characterised a single party dominance, assigns opposition members to commissions, established to draft the executive policy.¹⁹⁹ The political culture in Sweden forces the majority party to ensure the support or understanding of opposition MPs

¹⁹² See L Leduc & WL White 'The role of opposition in a one-party dominant system: The case of Ontario' (1974) 7:1 *Canadian Journal of Political Science* 86-100.

¹⁹³ Assefa (n 7 above) 165.

¹⁹⁴ Gilliome (n 177 above) 107.

¹⁹⁵ Heywood (n 148 above) 352.

¹⁹⁶ Simkins (n 175 above) 50.

¹⁹⁷ As above 12.

¹⁹⁸ Heywood (n 148 above) 287.

¹⁹⁹ Arter (n 52 before) 126.

on matters before presenting a policy for approval.²⁰⁰ Such an approach can be useful to deal with sensitive concerns as human rights.

Second, the lack of supervision by independent and/or opposition members encourages misappropriation of state property and invites the abuse and violations of rights by administrative officials. It is typical of dominant parties in party dominant party systems to be unresponsive to public concerns the longer they stay in power.²⁰¹ For instance, the growing maladministration in Japan had been one of the contributing factors for the failure of the dominant party in the country in the 1990s.²⁰²

Third, the weakness of opposition parties to compete in the political arena affects their priorities in the parliament. In party dominant systems, state institutions become political tools for the ruling party,²⁰³ denying chances for opposition parties to promote their political programs. Thus, the opposition parties would use every opportunity they get to challenge the political agenda of the government and to promote theirs, instead of using it to make rights-based supervision of the executive. This may be why parliamentary debates currently have emerged to be floors for political clashes²⁰⁴ than important sessions to revise executive programs and policies.

3.4.2 Executive dominance

A government needs effectively functioning legislative and executive arms to ensure democracy and protect fundamental principles and values of the state.²⁰⁵ The imbalance in one of them would result in chaotic environment where people will either suffer from an authoritarian government with an absolute power or fragile government with no actual power. Lijphart identifies three models of executive-legislative relations: 'executive dominance, legislative dominance, and a more or less balanced relationship between the two branches of government'.²⁰⁶ Both executive dominance and legislative dominance pose a danger to the society. Thus, in as much as the legislature needs to have the capacity to control the executive, care should be taken that it should not become an obstruction to the functioning of the executive.²⁰⁷ Ideally, the nature of the executive-legislative relation should not be dominated by any of the branches of government. However, in comparison, executive dominance poses more threat to the effectiveness of legislative oversight.²⁰⁸ The

²⁰⁰ As above 127.

²⁰¹ Heywood (n 148 above) 287.

²⁰² As above.

²⁰³ As above 287.

²⁰⁴ Peele (n 55 above) 236.

²⁰⁵ NDI 'Strengthening legislative capacity in legislative-executive relations' (2000) 4 http://www.ndi.org/files/980_gov_legcapacity_0.pdf (accessed 15 September 2012).

²⁰⁶ A Lijphart *Democracies: Patterns of majoritarian and consensus government in twenty-one centuries* (1984) 78.

²⁰⁷ As above.

²⁰⁸ Rockman (n 34 above) 422.

legislature in executive dominated government cannot exercise its oversight role properly. It simply serves to rubber-stamp executive's proposals and actions without scrutiny.

The nature of executive-legislative relation predetermines the balance of power between the two branches of the government. The executive-legislative relation also varies between parliamentary and presidential forms of government.²⁰⁹ Executive dominance is more common in parliamentary forms of government, where there exists fusion of power among the legislative and executive organs, than in presidential form of governments, where there is the strict application of separation of powers.²¹⁰ Currently, there are more executive dominated parliaments than balanced or legislature dominated parliaments.²¹¹

More importantly, for our purpose, party systems are essential factors in determining the nature of relation between the executive and the legislature.²¹² In such regard, party dominant systems bring more challenge to keep the executive-legislative balance than any other type of party system. This is essentially for two reasons. First, the existence of a strong party results in weaker legislature. Normally, parties and parliaments cannot be equally strong.²¹³ Where one is strong, the other becomes weak.²¹⁴ In party dominant systems, where one strong party controls both or either of the legislative and executive power, depending on the form of government, the legislature will be weakened because the party strength increases party cohesion. Second, the promotion of party discipline, which is another prominent feature of party dominant systems, fosters executive supremacy over the legislature.²¹⁵ Especially in countries that follow parliamentary form of government, MPs take party loyalty to mean supporting the leading party and turning their face away from their responsibility to monitor its actions.²¹⁶ The party discipline, coupled with the dominant composition the members of the ruling party have, will result in executive control over the legislature.

The legislature will encounter political challenge to monitor or adopt measures on executive actions since it will be under executive influence. This has an impact on the effectiveness of the oversight, in general, and in efficiently using oversight tools for protection of human rights, in particular. For instance, debates, as indicated earlier, are essential forums to raise human rights concerns and to win the support of MPs in their favour. But the reality is that, in parliaments, where there exists a dominant party, debates have no influence in the

²⁰⁹ See the discussion on nature of parliamentary oversight under chapter one.

²¹⁰ Lijphart (n 206 above) 78.

²¹¹ NDI (n 205 above) 4.

²¹² Heywood (n 148 above) 291.

²¹³ N Aylott 'Parties and party systems in the North' in Bergman (n 58 above) 299.

²¹⁴ Storm (n 53 above) 19.

²¹⁵ Heywood (n 148 above) 352.

²¹⁶ As above.

decision making process.²¹⁷ Votes will always go in favour of the party with the majority support because party loyalty dictates so.²¹⁸ Thus, the role of the legislature in checking the human rights performance of the executive will be compromised to the extent that parliaments will become institutional tools to legitimise actions taken by the executive.

3.4.3 Party politics and independence of members of parliaments

MPs play an essential role in the oversight functions of parliament. Ultimately, the execution of the parliament's function lies in the action to be taken by its members. The challenge in such situation is when the political obligations MPs assume as party members clashes with their representational role that obliges them to scrutinise actions taken by their party members and leaders. Parties often put an effective control on their members to acquire their support on the actions they will take through 'party cohesion and discipline'.²¹⁹

The level of cohesion is high in party dominant systems since the dominant party would take all measures to keep its power.²²⁰ For instance, the ANC in South Africa have internal party disciplinary rules that limit members from challenging their party publicly.²²¹ Such control over party members affected the oversight function of the South African Parliament.²²² This was aggravated by the fact that other forms of checks and balances of power were eroded from the Parliament and granted to the executive.²²³ For instance, MPs are prohibited from introducing bills without the approval of the Assembly while the members of the Cabinet can do so without similar procedure.²²⁴ The problem related to party cohesion is that it forces MPs to serve based on the ideologies of their political parties rather than the demand of their electorates, the public, and even their own opinions and 'conscience'.²²⁵ The pressure from external demands and from the members themselves will be overridden by the political influence coming from the dominant party. As a result, MPs would be reluctant to supervise their party leaders and to embarrass them for their misdeeds. The implications of this on protection of human rights are serious as administrative violations and abuses on human rights would not be subjected to any corrective legislative measures because of the reluctance of MPs to hold officials to account for their actions.

