



**UNIVERSITY *of the*
WESTERN CAPE**

Faculty of Law

**Gerrymandering and Extraterritorial Voting Right in Ethiopia:
Accommodation or Exclusion?**

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Prepared under the supervision of

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Declaration

I **Tibebu Hailu Jemaneh** do hereby declare that **Gerrymandering and Extraterritorial Voting Right in Ethiopia: Accommodation or Exclusion?** is my own work, that has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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The right to vote

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Chapter One: Introduction

1.1. Background of the Study

The State of the Harari People is one of the twelve constituent units – commonly known as ‘regions’ – of the Ethiopian federation.¹ It has unique features in several respects. It is an enclaved state within the State of Oromia, covering only 334 k.² As the name indicates, it is regarded as the homeland of the Harari people,³ who are reported to number approximately 31,869 according to the last available census data.⁴ Out of the state’s 183,415 residents, the Hararis account for less than 10 per cent of the population.⁵ Since the (re)constitution of the federation,⁶ the establishment of the state of Harari has remained controversial, as other ethnic groups with considerable territorial and population size did not receive a state of their own.⁷

The uniqueness of the state of Harari extends to the institutional arrangement that the State Constitution has established. The subnational legislature, the Harari People State Council (HPSC), is the highest authority of the state⁸. Comprised of two houses (i.e. the Harari

¹ When the federation was first constituted, there were nine autonomous subnational units and two, arguably, semi-autonomous city administrations. Since 2019, to give effect to the constitutional right of ethnic groups to establish their own state, the State of the Southern Nation, Nationalities, and Peoples (SNNP) has dissolved. Consequently, three states were established through referenda, while the remaining parts of the SNNP were clustered into one state, bringing the total members of the federation to twelve.

² With a span of 320,000km², the State of Oromia is the largest state in Ethiopia. https://www.citypopulation.de/en/ethiopia/admin/harari/ET130105_harari/ (accessed 23 January 2024).

³ The Harari people are the urban population of Harar, predominantly inhabiting the walled part of the city called *Jegol* or *Jugol*. They are a homogenous population with a strict preference for endogamy, and uniform adherence to Sunni Islam. Harar was serving as the capital of the Muslim Kingdom of Adal or Adal Sultanate (1415 to 1577) during the kingdom’s heydays and said to be the fourth holiest city in Islam–i.e., after Mecca, Medina, and Jerusalem. https://everythingharar.com/wpcontent/uploads/2021/02/Encyclopaedia_Aethiopica_Volume_2_2005_Harar_s.pdf (accessed 19 November 2024).

⁴ Central Statistical Agency *Summary and Statistical Report of the 2007 Population and Housing Census Results* (2008) available at [https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft\(1\).pdf](https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf) (accessed 15 November 2024).

⁵ The 2008 Census data reveals that the Oromos, Amharas, Gurages, Somalis, Tigrayans, and all other ethnic groups together comprised about 90 percent of the state’s general population. Central Statistical Agency (2008)

⁶ Although Harar served as the capital city of the Hararghe Province (*Teklay Gizat*, later *Awraja*) from 1900 to 1991, it was given a subnational status at the outset of the new federal structure as per Proclamation No. 7/1992 of the Transitional Government of Ethiopia (TGE). Subsequently, the Council of Representatives established a committee to deliberate a wide range of issues related to Harari’s statehood and provide recommendations, including the state’s boundaries, composition of the state legislature, and its electoral system. See art 3(1) of National/Regional Self-governments Establishment Proclamation No. 7/1992; Transitional Government of Ethiopia Council of Representatives *Minutes of the 102nd Regular Session* (1993)

⁷ See generally: Balcha B *Restructuring state and society: Ethnic federalism in Ethiopia* (PhD thesis, Aalborg University, 2007) 100–3; Legide K ‘The Quest for Regional Statehood and its Practicability Under the Post-1991 Ethiopian Federation: The Discontents and Experience of Sidama Nation’ (2019) 7.7 *Global Journal of Politics and Law Research* 1–52.

⁸ See art 51 of the Revised Constitution of the State of Harari People (hereafter ‘the Harari Constitution’).

