



NATIONAL ELECTORAL BOARD OF ETHIOPIA

ASSESSING THE IMPACT OF CHANGES TO THE ELECTORAL SYSTEM IN AN ELECTION YEAR

Introduction

This paper outlines technical considerations regarding potential changes to Ethiopia's electoral system during an election year, with a particular focus on the administration of the electoral process. At the time of writing changes to the electoral system under consideration are not clear, but indications suggest a mixed system is under consideration that would possibly see compensatory seats introduced based on a proportional representation at the country level element added to the existing plurality/majority system established by Art. 54 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia. This change would affect the lower house of the national legislature, the House of Peoples' Representatives (HoPR), only. This paper examines in general terms the impact on the implementation of the impending electoral process of such a change. This paper does not take a position on changes themselves, which are of a political nature and thus beyond the scope of this document.

General Considerations

Changes to electoral systems during an election year could potentially pose several challenges for the electorate, electoral administrators, and political parties. Changes to an electoral system may require a more or less extensive amendments of the legislative framework governing the conduct of elections. In some cases, they might also require a redesign of the electoral operation, reorganization of political parties, and more public outreach campaigns, amongst other considerations. When introducing a new system, it is particularly important to assess impact on vulnerable groups such as remote populations, those who suffer from low literacy, minorities and women may have the most difficulty adapting to new systems and may therefore not be fully represented in a new system. Finally, changes might have financial and capacity implications that would be difficult to accommodate through national budget processes. Finally, if the changes introduce significant additional operational complexities that could also require longer time for the implementation of the process. In sum, the additional burden posed by a change to electoral system within an election year could affect the quality of the process rather than address legitimate aspirations. For this reason, Internationally, there is recognition that you do not change election-related legislation a year before an election, especially not the fundamental aspects of an electoral system¹.

Ethiopia Specific Considerations

The following analysis takes into consideration six elements in assessing the impact of the change of electoral system on the electoral process in Ethiopia; should changes to the electoral system be introduced in 2020/2021 with general elections to be conducted by September 2021.

¹ European Commission for Democracy through Law (Venice Commission, Code of good practice in electoral matters. Adopted 18-19 October 2002, Pag 10.

ECOWAS protocol (available at

<https://www.ohchr.org/EN/Issues/RuleOfLaw/CompilationDemocracy/Pages/ECOWASProtocol.aspx>)

Implication for the legal and institutional framework for elections.

1. *Constitutional amendments.* Changing the electoral system outlined in Article 54(2) and 54(3)² of the Constitution would require revision according to the process laid out in Articles 104³ and Art. 105.⁴ Changes to the electoral system imply a constitutional reform process that would require extensive consultation and resources. In addition to the general considerations for consultation laid out above, Article 104 of the Constitution requires submission of the amendment to affected parties for discussion.⁵ Given the amendment affects the entire country, board consultations with diverse segments of the population would be required under the current constitutional provisions. In order to meet the legislative timeline for holding the election within the calendar 2013 year, the amendments must be passed in time and must not introduce significant additional operational challenges for the implementation.
2. *Legislative amendments.* A change to the Constitution would require concomitant changes to applicable electoral proclamations. For instance, the addition of a proportional element to the existing system would require an additional ballot, that may require the addition of a separate tabulation process with the potential to increase the risk of irregularities and eventually increase the (legislated) amount of time needed to announce results. Major changes were introduced to the legal framework for elections in 2019, including both the Proclamation No. 1162(2019) on elections, political parties' registration and code of conduct, and Proclamation No. 1133(2019) establishing the National Election Board of Ethiopia (NEBE).
3. *Institutional reforms.* Change to the electoral proclamation may imply further adjustments to NEBE, if significant additional operational challenges are introduced through the amended electoral system. The institution is currently introducing improvements to its structure, processes and procedures to adhere to the amendments introduced by Proclamation No 1162 and No. 1133 and to fulfil its mandate to organize a fair, inclusive and credible election.
4. *Changes to boundary delimitation.* The implications of the change for boundary delimitation are not clear. If changes are required that would significantly affect the implementation timelines.

² **Article 54 (Members of the House of Peoples' Representatives):** 1. Members of the House of Peoples' Representatives shall be elected by the People for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot. 2. Members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation for minority Nationalities and Peoples. 3. Members of the House, on the basis of population and special representation of minority Nationalities and Peoples, shall not exceed 550; of these, minority Nationalities and Peoples shall have at least 20 seats. Particulars shall be determined by law.

³ **Article 104 (Initiation of Amendments):** Any proposal for constitutional amendment, if supported by two-thirds majority vote in the House of Peoples' Representatives, or by a two-thirds majority vote in the House of the Federation or when one-third of the State Councils of the member States of the Federation, by a majority vote in each Council have supported it, shall be submitted for discussion and decision to the general public and to those whom the amendment of the Constitution concerns.

⁴ **Article 105 (Amendment of the Constitution):** 1. All rights and freedoms specified in Chapter Three of this Constitution, this very Article, and Article 104 can be amended only in the following manner: (a) When all State Councils, by a majority vote, approve the proposed amendment; (b) When the HoPR, by a two-thirds majority vote, approves the proposed amendment; and, (c) When the House of the Federation, by a two-thirds majority vote, approves the proposed amendment. 2. All provisions of this Constitution other than those specified in sub-Article 1 of this Article can be amended only in the following manner: (a) When the House of Peoples' Representatives and the House of the Federation, in a joint session, approve a proposed amendment by a two-thirds majority vote; and, (b) When two-thirds of the Councils of the member States of the Federation approve the proposed amendment by majority votes.