²¹⁷ As above.

²¹⁸ As above.

²¹⁹ JE Owens 'Explaining party cohesion and discipline in democratic legislatures: purposiveness and contexts' in RY Hazan *Cohesion and discipline in legislatures* (2006) 12.

²²⁰ Gilliomee (n 177 above) 18.

²²¹ As above.

²²² S Chouldry 'He had a mandate': The South African Constitutional Court and the ANC in a dominant party democracy' (2009) 2 CCR 1, 11.

²²³ As above.

²²⁴ The Constitutional Court in a recent case found the prohibition to be unconstitutional limitation on the rights of MPs. See *Oriani-Ambrosini* (n 90 above).

²²⁵ Heywood (n 148 above) 352.

The fact that MPs are the cornerstones to undertake any form of legislative oversight should also be taken into account. Whether it is oversight by parliamentary committees or by the plenary, MPs are the sole actors. Thus, a failure in MPs performance results in a failed parliament. Another often ignored but major impact of party dominance is its centralisation of state organs.²²⁶ In its peak, party dominance assimilates state and non-state actors to its dogmatic political values and choices.²²⁷ This is a threat not only for the legislative control over the executive but also to external control mechanisms by NHRIs and other non-state actors. In a state where institutions are centralised under a single ideology, it would be of a practical impossibility for NHRIs to act independently.

3.5 Conclusion

Party dominance has an impact on the effective functioning of the parliament in general and its oversight role in particular. This is not to say it is the only factor that affects oversight. However, the fact that its impact goes across-the-board affecting the parliamentary efficacy and independence of MPs to monitor the executive makes it a huge challenge to an efficient exercise of oversight by parliament. Such failure to conduct oversight effectively has numerous effects on achieving the objectives of legislative oversight and realising its roles, including the protection of human rights. The extent of such impact of party dominance on parliamentary oversight varies from one country to another depending on the political environment the legislature serves in. On this note, the following chapter will deal with the impact of party dominance on parliamentary oversight in Ethiopia and its implication on the protection of human rights.

²²⁶ As above 236.

²²⁷ As above.

Chapter Four

The impact of party dominance on parliamentary oversight and the protection of human rights in Ethiopia

4.1 Introduction

In Ethiopia, the establishment of the first modern parliament in 1931 was not accompanied by oversight power. It was only in 1991 that parliament was entrusted with oversight power. Thus, the expansion of the power of the legislature to include oversight power is a fairly recent phenomenon. On the other hand, when we see the history of political parties and party dominance, their emergence seems to immediately follow one another. The political party that was established in 1984 was the only legally recognised party in the country that dominated the political system until the government it led was overthrown in 1991. In the aftermath, although numerous political parties were established, the dominance of a single party continues to characterise the Ethiopian political landscape.

The aim of this chapter is to assess the extent to which the party dominance in the Ethiopian parliament affects the parliament's ability to protect human rights through oversight. To achieve this objective, first, we will see the history of parliaments and party systems in Ethiopia. Then the legal framework of oversight in Ethiopia and its role in ensuring the respect of human rights is analysed. This is followed by a detailed discussion on the impact of party dominance on the oversight power of the parliament and its implication for the protection of human rights.

4.2 Ethiopian parliaments and the party system

4.2.1 Parliaments in Ethiopia

The history of parliaments in Ethiopia began in 1931. The first written constitution of 1931 legitimised the monopoly and established a bicameral parliament, comprising of the Chamber of Senate and the Chamber of Deputies.²²⁸ While the Emperor himself appointed members of the Senate, members of the Deputies were appointed by the nobility.²²⁹ The Chambers had very limited power to make laws and discuss ministerial proposals. The powers they exercised, including making laws, required the approval of the Emperor if they were to have an effect at all.²³⁰

²²⁸ Ethiopian Constitution of 1931 art 30.

²²⁹ As above arts 31-32.

²³⁰ As above art 34.

The 1931 Constitution was revised in 1955 because of the changes in external and internal political environment.²³¹ Although the revised Constitution kept the overall structure of the parliament,²³² members of the Chamber of Deputies were to be directly elected by the people.²³³ The power of the chambers also expanded from merely making laws to include approving budget proposals by ministers, adopting international treaties signed by the Cabinet, and reviewing the reports by auditors.²³⁴ However, the parliament's power was still superficial as the Emperor could veto any decision and even dissolve the chambers.²³⁵

In 1974, the Imperial regime was overthrown by the military junta known as *Derg*. After abolishing all institutions established by the previous constitutions, the military government exercised all legislative and executive powers without any legal basis for almost 13 years.²³⁶ In 1987, a new constitution was adopted that established a unitary government with a unicameral parliament that has to be directly elected by the people. The Constitution vested all powers in the national legislative body, the National *Shengo*.²³⁷ The day-to-day activity of the *Shengo* including oversight was administered by the Council of State, which was an organ of the *Shengo*.²³⁸ However, the Council was led by the Head of State and the Secretary of the majority party in the Parliament, therefore, its role remained under the control of government.

The military regime was overthrown in 1991 by a rebel group called, Ethiopian People's Revolutionary Democratic Front (EPRDF). The EPRDF under the leadership role of the Tigray People's Liberation Front in coalition with the Ethiopian People's Democratic Movement, the Oromo People's Democratic Organisation and the Ethiopian Democratic Officers Revolutionary Movement, representing the four major ethnic groups in the country.²³⁹ The EPRDF immediately established the Transitional Government of Ethiopia with a transitional parliament, the Council of Representatives.²⁴⁰ The Council served as the highest decision making body with full legislative power for three years until the promulgation of the Federal Democratic Republic of Ethiopia Constitution (FDRE Constitution).²⁴¹ It was

²³¹ The confederation of Eritrea and the impact of Italian occupation are the main causes. See F Nahum *Constitution for a nation of nations: The Ethiopian prospect* (1997) 25.

²³² Chapter II and V of the 1955 Revised Constitution of Ethiopia.

²³³ As above 93.