National Assembly (HNA) and the Peoples Representatives Assembly (PRA)), the HPSC has a total of 36 members.⁹ The PRA is comprised of 22 seats while the HNA is composed of 14 members.¹⁰

Each assembly is assigned key exclusive powers by the State Constitution. The HNA has the power to legislate on matters related to language, history, heritages, religious sites, the implementation of the self-determination rights of Hararis—including secession. It has the power to nominate the state’s president and deputy house speaker of the HPSC.¹¹ Conversely, the PRA initiates laws on matters of economic development, social security and agricultural taxes, nominates the house speaker of the HPSC, and reviews the budget.¹² Together, a two-third quorum of both assemblies has the power to amend the constitution, set land use policies, levy state taxes, determine the state’s budget, declare a state of emergency, appoint judges and the state president.¹³

Unlike other states where electoral districts are largely delimited based on the population density,¹⁴ members of both assemblies in Harari are drawn from three constituencies¹⁵ gerrymandered following patterns of ethnic settlement inside and outside of the *Jugol* wall, the historic fortification surrounding the city.¹⁶ The Hararis predominantly reside within the walled part of the city, while the surrounding areas of the wall are largely inhabited by other ethnic groups.¹⁷ The delimitation of constituency boundaries grants Hararis strong voting power across two constituencies, while concentrating the voting power of non-Hararis into a

⁹ See art 48 and art 49(1) (a) (b) of the Harari Constitution.

¹⁰ See art 49(2) (3) of the Harari Constitution.

¹¹ See art 59 of the Harari Constitution.

¹² See art 58 of the Harari Constitution.

¹³ See art 51 of the Harari Constitution.

¹⁴ Dessalegn B ‘The right of minorities to political participation under the Ethiopian electoral system’ (2013) 7.1 *Mizan Law Review* 84.

¹⁵ These are the Jugol Leyu, Jugol Medebegna, and Jugol Zuriya and Hundene constituencies loosely translated as ‘Jugol Special’, ‘Jugol Regular’, and ‘Jugol Neighbourhood’, respectively. See art 50(1) (a) (b) and art 50(2) of the Harari Constitution; National Election Board of Ethiopia *Election Result for State Council* available at https://drive.google.com/file/d/1zb3OjtJ3_rz0WrqAf7cfF9YUXX75HDyX/view (accessed 13 November 2024).

¹⁶ The Jugol Wall was built by Amir Nur between the 13th and 16th centuries to defend the threat posed by the Oromo’s expansion towards the north and east. The wall is inscribed by the UNESCO as world heritage for its character and uniqueness. UNESCO ‘Harar Jugol, the Fortified Historic Town’ available at <https://whc.unesco.org/en/list/1189/> (accessed 19 November 2024).

¹⁷ The State of Harari is divided into three rural *woredas* (Dire Teyara, Sof and Erer districts) and six urban *woredas* within Harar Town Administration (Abadir, Aboker, Amir Nur, Jenella, Hakim and Shenkor districts). These districts are administratively further sub-divided into 36 sub-districts (*kebeles*). Esayas E et al ‘Malaria epidemiology and stratification of incidence in the malaria elimination setting in Harari Region, Eastern Ethiopia’ (2020) 9 *Infectious Diseases of Poverty* 1-12.

single, larger constituency.¹⁸ Accordingly, all 14 members of the HNA are elected from the first constituency inside the Jugol, covering Abadir *woreda*.¹⁹ The second constituency inside the Jugol covers Amir Nur *woreda*, from which four members of the other house of the HPSC, the PRA, are drawn. The remaining 18 members of the PRA are elected from the third constituency, which covers seven *woredas* outside of the Jugol. When the all-Harari HNA combines with the four PRA seats they hold, it gives Harari's control half of the HPSC. If non-Harari residents manage to control the 18 seats of the PRA, the HPSC becomes a 'balanced' representative legislature for both Hararis and non-Harari residents of the state. The gerrymandering results in a disproportionate representation of the tiny Hararis, who predominantly reside in just two *woredas*, and underrepresent the majority of the state's residents who spread across all nine *woredas* of Harari.