⁵ **Article 104 (Initiation of Amendments):** Any proposal for constitutional amendment, if supported by a two-thirds majority vote in the House of Peoples' Representatives, or by a two-thirds majority vote in the House of the Federation or when one-third of the State Councils of the member States of the Federation, by a majority vote in each Council have supported it, shall be submitted for discussion and decision to the general public and to those whom the amendment of the Constitution concerns.

Implications for the timeline

The impact on the electoral timeline caused by a change in the electoral system is a major concern, nevertheless depending on the actual changes the impact may be manageable or cause a delay. As discussed above, a change of the electoral system in Ethiopia would require a change to the 1995 Constitution, which would in turn require broad consultations (Art 104) and could result in changes to national electoral proclamations. Regardless of the intentions, constitutional reform processes are unpredictable and the absence of a reliable legal framework for elections would make it difficult to determine a timeline for the electoral process in consultation with political parties, and to begin preparations.

An additional concern relates to Resolution 16(2020) of the HoPR requiring elections to be conducted in 2013 (EC) or September 2021 (GC). Should a constitutional reform process be initiated, the timeline for the electoral process would certainly exceed the deadline set in the Resolution, leaving NEBE in violation of the current decision if it failed to proceed with preparations immediately. Accordingly, an updated Resolution would be required.

In summary, the timeline for elections is contingent upon the adoption of any amendments to the Constitution, electoral proclamations and other decisions and the legislature. Preparations for electoral process based on unstable timeline are not advisable. Only once these processes are completed should an electoral timeline be consulted and announced, and preparations begin in earnest.

Implications for the electoral budget

A change to the Constitution and electoral proclamations would require a dedicated budget in order to fulfil the obligation for public consultations. This, however, is outside the purview of this paper. A change to the Constitution and electoral proclamations in an election year would also have downstream risks and effects on the budget for the administration of the eventual electoral process. The principal risks/impact are:

1. *Risk of losing fixed or sunk costs.* The risk exists that NEBE would be obliged to advance preparations in accordance with its current legal obligations before clarity is gained on any amended legal framework, leading to significant loss of resources invested. Loss of resources could be related to, for instance, procurement of electoral materials and their storage, or increasing institutional capacity to accommodate a national electoral process.
2. *Implication of additional budgetary requirements from introduction of changes.* Once the provisions of the Constitution and the electoral proclamations are known, there is a possibility that additional resources could be required to accommodate changes in case that an amended electoral system would pose significant additional operational challenges.

Implications for operational processes

A change to the Constitution and electoral proclamations would have downstream effects on the administration of the electoral operation.

1. *Stakeholder consultations.* Additional consultations with electoral stakeholders would be needed, which would inform the revision of any directives or procedures following a change to the electoral system.
2. *Candidate registration.* The addition of proportional representation element could require additional registration of political parties and coalitions under different criteria than what currently exists. This may require NEBE to design and procure additional material, and to adjust the ICT application designed for party and candidate registration. It may also include changes to procedures for symbol selection.
3. *Political campaign.* Rules and procedures surrounding allocation of campaign finance could possibly require review and amendment.

4. *Electoral materials.* If running two races simultaneously across the country would be required, additional materials such as ballot boxes (particularly if regional states also amend their systems to include a proportional element), ballots, result forms and seals would also be required.
5. *Results management system.* The possible introduction of an additional race would make aggregation of results more complex and time-consuming, particularly if regional states amended their systems as well. A manual system for tabulating results would be extremely complex, time consuming, expensive, and prone to mistakes. At a minimum, an electronic results management system should be introduced to mitigate this risk, and the timeline for announcement of results should be amended in the electoral proclamation.
6. *Dispute resolution.* The current system of electoral dispute resolution could require review to ensure that it can accommodate challenge and complaints related to the administration of a proportional race.
7. *Training.* The possible introduction of a new race to the electoral system would require additional training materials and may require extended training of electoral officials and polling staff to be acquainted with the new dimension of the polling process.
8. *Voter education.* Voter education and information efforts will have to be bolstered to provide robust information to the general public on the changes to the system and their rights, with a specific focus on vulnerable and marginalized groups.

Conclusions

The limited information currently available on the proposed changes do not allow for detailed analysis regarding technical implications of a change to electoral systems. With that caveat, however, initial analysis suggests that certain changes during an election year poses significant risks to the overall integrity, credibility, inclusivity and timeliness of the eventual electoral process.

The timeline for election can only be determined once the changes have been finalized and the new the Constitution and electoral proclamation are adopted. Only then, can NEBE review its directives and operational plans based on the new constitution and amended electoral proclamation. NEBE will have to include in its timeline the time required to affect all the required changes.

If the changes would not pose significant additional operational challenges, they would still need to be adopted in time to allow NEBE to be able to continue the implementation of electoral activities to hold elections within the deadline set by the Parliament. To this end NEBE should be consulted on the latest date for introduction of the changes but should also be informed during the debate on the nature of changes to be able to assess and advise on the impact on electoral operations and timeline for elections.