²³⁴ See above arts 30, 115 & 120.

²³⁵ As above arts 30 & 31-33.

²³⁶ Berhanu (n 10 above) 168.

²³⁷ Article 59 of the 1987 People's Democratic Republic of Ethiopia Constitution.

²³⁸ TP Ofcansky & L Berry 'Ethiopia, a country study' http://www.munseys.com/diskone/ethiop.htm#1_0_133 (accessed 30 October 2012).

²³⁹ YT Fessha 'Governing from the center: Federal-state relations in Ethiopia' in G Fárber *Governing from the center: The influence of the federal/central government on sub national governments* (2012) 126.

²⁴⁰ SF Joireman 'Opposition politics and ethnicity in Ethiopia: We will all go down together' (1997) 35:3 *Journal of Modern African Studies* 387, 388.

²⁴¹ See Transitional Charter art 9.

also provided with the power to 'oversee the work of the Council of ministers'.²⁴² It was composed of 87 members, representing different political parties and groups.²⁴³

The FDRE Constitution established a parliamentary form of government²⁴⁴ with a bicameral house, comprising of the House of Peoples Representatives (HPR), which is the Lower House and the House of Federation, which is the Upper House.²⁴⁵ The HPR is the legislative organ with 'the highest authority of the Federal Government'.²⁴⁶ Unlike its predecessors, the HPR is provided with extensive powers and functions, including the power to enact laws, declare state of emergency or state of war, and approve policies and strategies adopted by the executive.²⁴⁷ The HPR has all the major roles of ordinary parliaments from legislation to representation and oversight. Since the FDRE Constitution has established a federal form of government, states also have their own executive and legislative bodies with similar power and functions. However, our discussion deals only with the oversight role of HPR, the highest legislative authority of the federal government.²⁴⁸

4.2.2 Political parties and dominant party system

Political parties were introduced in Ethiopia in the 1970s.²⁴⁹ Though Ethiopia became a constitutional monarchy in 1931 with an elected parliament, political parties were outlawed in the country.²⁵⁰ Following the fall of the imperial regime in 1974, numerous political groups were formed on different basis. Some of them were established based on ethnic claims. Many other opposed the socialist ideology with some differences. Regrettably, the establishment of the political groups was not accompanied with an environment that is conducive to enhance the development of political parties.²⁵¹ The military government banned other political groups and established a 'state-sponsored' coalition party, called Workers' Party of Ethiopia (WPE) in 1984.²⁵² In the 1987 election held for the National *Shengo*, the WPE was the only registered political party that presented candidates²⁵³ and continued to be the only party until the fall of the *Derg*.

²⁴² As above.

²⁴³ However, after the withdrawal of opposition parties from the government, it was occupied by only the EPRDF and its allies. See Joireman (n 240 above) 399.

²⁴⁴ FDRE Constitution art 45.

²⁴⁵ FDRE Constitution art 53.

²⁴⁶ FDRE Constitution art 50.

²⁴⁷ See article 55 of the FDRE Constitution.

²⁴⁸ The Upper House is not granted with the power to oversee the executive organ under the Constitution unless such power is delegated to it by the HPR. See FDRE Constitution art 62.

²⁴⁹ K Berhanu 'Party politics and political culture in Ethiopia' in Salih (n 147 above) 117. Other scholars such as Keller argue that there were not political parties in the military regime. See ES Keller 'Ethnic federalism, fiscal reform, development and democracy in Ethiopia' (2002) 7:1 *African Journal of Political Parties* 21, 22.

²⁵⁰ M Gudina 'Party politics, political polarization and the future of Ethiopian democracy' (2007) 5 <http://homepages.wmich.edu/~asefa/2007%20Conference%20Program.pdf> (accessed 28 September 2012).

²⁵¹ Berhanu (n 249 above) 117.

²⁵² As above.

²⁵³ IPU 'Ethiopia' http://www.ipu.org/parline-e/reports/arc/ETHIOPIA_1987_E.PDF (accessed 25 October 2012).

In 1991, the political environment seemed to take a shift to a more democratic system with the adoption of multi-party system and political pluralism.²⁵⁴ It was during this time that the first proclamation²⁵⁵ dealing with the registration of political parties was issued. Based on the Proclamation, numerous parties, who had failed to legally involve in the politics of the country under the previous regime, were registered and many new parties were formed.

The 1992 election that was conducted to legitimise the Transitional Government and the 1994 election that was held to institute the Constitutional Assembly gave some indicators about the future of the party system in the country. The major opposition parties withdrew from the election because of unfair political competition, alleged violation of rights on their party members by the government, and internal problems.²⁵⁶ This resulted in the EPRDF's absolute majority win of the Constitutional Assembly election, getting 484 seats out of 547.

The first countrywide election took place in 1995. The election brought no different challenge or result that was not seen in the Constitutional Assembly election. The self imposed withdrawal of opposition parties and the overall control of matters by the EPRDF were evident before the election.²⁵⁷ Finally, EPRDF won 491 seats out of 547. The remaining seats were shared between regional parties and independent contestants, who are alleged to have the support of the ruling party,²⁵⁸ and opposition parties.

The 2000 election saw greater participation of opposition political parties. Berhanu attributes the improved participation of opposition parties to the 1993 Proclamation which allows the government to terminate political parties that fail to participate in two major elections.²⁵⁹ Otherwise, the challenges for opposition party's participation in elections continued.²⁶⁰ The EPRDF maintained its dominance with 85 percent of the seat.

The country witnessed a real electoral competition between oppositions and the ruling party in the 2005 election.²⁶¹ The existence of more conducive pre-election environment, that allowed opposition parties to hold public debate, informing and providing voters with political choices, largely contributed to the competent nature of the election.²⁶² Opposition political parties adopted more effective strategy by forming a coalition called the Coalition for Unity and Democracy (CUD). The opposition parties won 174 seats while the EPRDF hold 327 seats out of the 547 total seats. The election would have resulted in a major shift in the one

²⁵⁴ Keller (n 249 above) 22.

²⁵⁵ Proclamation 46/1993 on Political Parties Registration.

²⁵⁶ T Lyons 'Closing the transition: The May 1995 elections in Ethiopia' (1996) 34:1 *Journal of Modern African Studies* 121, 132.

²⁵⁷ Berhanu (n 249 above) 134.

²⁵⁸ As above 135.

²⁵⁹ See article 38 of Proclamation no 46/1993.

²⁶⁰ Berhanu (n 249 above) 136-7.

²⁶¹ Ethiopian national election the Carter 'Center Observation Mission report (2005) 39 http://www.ethiomeia.com/course/carter_center_final_report.pdf (accessed 28 September 2012).