Further, it must be noted that the Harari's constitution does not extend the same voting rights to inhabitants of the state. The right to elect and be elected in the HNA is exclusively reserved for Hararis, including to those that reside outside the state. Persons belonging to other ethnic groups are not allowed to vote for members of the HNA. That makes the HNA an exclusive house of the Hararis. On the other hand, any resident of the state is allowed to vote or run for membership of the PRA.

Of course, it is not uncommon for jurisdictions to adopt different electoral arrangements with the aim of making the legislature inclusive, reflecting the geographical and/or demographic composition of their respective societies. The practice of seat reservation for a particular group is widely adopted in many countries.²⁰ This can be translated into representation through ethnically mixed lists of candidates or special exemptions entitled for specified minority parties.²¹ Seats can also be reserved for a group to be filled by appointees of the recognised group or elected by voters from a communal roll.²² Although it is usually associated with disadvantaging minorities, gerrymandering may also be used to ensure or facilitate the election of a minority representative. In the US, for instance, deliberate redrawing of electoral districts in favour of a territorially concentrated African Americans

¹⁸ Transitional Government of Ethiopia Council of Representatives *Minutes of the 102nd Regular Session* (1993) 2–5.

¹⁹ A *woreda* (district) is one tier of local government in Ethiopia accountable to the Zonal administration.

²⁰ The bases of identities to determine who will utilise the seats vary from place to place. While most countries reserve seats based on race or ethnicity, others use language, religious identity, or geographical concentration. Reynolds A 'Electoral systems and the protection and participation of minorities' (2006) *Minority Rights Group International* 15–9.

²¹ Reynolds A (2006) 18–9.

²² Reynolds A (2006) 18.

were instituted to ensure their representation in Congress.²³ Practically, some of such designs may ensure adequate representations and protection of a particular group while others are accentuating unequal representation or discrimination against another.

1.2. Problem Statement

Closer reading of the white paper commissioned by the Transitional Government Council of People's Representatives, the document based on which the decision to establish the state of Harari was largely based on, reveals that the electoral design is adopted in response to the 'yearlong political, economic, and cultural suppression, extermination, and exile under successive regimes.'²⁴ The paper argues that these sufferings called for 'special protection in political representation for the depleted Harari community, given the unique situation where the number of 'settlers' exceeds the 'indigenous' society.'²⁵ It also claimed the gerrymandering would help Harari urbanities and rural dwellers to reinstate their tie which was affected by historical injustices and dispossessions, and give them a better chance to participate in elections and public life.²⁶

Harari's electoral design has been in place for the past six rounds of national elections since 1995 without any change. The special voting right extended to Hararis outside Harari, the exclusive composition of the HNA by Hararis and the gerrymandered electoral constituencies raise questions of equal treatment between Hararis and non-Harari residents. Furthermore, the extraterritorial voting right (EVR) has been exercised despite the constitutional and electoral laws²⁷ that guarantee non-discrimination and universal suffrage.²⁸

This study, therefore, seeks to analyse the purpose of Harari's electoral design in terms of minority rights protection in Ethiopia. At the crux of it is whether gerrymandering and EVR are viable options to enhance accommodation within subnational legislature or promote

²³ Reynolds A (2006) 11.

²⁴ Transitional Government of Ethiopia Council of Representatives *Minutes of the 102nd Regular Session* (1993) 7–8.

²⁵ Transitional Government of Ethiopia Council of Representatives *Minutes of the 102nd Regular Session* (1993) 8–10.

²⁶ Transitional Government of Ethiopia Council of Representatives *Minutes of the 102nd Regular Session* (1993) 10.

²⁷ See art 38 of the Constitution of the Federal Democratic Republic of Ethiopia (hereafter 'the Federal Constitution'); also, art 18 & 31 of the Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No 1162/2019 (hereafter 'Election Proclamation No. 1162/2019').

²⁸ The International Covenant on Civil and Political Rights, to which Ethiopia is also a party, guarantees that any individual, upon fulfilling certain objective and reasonable conditions (such as citizenship, age, residency, and, not being deprived of civic rights because of convictions or mental state), can freely exercise the right to elect and be elected without discrimination. See UN Human Rights Committee *International Covenant on Civil and Political Rights, General Comment No. 25*, 12 July 1996, UN Doc CCPR/C/21/Rev.1/Add.7.

exclusion. The study, ergo, seeks to interrogate the justifications attached to Harari's electoral design, examining whether and how the design ensures or facilitates the cultural and political autonomy of the Harari without depriving fundamental rights of non-Harari residents of the state, its compatibility with fundamental principles of the constitution, and its relevance for contemporary challenges faced by the State of Harari.

Thus, the study seeks to determine the extent to which Harari's constitutional electoral design ensure or facilitate the protection of minority rights in Ethiopia. In order to answer the main research question, this study will address the following sub-questions:

- What reasons do justify the adoption of gerrymandering and EVR of Hararis? How does these designs align with other principles of the federal system and the constitution?
- How could Harari's electoral design be seen from the perspective of other minority ethnic groups and dispersed minorities in Ethiopia?
- What prospects for reforms exist concerning the gerrymandering and the EVR of Hararis?

1.3. Objectives of the Study

The study primarily aims to evaluate whether and how Harari's electoral design ensures minority protection by facilitating cultural and political autonomy. By examining the reasons and objectives outlined in the white paper that served as the basis for Harari's constitution, the study seeks to inquire the justifiability and compatibility of the electoral design with the fundamental principles of both the federal and regional constitutions, as well as the principles of electoral systems. Finally, the study will analyze trends and patterns to identify potential revisions or the need to maintain Harari's electoral design.

1.4. Significance of the Study

The study contributes to the discussion of territorial and non-territorial solutions in accommodating multi-ethnic interests at the level of a subnational unit. The comparative experiences and the court case that are explored in the paper are relevant to guide any policy revision efforts to address gaps of existing institutional designs to enhance minority rights protection. Additionally, it enhances our understanding of the less explored area concerning the compatibility (or otherwise) of gerrymandering and its complementary designs within pertinent laws of Ethiopia.

1.5. Methodology

The study employs a desk research approach, utilising both primary and secondary sources of data. The primary sources include constitutions, pertinent electoral legislations, court cases, international and regional human rights instruments, commentaries and deliberations made by special mechanisms of international and regional human rights bodies. Journal articles, book chapters, publications, government reports, and other internet sources relevant to the subject matter will be used as secondary sources of data.

1.6. Preliminary Literature Review

Several studies have focused on Harari's statehood and the unique structure of its legislative council. A prominent example is Sarah Vaughan's dissertation, "Ethnicity and Power in Ethiopia"²⁹, which, among other things, examines the historical, political, and demographic factors that contribute to the statehood of Harari. Vaughan argued that although the Ethiopian People's Revolutionary Democratic Front (EPRDF) mostly preferred to confine the self-government of ethnic communities within the territory they inhabit at the time of the reconstitution, they chose to treat the Hararis differently, granting them autonomy in the cosmopolitan city of Harar outside the Jugol wall, where they constitute a minority, in recognition of both their glories and nadir pasts.³⁰ She further highlights the socio-economical non-viability of Harar as a walled city state, had it not been for the incorporation of 17 rural *kebeles*³¹ from the surrounding areas of Oromia region.³² She emphasises the 'lynchpin role' of autonomous Harari in eastern Ethiopia, a volatile area marked by territorial claims between Oromo and Somali nationalists. Additionally, she notes similar role played by Harar in serving 'as a convenient and conciliatory bulwark against radical Islam's incursion from Somalia', which was leveraged by the central government.³³ Recognising that all ethnicities were not 'born equal' when the federation started in 1991, Vaughan notes the following:

The central... explanation for the adoption of unusual arrangements... in Harari... was some sharp negotiation, and elevated lobbying, by the cohesive, articulate, and wealthy Harari community, led by the [Harari National League (HNL)].³⁴ [Certainly,]

²⁹ Vaughan S *Ethnicity and power in Ethiopia* (PhD thesis, The University of Edinburgh, 2003).

³⁰ Vaughan (2003) 230–1 & 235.

³¹ The smallest administrative unit in Ethiopia accountable to the woreda administration.