²⁶² As above.

party absolute dominance. However, it was followed by violence and opposition party's refusal to take their seats in parliament claiming government had tampered with the election's result.²⁶³ Still, by March 2008, around 150 members of the opposition members had taken their seat in the HPR.²⁶⁴

The aftermath effect of the post-election violence of 2005 whereby the government prosecuted CUD officials and the repressive laws that were adopted thereafter to weaken all oppositions undermined the spirit of electoral competition that characterised the 2005 election.²⁶⁵ This was particularly evident in the outcome of the following election. In the 2010 election, EPRDF and its allies won 545 seats out of 547 seats while the opposition get only one seat in the parliament.²⁶⁶ The election was characterised by frustrated opposition party participation, development of fear based political choice resulting from post-election conflict, and growth of unequal field of competition for oppositions in which the EPRDF won more public trust.²⁶⁷

The trend in the electoral results indicates, political environment in Ethiopia is not only characterised by the existence of a single party domination but also by the nonexistence of a free and fair political competition. What makes a state a party dominant system is both the prolonged control of state power by one party and the weakness of other parties to compete against it. The EPRDF has led the country for more than 20 years. Although there are, at the moment, 79 registered political parties,²⁶⁸ none have the ability to break the strong dominance of the EPRDF. Thus, there is no doubt that Ethiopia has dominant party system.²⁶⁹ The next sections discuss the impact of such party dominance on the oversight by the parliament and protection of rights.

4.3 The legal framework of parliamentary oversight

The Ethiopian Constitution makes the principles of accountability and transparency the basis for conducting any governmental activity.²⁷⁰ Though oversight is not expressly mentioned in the Constitution, the legislature is given the responsibility to monitor executive actions through various powers it has. These include the power to call and question

²⁶³ W Teshome 'Electoral violence in Africa: Experience from Ethiopia' (2009) 4:6 *International Journal of Human Social Science* 463, 467-8.

²⁶⁴ '2005 Ethiopian election: A look back' *Voice of America* (16 May 2010) <http://www.voanews.com/content/article-2005-ethiopian-election-a-look-back-93947294/159888.html> (accessed 24 October 2012).

²⁶⁵ M Gudina 'Electoral authoritarianism and democratic governance in Ethiopia' in L Mafela & H Musahara *Setting of new agendas for Africa in the 21st century* (2011) 118.

²⁶⁶ Ethiopia Yehizib Tewekayoch Mikirbet <http://www.ipu.org/parline/reports/2107.htm> (accessed 28 September 2012).

²⁶⁷ See Teshome (n 263 above).

²⁶⁸ National Electoral Board of Ethiopia <http://www.electionethiopia.org/en/political-parties.html> (accessed 20 September 2012).

²⁶⁹ See also MAM Salih & P Nordlund 'Political parties in Africa: Challenges for sustained multiparty democracy' (2007) *Africa Regional Report* 49.

²⁷⁰ FDRE Constitution art 12.

ministers, establish independent monitoring institutions, and discuss any power of the executive.²⁷¹ Moreover, the HPR Rules of Procedures and Members Code of Conduct Regulation (Regulation) specifies oversight among the powers and duties of the House.²⁷² The regulation defines the scope of oversight power the House has. Article 74(1) of the Regulation provides:

‘The House shall conduct supervision and follow up around the matters specified below:

- a) The implementation and the direction of the national polices, strategies, plans, laws and operations towards advancing the Country’s development,*
- b) The observance of the fundamental rights and freedoms of citizens, and*
- c) The proper implementation of the budget and resources of the federal government.’*

Controlling the proper enforcement of legislation and policies and administration of budget are commonly regarded as part of the oversight power of the legislature. It is also interesting to note that the House has expressly listed enforcement of human rights among matters that has to be overseen by the parliament. While the House has full oversight jurisdiction on all federal government organs, it supervises regional bodies only where they fail to control continuous human rights violations.²⁷³

The oversight role of the HPR commences upon the appointment of the ministers and officials. The House is responsible for the appointment of the Prime Minister and the approval of recommended appointees for the Council of Ministers (CoM).²⁷⁴ Through the appointment process, the Parliament can ensure that positions are assigned to individuals who can serve the public responsibly. It also has the power to remove ministers,²⁷⁵ which empowers it to take strict measures where ministers fail to carry out their duty. The Prime Minister and members of the CoM are accountable to the House. They are collectively responsible for the measures they adopt as a body.²⁷⁶ Although the Constitution does not expressly provide for ‘vote of no confidence’²⁷⁷, the Regulation authorises the Parliament to enter vote of no confidence on the CoM, if necessary.²⁷⁸

The Parliament has the power to question ministers, undertake investigation and adopt measures on any action of the executive.²⁷⁹ By exercising these powers, the Parliament

²⁷¹ FDRE Constitution art 55(15, 17 & 18).

²⁷² House of People’s Representatives Rules of Procedures and Members Code of Conduct Regulation 3/2006 (Regulation) art 4(2(b)).

²⁷³ Regulation art 74(2).

²⁷⁴ FDRE Constitution art 73 & 74(2).

²⁷⁵ Regulation art 99(2(6)).

²⁷⁶ FDRE Constitution art 72(2).

²⁷⁷ Vote of no confidence is a procedure commonly found under parliamentary form of governments whereby the executive is forced to resign from its office. See BA Garner *Black’s law dictionary* (2004) 3316.

²⁷⁸ Regulation art 93. The procedure has never been used by the Parliament.

²⁷⁹ FDRE Constitution art 55(17-8).

makes the executive to account for any measures it has taken. Furthermore, executive proposals, policies and plans have to be approved by the legislature before they are adopted.²⁸⁰ When the executive acts in its delegated legislative power²⁸¹ as well, it is under the strict control of the Parliament. International agreements and treaties that are signed by the government also need to be ratified by the HPR before coming into effect.²⁸²

Expounding on the oversight powers provided by the Constitution, the Regulation provides for detailed mechanisms through which the legislature can conduct its supervisory role. These include ensuring the submission of annual reports by government organs to the House or Committees, conducting financial control on any organs of the government, calling on witnesses and experts for investigation, and reviewing documents presented by governmental or non-governmental organisations.²⁸³ The Regulation recognised a wide range of legislative tools that can be used to effectively administer oversight with detailed procedures. It also strengthens the oversight power of the Parliament by providing that remedial measures can be adopted by the House where administrative violations occur.²⁸⁴

4.4 Using parliamentary oversight for the protection of human rights in Ethiopia

The FDRE Constitution, before recognising key rights and freedoms under chapter three, provides that '[a]ll Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter'.²⁸⁵ From this, it is clear that the Constitution imposes a firm obligation on state organs to protect human rights. Thus, any legislative, administrative or judicial action should aim at ensuring the protection of citizen's rights. One important means that the Parliament can use to discharge its human rights obligation provided under the Constitution is through its oversight power. More specifically, article 73 of the Regulation mentions the respect of human rights among the main objectives of supervising executive actions.