³² Vaughan S (2003) 230.

³³ Vaughan S (2003) 232–4.

³⁴ Harari National League. Vaughan S (2003) 232.

Hararis are highly bounded by the city wall, which ensures that the identity of those within remained sharply distinguished from neighbouring groups by lineage claims, language, idiosyncratic norms of dress, architecture, food, music, and rituals of hospitality, with persisting sanctions on exogamy.³⁵

Conversely, Balcha argues that the deviation from ethnolinguistic basis of classification, which he criticised for being unrealistic in constructing ‘sixty-five’ ethnic state in the first place, is unconvincing when applied to both Hararis and the relatively larger groups such as Sidama and Wolaita.³⁶ For him ‘[Harari’s statehood] is a case for the distortion and arbitrary nature of the ethnic federalism in Ethiopia.’³⁷

Nonetheless, literature that solely focus on the constitutional design of the State of Harari are very limited. Van der Beken generally outlines some unique features of Harari’s constitution in his comparative discussion of the subnational constitutions in Ethiopia. These include the bi-cameral legislative council with suffrage limited to the Harari people in the election of one of its chambers, the designation of two languages as the state’s working languages (Harari and Afaan Oromo), and the absence of a separate chapter on policy objectives and provisions for the local administrative level of *woreda*.³⁸

In another similar attempt to illustrate the aberration of EVR incorporated into the Hararis constitution, Fessha & Van der Beken’s alludes to the concept and application of non-territorial autonomy embedded in such entitlement. The writers argue that the design makes the HNA a non-territorial institution, allowing it to represent all Hararis in Ethiopia on cultural and identity related matters assigned to it.³⁹

The dispute over the constitutionality of Hararis’ EVR between the National Election Board of Ethiopia (NEBE) and the HNA brought before the Federal Supreme Court (FSC) sparked debates. Some writers regarded the electoral design as a constitutionally prudent and astute

³⁵ Vaughan S (2003) 237.

³⁶ Balcha B (2007) 93.

³⁷ Balcha B (2007) 103.

³⁸ Van der Beken C ‘Sub-national constitutional autonomy in Ethiopia: On the road to distinctive regional constitutions’ (2014) *The IXth World Congress of Constitutional Law’ Constitutional Challenges: Global and Local* 14–8.

³⁹ Fessha Y & Van der Beken C ‘Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia’ (2013) 21 *African Journal of International and Comparative Law* 44–5.

measure that enables the tiny Hararis to protect their collective rights and identity.⁴⁰ The FSC also affirmed this position, thereby upholding the practice of Hararis EVR.⁴¹

Wozir & Ersso claim that the design is a ‘strong and institutionalised affirmative action that is required to better protect minority rights from discrimination, promote their identity, and assist them in preserving their culture and traditions’.⁴² Similarly, in his short account, Mohammed notes the Federal Constitution’s silence on the extraterritoriality of voting rights and argues that ‘the right of citizens residing in one corner of Ethiopia to cast vote for the candidate running for the other House or Council of which s/he is historically, culturally, and emotionally attached and affected’ is not constitutionally impermissible. The writer further claimed that enfranchising Hararis with EVR would not be a surprise as many countries around the globe have allowed their citizens residing abroad to cast their vote in elections.⁴³

Others question the constitutionality of the design of Harari’s legislature. In his commentary on the FSC’s decision, Assefa, contends that the HNA is not as apolitical as drafters of the State Constitution intends to present it, since it has few exclusive powers, including submission of demands to effect the secession of Harari, and decides, though not alone, on significantly important matters, such as constitutional amendment.⁴⁴ Additionally, he argues that the gerrymandering in place has provided Hararis an ‘unfair advantage over another which admittedly are majority in proportion’ contrary to the constitutional principle of equality of votes.⁴⁵ Most importantly, the very nature of Ethiopia’s constituency demarcation and voting is territorially restricted, with extensions occurring only in cases where special polling stations⁴⁶ are established.⁴⁷

⁴⁰ Wozir F & Ersso M ‘Protection of indigenous minority voting rights in the Ethiopian electoral system: The case of Harari National Assembly’ (2021) 8.3 *Journal of Social and Administrative Sciences* 107.

⁴¹ *National Electoral Board of Ethiopia v Harari National Assembly* (2021) Federal Supreme Court Cassation Division File No. 207036.

⁴² Wozir F & Ersso M (2021) 107.

⁴³ Mohammed YA ‘Harari People, Self-Administration & Electoral System: Clearing Wrong Perceptions’ Addis Standard 03 June 2021 available at <https://addisstandard.com/view-point-harari-people-self-administration-electoral-system-clearing-wrong-perceptions/> (accessed on 22 November 2024).

⁴⁴ Assefa SK ‘Comment: Legitimizing Gerrymandering in the Harari Regional State Contrary to the Principle of Equality of Votes’ (2021) 15.1 *Mizan Law Review* 279–80.

⁴⁵ Assefa SK (2021) 292.

⁴⁶ These polling stations are established for the purpose of enfranchising those living far from their home to cast their vote, such as members of the military, college students, civil servants, incarcerated citizens, internally displaced persons, and to some extent citizens residing abroad. See art 17 of Election Proclamation No. 1162/2019.

⁴⁷ Assefa SK (2021) 281–2.

In another, yet very brief account, Hailu, argues that using ethnicity, irrespective of residency, to elect or be elected to a chamber of the state's legislature is difficult to reconcile with established democratic frameworks of universal suffrage and non-discrimination. He further argued that although the Harari people have concerns of oppression or being assimilated by the majority non-Harari residents, that doesn't justify the injustice of a system allowing minorities to rule the majority.⁴⁸

The discussion highlights that efforts to address Harari's constitutional issues and the practice of gerrymandering are marked by a lack of critical analysis regarding electoral design. While some aspects of the constitutional provisions of the EVR have been examined, other areas of this topic remain poorly documented. Furthermore, none of the existing studies have clearly explained the connection between minority group interests and constitutional deviations from a comparative perspective. It is important to note that some of the sources discussed are not peer-reviewed, highlighting the need for well-supported arguments enriched with academic rigor. This situation calls for further research to enhance our understanding of the purposes and effectiveness of Harari's electoral design in protecting minority rights.

1.7. Chapters Structure

The study comprises four chapters. Chapter two provides the comparative and theoretical frameworks to the concept and application of gerrymandering and EVR. Chapter three analyses the background, justifications, and criticisms of Harari's electoral design, examine its impact in upholding the political and cultural autonomy of Harari, and discuss its prospects. Chapter four draws concluding remarks and suggestions based on the discussions in the preceding chapters.

⁴⁸ Hailu B 'The Oligarchy of the Harari' available at <https://befege.blogspot.com/2020/08/the-oligarchy-of-harari.html> (accessed on 23 November 2024).

Chapter Two: Electoral Design and Minorities Protection

2.1. Introduction

Minority group's interests can be protected through a range of legal, political, and institutional regimes. Despite contextual variations, specific protection mechanisms are common across jurisdictions. Some might constitutionalise judicially enforceable individual and group rights, provide self-governance, or grant veto power on particular issues. Others might devise electoral systems that guarantee political representation or implement affirmative measures to facilitate political participation and, thereby, representation. This chapter focuses on whether and how electoral designs ensure the protection of minority rights. It elaborates on the electoral design arrangements implemented in different jurisdictions to achieve such protection.

The chapter is structured into three sections. The next section provides a brief introduction about elements that guide the determination of minority, explaining why promoting their rights possesses significance, and outlining how the rights protection can generally be achieved. That is followed by a section that engages with various electoral designs implemented in various countries. The chapter then moves to focus on the main themes of the study, namely gerrymandering and (extraterritorial) voting rights, with the view to understanding the nuances of their nature, principles, and the considerations underlying these designs. The final section concludes the chapter's discussion.

2.2.Minority Rights: Definition and Scope

In its simplest sense, minority rights can be understood as the rights conferred on individual members of minority groups.⁴⁹ However, observers argue that they also refer to collective rights packaged for minority populations with certain distinctive markers who are often subjected to discrimination or differential treatment.⁵⁰ This notion surely urges us to engage with the question of “who are minorities” to determine the rights holders for both practical and legal purposes.