The emphasis given by the law on recognising the role parliamentary oversight plays in the protection of human rights can be seen from the broadly defined scope of oversight power the parliament enjoys. Even though the HPR is a federal legislative organ, it is granted with supervisory power over regional executive organs where they cannot prevent on-going human rights violations.²⁸⁶

²⁸⁰ FDRE Constitution art 55(10).

²⁸¹ The executive have the power to come up with regulations based on the delegation given to it by the Parliament. See FDRE Constitution art 77(13).

²⁸² FDRE Constitution art 55(12).

²⁸³ Regulation art 75(1-5).

²⁸⁴ Regulation art 75(6).

²⁸⁵ FDRE Constitution art 13(1).

²⁸⁶ Regulation art 74(2).

The Parliament can use different tools of oversight to ensure the observance of human rights. The Regulation has recognised various methods to oversight including report consideration, questioning, and investigation.²⁸⁷ These procedures are carried out either by parliamentary committees or the Plenary. First, we will separately deal with the oversight by parliamentary committees, followed by other legislative tools, mainly questions and debates and oversight through NHRIs.

4.4.1 Parliamentary committees

One of the most effective mechanisms by which parliaments can undertake oversight is through parliamentary committees. Article 55(19) of the Constitution provides that the Parliament should establish *ad hoc* and standing Committees. The Regulation provides for the establishment of 13 standing committees. To date, the House has established 11 standing Committees.²⁸⁸ The purpose of establishing the standing committees, as stated under the preamble, is to effectively administer the overall functioning of Parliament. The power to ‘follow up and supervise Government bodies’ is given to standing committees.²⁸⁹ The Committees are designed to carry out the day-to-day activities of the Parliament which puts them in a better position to supervise executive actions performed on daily basis. This is especially true for protection of human rights, which requires a regular monitoring of proper implementation of laws.

In Ethiopia, there is no specific committee that exclusively deal with enforcement of human rights. The law does not also refer to human rights under the provisions establishing the committees. It is, however, possible to mainstream human rights in the works of each committee. The organisation of the committees is suitable to integrate human rights as ‘cross-cutting’ issue. The Regulation has arranged a system by which each ministerial office would have corresponding standing committee. If each committee takes human rights as one criterion to control the work of the executive, all executive actions will be subjected to human rights based monitoring. The committees can also use human rights standards when undertaking their oversight tasks such as considering annual reports presented by each ministerial body,²⁹⁰ reviewing draft legislations, and reporting to the House on different matters.²⁹¹

²⁸⁷ Regulation art 75.

²⁸⁸ Government Portal ‘House of people’s Representative’

<http://www.ethiopia.gov.et/English/Information/Pages/GovernmentStructure.aspx> (accessed 28 September 2012). See also chapter 21 of the Regulation.

²⁸⁹ Regulation art 150(1(b)).

²⁹⁰ Regulation art 75(1).

²⁹¹ Regulation art 150(1).

In practice, the use of committees by the parliament to discharge its oversight duty is very poor.²⁹² The committees have not so far been effective in challenging administrative actions and adopting corrective measures where maladministration occurs. Such can be caused by different reason such as lack of expert assistance, lack of independence of committee members, and negligence towards their responsibility of protecting human rights. The absence of legal provision, directly imposing obligations on the committees to consider human rights in their works might also explain their reluctance.

4.4.2 Debates and questions

Debates are another form of oversight tool provided by the Regulation. Any MP, the executive, Committees, the Speaker and parliamentary groups can initiate a matter for debate.²⁹³ The power to decide on which matters shall pass for debates and the allotment of times is that of the House's Business Advisory Committee.²⁹⁴ The Committee can bring any agenda on which consensus is reached upon for discussion.²⁹⁵

In addition to continuous debates held in any parliamentary session whenever new agendas are passed for discussion, debates are usually held after the opening speech of the President and the Prime Minister's presentation of executive annual plan.²⁹⁶ Debates are also required for the approval of recommended appointees for ministerial and other positions,²⁹⁷ and on legislative drafts presented by the executive.²⁹⁸ There is also a debate that has to be held every month on agendas raised by opposition parties, for an hour, to give them a chance to be heard.²⁹⁹

Another tool of oversight recognised by the Constitution is questioning. The FDRE Constitution provides that the HPR has power to question the Prime Minister, ministers or other government officials in relation to the discharge of their obligations.³⁰⁰ The Regulation gives details on the procedure of question times. Questions in the HPR are answerable orally.³⁰¹ Although the House can ask for submission of documents, it can do so only when a certain matter leads to an investigation.

Among the three main forms of questions namely, oral questions, written questions and private notice questions, only questions very similar to private notice questions are recognised. Ten days prior notice together with the list of questions shall be submitted to

²⁹² Berhanu (n 10 above) 175. See also Ahmed (n 121 above) 86.

²⁹³ Regulation art 29(3(g)).

²⁹⁴ Regulation art 32.

²⁹⁵ Regulation art 32(3).

²⁹⁶ Regulation art 12.

²⁹⁷ Regulation art 99(3).

²⁹⁸ See FDRE Constitution art 77(11) and Regulation art 52(2) and art 153.

²⁹⁹ Regulation art 35.

³⁰⁰ FDRE Constitution art 55(17).

³⁰¹ See article 87 of the Regulation.

call on ministers to give answer.³⁰² Exceptionally, where matters requiring immediate attention are raised, the notice time can be shortened.³⁰³ Consequently, asking an unexpected question is not possible. The minister can even refuse to answer clarification questions if she/he believes it is beyond what is indicated in the notice.³⁰⁴ This is unfortunate as surprise questions have proved to be an efficient tool to account officials and to draw public pressure on their actions in countries like the UK.³⁰⁵ The absence of unpredicted questions makes question times less relevant to ensure transparency of the administrative body as the minister can make all preparation beforehand to conceal facts. For this reason, question times are less effective in Ethiopia in terms of creating transparency of ministers. Regular question sessions for ministers are limited to an hour per week and the Prime Minister can be called for questioning only once a month.³⁰⁶

Debates and questions can both be used to the protection of human rights to the extent that MPs makes it their priority concern. Human right agendas can be raised for discussions by the parliamentarians or to be answered by the ministers. However, as far as debates are concerned, the law gives priority to government agendas³⁰⁷ which may subject the Parliament to executive agenda setting. This may be why there is not a record of human rights oriented debate in the Parliament yet. Using opposition days for human rights purposes is also another alternative to promote human rights through debates. However, opposition day debates, as they are in most countries, generally become more political debates than substance-oriented supervisory debates on the performance of the government.³⁰⁸ The same is true in Ethiopia.