⁴⁹ This individualistic understanding of minority rights is influenced by the framing of Article 27 of the International Covenant on Civil and Political Rights. As Macklem rightly observes, the text of article 27 suggests that “minority rights are individual rights to engage in particular activities in community with others, not collective rights of a minority population to a measure of autonomy from the broader society in which it is situated.” Macklem P ‘Minority rights in international law’ (2008) 6 *International Journal of constitutional law* 535.

⁵⁰ For a helpful overview of the discussion in this respect, Jovanovic MA ‘Recognizing minority identities through collective rights’ (2005) 27 *Human rights quarterly* 625-651.

Countless efforts to construe the concept ‘minority’ are not without success, despite the lack of a generally agreed-upon definition. Contributions made by international and regional human rights mechanisms,⁵¹ as well as academia, have provided certain insights that aid the process of determining who minorities are. In this regard, the discussions on minorities have benefited extensively from the definition proposed by Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his study on the rights of minorities under international law, published in 1977.⁵² The Special Rapporteur defined ‘minority’ as:

*‘A group which is numerically inferior to the rest of the population of a state and in a non-dominant position, whose members possess ethnic, religious, or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language.’*⁵³

Relying on this and other contributions,⁵⁴ one can deduce essential objective and subjective elements to guide the determination of the status of a minority. To begin with, possession of distinctive ethnic, religious, or linguistic characteristics is a key requirement. This implies possession of traits that set apart the minority group from the rest of the general population. Being a citizen or national of the state in which they reside is also an essential component of the definition. Another key element of Capotorti’s definition is numerical inferiority. It suggests that a group’s smaller population size aids in determining it as a minority. Of course, what constitutes numerical inferiority must be understood as relative to the general population.⁵⁵ As Henrad argues this relativity is especially relevant in cases where no single group constitutes a clear majority within the state.⁵⁶ As is the case in many diverse

⁵¹ The concept of ‘minority’ has also been shaped by relevant international and regional human rights instruments as well as commentaries or decisions issued by international and regional human rights bodies. For further reading on the issue see, Pejic J ‘Minority rights in international law’ (1997) 19 *Human Rights Quarterly* 666–685; for African context see, Dersso S ‘The African human rights system and the issue of minorities in Africa’ (2012) 20 *African Journal of International and Comparative Law* 42–69.

⁵² The study was commissioned by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities to provide a comprehensive analysis on the rights of minorities, the challenges they face, and mechanism that ensure their protection and inclusion.

⁵³ Francesco Capotorti ‘Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities’ (1979) UN Doc E/CN.4 Sub2/384/Rev 1 para 568.

⁵⁴ Similar attempt was made by the UN under a sub-commission led by Jules Deschenes, but it received low rating for failing to introduce anything novel in the definition of minorities. Henrad K *Devising an adequate system of minority protection: Individual human rights, minority right and the right to self-determination* (2000) The Hague: Martinus Nijhoff Publishers 40.

⁵⁵ Henrad K (2000) 33.

⁵⁶ Henrad K (2000) 34.

federations, a certain group that holds a majority in one part of the country may find itself a minority in another, but the Human Rights Committee has said that minority status is determined with reference to the state as a whole in *McIntyre v. Canada*.⁵⁷ In this case, the Committee holds that ‘the minorities referenced in article 27 are to be understood as minorities within a State as a whole, rather than within any province’. Hence, English speaking residents in Quebec, Canada, cannot be considered as a linguistic minority, as they constitute a numerical majority across the entirety of Canada.⁵⁸ Yet, numerically smaller groups may hold a dominant position in political power, and/or socio-economic and cultural sphere of influence. Similarly, a national majority can be a subnational minority which requires a constitutional protection. That is why, a group’s political, socio-economic and cultural status, what Capotorti describes as a ‘non-dominant position’, is also deemed important to determine whether a group qualifies for minority status. Capotorti’s definition also expects a sort of solidarity among the minority group to preserve its distinctiveness. Recognising the challenge to evaluate a certain group’s desire or determination in persevering its distinctive characteristics, Capotorti insists that even implied will is sufficient. Henrad suggests that ‘the mere continued existence of the group could be regarded as sufficient proof of collective will’.⁵⁹