4.4.3 Using external institutions for oversight

As indicated in the second chapter, utilising external institutions to monitor the executive augments the internal parliamentary oversight procedure. The HPR is empowered to establish NHRIs.³⁰⁹ Accordingly, Ethiopian Human Rights Commission (EHRC) and Institution of the Ombudsman (EIO) were established in 2005 by proclamation 210/2000 and proclamation 211/2000, respectively. The institutions have the duty to monitor administrative bodies. EIO monitors administrative actions to ensure that they 'do not contravene the constitutional rights of citizens and the law'.³¹⁰ EHRC promotes the respect of rights and freedoms by citizens, government organs, and other institutions.³¹¹ Both report

³⁰² Regulation art 88(1).

³⁰³ Regulation art 92(1).

³⁰⁴ Regulation art 91(2).

³⁰⁵ Peele (n 55 above) 235.

³⁰⁶ Regulation art 87(1-2).

³⁰⁷ Regulation art 32(5).

³⁰⁸ See Murray (n 30 above) 95.

³⁰⁹ FDRE Constitution art 55(15-6).

³¹⁰ Proclamation 211/2000 on the Establishment of the Institution of the Ombudsman art 6(1).

³¹¹ Proclamation 210/2000 on the Establishment of Ethiopian National Human Rights Commission art 6(1).

to the HPR on violations that occurred in their respective mandates.³¹² The Parliament then considers these reports in detail and adopts appropriate measures.³¹³ It is through these reports that the Parliament can evaluate the human rights performance of the executive.

To function effectively, such institutions need to be independent from government intervention. There are at least two requirements to guarantee the independence of NHRIs. First, there must be a legally established procedure on the appointment and removal of members of the institutions, operational powers, financial resources and etc.³¹⁴ In this regard, both the EHRC and EIO establishment proclamations clearly provide well designed procedures in each area. Second the ‘personal integrity of members’ and their ‘autonomy from other existing partisan political forces’ must be kept.³¹⁵ This is the challenge in Ethiopia. For instance, high financial dependence on the government³¹⁶ and the use of political affiliation as a ground to appoint Commissioners³¹⁷ are factors compromising the independence of these institutions. The lack of independence makes the institutions unreliable for the parliament to use them as external control mechanisms on the executive.

4.5 The impact of party dominance on the role of parliamentary oversight for the protection of human rights in Ethiopia

The mere existence of party dominance does not necessarily imply a weak legislature. The independence and the strength of the legislature can be maintained if the parliament exercises effective control over the executive. The impact of party dominance on the effectiveness of the oversight depends on different factors that are related to the party structure and the interparty relation. Party dominance in Ethiopia is characterised by centralised party system, strong party discipline, and weak opposition parties. In the next few sections, we will discuss each of these factors in detail and analyse their impact on parliamentary oversight and the protection of human rights.

4.5.1 Centralised party system

Party dominance creates favourable environment for the emergence of a centralised party system. The centralisation of party system informs the division or concentration of power that may exist in the state.³¹⁸ In centralised party systems, every decision to be adopted at each level of government and by each branches of state will come from the central office of

³¹² Common provision art 19(2) of Proclamation 210/2000 and 211/2000.

³¹³ Regulation art 75.

³¹⁴ K Hossain et al *Human rights commissions and ombudsman offices: National experiences throughout the world* (2000) 558.

³¹⁵ As above.

³¹⁶ Y Endale ‘The roles and challenges of Ethiopian national human rights institutions in the protection of human rights in light of the Paris Principles’ (2010) 57.

³¹⁷ As above 60-1.

³¹⁸ L Aalen ‘Ethnic federalism in a dominant party system: The Ethiopian experience 1991-2000,’ (2002) *Development Studies and Human Rights* 20.

the political party.³¹⁹ Thus, actual practice of separation of power among the branches will be challenging. Here, the form of government is also relevant as the impact of the party structure would vary depending on the system of government a country follows. In parliamentary systems, where the leading party controls the majority seat of the parliament and acts as the head of the executive organ, the legislative control depends directly upon on the degree of power political parties exercise over the executive and the legislature.³²⁰ The more the party system is centralised, the executive will gain more strength and power over the parliament.

Normally, centralising power in political parties formed through coalition is difficult.³²¹ However, the EPRDF has adopted a centralised party structure where all decisions passes through the party's headquarter by using the principle of 'democratic centralism' to organise its member parties.³²² According to this principle, the 'highest decision body' retains all decision making powers on relevant issues.³²³ This has obstructed the intention of the Constitution to decentralise power vertically between the federal and regional states³²⁴ and horizontally among the branches of the government.

The challenge for the HPR is that the centralisation of the party has skewed the balance of legislative-executive relation in favour of the executive, resulting in dominant executive. Since all decisions are adopted at the party level, the Parliament only serves as a rubber-stump for the decisions proposed by the executive.³²⁵ Country assessment made in 2012 indicated that the 'parliament has no real ability to check the executive or to represent the hopes, expectations and criticisms of the public'.³²⁶ The power of the executive is increasing from time to time while the Parliament is giving away its controlling power through legislations that empower the executive to take administrative decisions without any supervision.³²⁷ This is a direct consequence of the centralised party structure that the ruling party has adopted which forces decision from the centre down to all organs of government. A look at the oversight powers of committees sheds light on the matter.

In 2009, the Parliament adopted two controversial proclamations: Charities and Societies Proclamation and Anti-terrorism Proclamation. Both proclamations put restriction on

³¹⁹ Salih (n 269 above) 81.

³²⁰ Assefa (n 7 above) 174.

³²¹ This is because 'in parliamentary systems where the executive is often a party coalition... a unison support for the latter may not always result from the legislature'. As above 175.

³²² See Fessha (n 239 above) 126.

³²³ As above.

³²⁴ As above.

³²⁵ A Abebe 'Rule by law in Ethiopia: Rendering constitutional limits on government power nonsensical' (2012) *CGHR Working Paper* 1 11.

³²⁶ B Stiftung 'Bertelsmann's Transformation Index 2012 — Ethiopia Country Report' (2012) 13 <http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Ethiopia.pdf> (accessed 28 September 2012).

³²⁷ As above.

fundamental rights.³²⁸ They were criticised by human rights advocates from the time their initial draft is presented to the Parliament.³²⁹ Under the existing procedure, it was the committee's responsibility to ensure whether draft legislations meet human rights standards by revising, preparing reports and proposing amendments to the draft.³³⁰ However, the final adopted laws do not have any substantial difference from the drafts. Subsequently, the laws resulted in the persecution of journalists and opposition party members and hindered the establishment and function of civil societies in the country.³³¹ The laws were designed by the EPRDF after the 2005 election to immobilise oppositions. The Parliament adopted the laws without any change as the laws were drafted in the decision and best interest of the party. The Committees or the House is yet to take the initiation to amend the laws or take remedial measures for human rights abuses resulting from their applicability.

4.5.2 Party discipline

The nature of political parties necessitates members to be 'bound by a set of values or ideologies' which brings 'discipline and loyalty'.³³² The extent of discipline required of party members varies from one party to the other. When strong party discipline exists in party dominant systems, the outcome is serious on the legislature. Members have to make a choice between their political interest and the public interest, often ending up in preference of the former because of party discipline. The greatest challenge party discipline poses on the oversight role of parliament is compromising independent standing of the parliament and its members.

The existing party discipline in Ethiopia is among the main factors affecting administration of oversight.³³³ The Parliament has been reluctant to take measures on misdeeds of administrative agencies and on actions of the executive that resulted in violation of fundamental rights of citizens. The Parliament has not, in its history of 17 years, adopted any remedial measures even upon ministerial offices' disclosure of violation of their duties in annual reports.³³⁴

The situation is worsened by the absolute dominance EPRDF has in the Parliament. This is largely for two reasons. First, opposing views cannot be influential and be adopted by the Parliament as the only representative from the opposition would not get a support by the

³²⁸ This includes Media law and the amended political party's registration proclamation. As above 8.

³²⁹ See Human Rights Watch 'Analysis of Ethiopia's draft Anti-terrorism Proclamation' (2009) http://www.hrw.org/sites/default/files/related_material/Ethiopia%20Analysis%20June%202009_2.pdf and 'Ethiopian: Draft law threatens civil society' (2008) <http://www.hrw.org/news/2008/10/13/analysis-ethiopia-s-draft-civil-society-law-0> (accessed 20 September 2012).

³³⁰ Regulation art 150(1).

³³¹ US Department of State '2011 Country reports on human rights practices: Ethiopia' (May 2012) <http://www.unhcr.org/refworld/docid/4fc75aa0c.html> (accessed 9 October 2012).

³³² Salih (n 269 above) 80.

³³³ Ahmed (n 121 above) 103.

³³⁴ Berhanu (n 10 above) 177.

ruling party members. Second, members of the EPRDF are known for their loyalty to their party's political agenda because of the strict party discipline. The EPRDF Constitutive Act expressly provides that member parties "will not have distinct political and ideological existence outside the Front".³³⁵ The individual members of the party are also selected based on their loyalty to the party than assuming leadership through election.³³⁶ Thus, the continuity of their carrier as a parliamentarian or politician depends on the support they give to their party, which controls the executive. It is these same members that administer the monitoring and supervision of the executive at the plenary or the committee level, making the oversight of the Parliament at both levels ineffective.³³⁷

The reluctance of MPs to adopt measures against their political parties does not only affect the internal scrutiny mechanism, but also discourages NHRIs from presenting their reports to the Parliament. These institutions only have the power to pass recommendation on matters. The implementation of the recommendation depends on the action of the executive and the control of the parliament over its enforcement. Hence, the weakness of the Parliament to take measures makes the internal and external human rights protection mechanisms in the country unproductive.

4.5.3 Undermined role of opposition parties

The rigorousness of legislative oversight is determined by the party relation that exists among parties.³³⁸ In such regard, opposition party's influence in oversight is strong. Whether emanating from political motives or acting responsibly as representatives of the people, opposition members are more motivated and consistent on their oversight role.³³⁹ However, their influence on the government depends on the number of seat they have in parliament.³⁴⁰ Party dominance affects the numerical strength of opposition parties. Yet the possibility is there for opposition parties to become influential if the government can cooperate with them and give them the chance to be heard. It is with such intent that parliaments, including HPR, adopt opposition debate sessions.³⁴¹

Every month, the Ethiopian Parliament provides an hour for opposition questions. Compared to other legal systems (for example 20 days in a year in UK)³⁴², such time would not be sufficient to discuss even the most relevant concerns and influence MP's position in the matter. Thus, the chance of using such stages to supervise executive actions, in general, and its human rights performance, in particular, is less likely.

³³⁵ Article 6 of EPRDF Constitution cited at Fessha (n 239 above) 126.

³³⁶ Salih (n 269 above) 87.

³³⁷ Berhanu (n 10 above) 175.

³³⁸ Assefa (n 7 above) 164.

³³⁹ As above.

³⁴⁰ As above 165.

³⁴¹ Regulation art 35.

³⁴² Assefa (n 7 above) 164.

The fact that there is only one opposition member presently in the House is not the only concern. In general, opposition parties in Ethiopia have weak internal organisation that makes them less competitive.³⁴³ The EPRDF also uses different strategies to frustrate oppositions. This includes increasing members of the EPRDF by forcing individual's support through restriction of civil service jobs only for members, prosecuting opposition party members and leaders, using state resources and the media for political purposes, and controlling state organs from the highest authority to the local administration through centralisation of powers.³⁴⁴ Thus, role of opposition parties to oversee the executive is undermined in the parliament. Such failure weakens the effectiveness of oversight in the country. As a result, the Parliament is unable to use oversight tools efficiently for the protection of human rights.

4.6 Conclusion

The existence of party dominance in Ethiopia has resulted in a weak legislature and strong executive. The lack of strength in the parliament impacts the effectiveness of the oversight by the parliament. The Parliament, in numerous instances, has failed to take measures to hold administrative officials accountable for their actions which resulted in specific human rights including violations on freedom of expression and association. Furthermore, when the parliament's ability to oversee is affected, it will compromise the overall effectiveness of using internal and external tools of oversight for protection of human rights. Consequently, the executive has been able to get away with abuse and violation of citizen's fundamental rights and freedoms.

³⁴³ See K Berhanu 'Ethiopia: Bealeaguered opposition under a dominant system' <http://www.cmi.no/file/?1315> (accessed 20 August 2012).

³⁴⁴ T Lyons 'Ethiopia: Assessing the risks to stability' (2011) A report of the CSIS Africa Program 10-11.

Chapter five

Conclusions and recommendations

5.1 Introduction

This paper has examined how the role of parliamentary oversight to protect human rights can be affected by party dominance. The role of the legislative control over the executive in promoting and protecting human rights has not been given enough attention. Thus, the objective of the paper was to clearly establish this particular role of the legislature before dealing with the effect of party dominance on parliamentary oversight. This section summarises the major findings of the study.

5.2 Conclusions

The legislature, as an organ that represents the people and their will, has the responsibility to protect citizen's rights in its overall function, particularly through its oversight role. Human rights standards, set out under international and national instruments, can be used to monitor executive actions. When parliaments use human rights as a criterion to supervise the executive, it makes government officials conscious of their human rights obligations.

Parliamentary oversight provides parliaments with oversight tools to protect citizens from violations of rights and put in place corrective measures when such violations do occur. The tools include establishing human rights committees that monitor human rights implementation, bringing out human rights concerns through debates and questions, and creating partnership with NHRIs to reinforce one another's work.

However, the effective use of oversight for the protection of human rights can be affected by numerous factors. One of these factors is the existence of party dominance in a state. Party dominant system occurs where a single party stays in power for a long time by winning over other parties. The major effect of party dominance is that it weakens state institutions. The system is characterised by weak party competition, inefficient opposition parties, and strict party discipline. The dominant party takes all measures to remain in control. The effect of this is a weak parliament and an emboldened executive, basically resulting in executive dominance.

It is a challenge to parliaments in party dominant states to hold the executive to account for its actions. The single party dominance situation affects party competition, the decision making process and the agenda setting in the parliament. Party competition and effectiveness of oversight are directly related. Weak party competition discourages MPs from challenging actions of government. As the majority of the MPs would be members of the

ruling party, reluctance to check on their party members is common. Additionally, the party discipline promotes loyalty of MPs to their parties than to the people who elects them. Thus, protecting the interest of the people, including human rights, would be a supplementary role to the MPs, next to protecting their party interests. It is not only the independence of the MPs that will be diminished in such systems. The fact that the opposition parties are ineffective will also impact their contributions towards parliamentary oversight.

In addition, decisions to be adopted by the parliament would mainly be those favouring the majority party because cross-party voting is not possible under the strict sense of party loyalty. In executive dominated parliaments, the agenda setting is mostly controlled by the government, either directly, by influencing the parliament, or indirectly, by using its party members in the parliament. This especially affects the protection of human rights because parliament's primary concern would be determined by the executive which may never want its human rights obligation to be raised as an agenda.

The overall impact of these challenges makes the parliament ineffective to conduct oversight. The parliament cannot use its legislative tools to properly supervise and follow up the executive and ensure the protection of human rights. This seems to be the case with Ethiopian Parliament. The ruling party in Ethiopia, EPRDF, has stayed in power since 1991. It has an absolute control of the legislative and the executive organs. Currently, 99.6 percent of the seat in parliament is occupied by the party. With the current composition of the parliament, decisions are won easily in favour of the executive. This is compounded by the fact that the country follows a parliamentary form of government. The executive is elected from the majority party in the parliament. And the ministers still hold their seat in the parliament even upon appointment. Hence, the executive-legislative relation is a decisive factor to the effectiveness of oversight by the legislature.

EPRDF has a centralised approach to power and strict party discipline rules. Every decision comes from the head office of the party. Party members are obliged to respect and enforce these decisions in any status they have including as MPs. Furthermore, the party adopted different strategies, such as persecution of opposition party members and leaders, to diminish the party competition in the country. Thus, opposition parties in the country are also very weak. The composition of the parliament, the absence of strong oppositions, the party discipline and the centralisation of power have brought executive dominance, thereby, weakening the oversight conducted by the parliament.

The implication of all this on the protection of human rights is paramount. The FDRE Constitution obliges all branches of government to enforce the human rights provisions in the Constitution. The Regulation on the Rule of Procedures of the Parliament specifically provides the 'observance of human rights' as a subject matter of scrutiny by the legislature.

However, the law does not provide for specific guidance on how to integrate human rights in the oversight activities of parliament. It is the discretion of the Parliament to adopt oversight mechanism to give effect to its own human rights obligations. Nonetheless, HPR, under the current party system, has failed to oversee executive actions effectively and independently, which is also a failure on its obligation to protect human rights.

It is not only the internal oversight mechanisms that are not effectively used by the HPR. The NHRIs, EHRC and EIO, are not independent from government intervention. The fusion of the state and the party in the country has caused all state institutions, even those that should be independent like NHRIs, to assimilate to the political ideology of EPRDF. Therefore, the Parliament is also unable to use them as independent external control mechanism to ensure the protection of human rights.

5.3 Recommendations

The human rights record of Ethiopia is on the decline. Having a strong parliament with an effective oversight power can assist in improving the protection and promotion of human rights in the country. Thus, the following measures should be adopted to strengthen parliamentary oversight.

i. Promote multi-party system and party competition

The problem in party dominant systems lies on their reliance on weakening the opposition parties to maintain power. To tackle this, the government should encourage political participation of opposition parties and facilitate their representation in the parliament. Where more interests are represented and party competition is increased, the oversight role of the parliament would be strengthened from the pressure by different interest groups.

ii. Discard party discipline and centralisation of power

The existing strong party discipline and centralised power affect the independence of MPs to conduct oversight and serve the public interest in enforcing human rights. The EPRDF should adopt a flexible approach to party disciplinary rules and the decision making process. This would assist the process of strengthening parliamentary oversight.

iii. Recognise and prioritise human rights

Reform measures to be taken by the government would have no result in improving the protection of human rights unless human right is clearly recognised as the primary responsibility of parliaments. Where the parliament gives priority to human rights concerns, it would increase the consciousness of the administrative officials on their human rights obligations.

iv. Reform oversight procedures and incorporate human rights

Specific guidelines to parliamentarians on how to incorporate human rights works in their activities and how to use parliamentary tools to undertake their human rights obligations are necessary. The experience of countries, where a separate human rights committee dealing with the implementation of human rights is established, has proven to be efficient. Also countries like Sweden, where party dominance existed for long, has established effectively functioning parliaments by strengthening the internal procedure of executive scrutiny and increasing legislative efficacy. Thus, the parliament should adopt such alternative measures immediately irrespective of major political reforms that have to be taken.

v. Strengthen external control mechanisms

Another alternative for the Parliament to effectively control the executive and to protect human rights is to work in cooperation with NHRIs. In such regard, measures should be taken by the Parliament to secure the independence of these institutions and create a partnership with them.

Word count: 19 939 (excluding table of contents and bibliography)

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