From the foregoing, it is clear that both objective and subjective elements are essential parts of the determination process, which makes it a more arduous task than it may initially appear. Objective elements include distinguishable aspects such as population size, distinctive characteristics, and the role of the concerned group in public life or its position in influencing the socio-economic and cultural aspects of its neighbouring societies. Subjective elements, on the other hand, encompass perceptions and social attitudes towards unique characteristics of the minority group. Determination of the status of minorities, therefore, requires a combining and thoughtful consideration of these elements to ensure fair and effective treatment of minorities and protection of their rights.

What justifies the promotion of minority rights or devising system of protection for minorities? Observers have forwarded a range of philosophical, moral, and legal justifications. The most common justification for minority rights has to do with the need to preserve distinct identities of minority groups and thereby ensuring accommodation of

⁵⁷ Henrad K (2000) 36.

⁵⁸ *McIntyre v Canada* Communications Nos. 359/1989 and 385/1989, UN Doc. CCPR/C/47/D/359/1989/Rev. (1993) para 11.2.

⁵⁹ Henrad K (2000) 37.

diversity.⁶⁰ As the Human Rights Committee stated it in its General Comment No. 23, minority rights represent yet another, and distinct, layer of protection, devised to 'ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, [thereby] enriching the fabric of society as a whole.'⁶¹ As Kukathas aptly observes, this does not 'belittle the idea of individual rights'.⁶² Rather, minority rights address some of the concerns not sufficiently answered by traditional human rights regimes. In this regard, Kymlicka argues that an individual human rights regime cannot, for instance, address minority groups' concerns in official language determination, distribution of public office posts, or on matters of integration.⁶³ Such a dearth of protection may cause injustice, which can potentially create tensions and conflicts.⁶⁴ This warrants a protection scheme that can address minority groups' sense of injustice, thereby contributing to the prevention of insecurity ensuing from these situations.⁶⁵

On the other side, however, one may argue that Article 27 of the ICCPR envisage a negative obligation in which the State only required to refrain from intervening into enjoyment of cultural, religious, or linguistic rights of individual members of a minority group. In this regard, the Committee explains that Article 27 also require the State to protect individual members of a minority groups from violations of their rights, which might come from the State itself or other actors.⁶⁶ Nevertheless, since the violation of the individual rights among members of minority groups threatens the survival of the group as a whole, the protection of minority groups can also be seen as part of the State's broader efforts to safeguard the rights and well-being of its members.

The protection of minorities and minority rights are also justified based on the principle of democracy. It is argued that the notion of democracy ought to recognise minority identities, guarantee individual and group rights, and provide protection of participation in decision-making processes to ensure everyone is on an equal footing.⁶⁷ This provides a means to ensure that the 'tyranny of majority' is curbed and to build a pluralistic society that

⁶⁰ Alam A 'Minority rights under international law' (2015) *Journal of the Indian Law Institute* 381.

⁶¹ UN Human Rights Committee International Covenant on Civil and Political Rights, *General Comment No. 23*, 8 April 1994, UN Doc CCPR/C/21/Rev.1/Add.5 para 1 & 9.

⁶² Kukathas C 'Are there any Cultural Rights?' (1992) 20 *Political Theory* 109.

⁶³ Geldenhuys D & Rossouw J 'The international protection of minority rights' (2001) *FW de Klerk Foundation* 7.

⁶⁴ Geldenhuys D & Rossouw (2001) 7.

⁶⁵ Geldenhuys D & Rossouw (2001) 9.

⁶⁶ UN General Comment No. 23 (1994) para 6.1.

⁶⁷ Kymlicka W & Rubio MR 'Liberalism and Minority Rights An Interview' (1999) 12 *Ratio Juris* 137.

accommodates the interests and needs of everyone.⁶⁸ Most importantly, democracy in its very nature, seeks to bring ‘all affected parties’ into the space where the decision is deliberated through a direct or an indirect representation scheme. As Horiuchi & Saito rightly articulated, representation bias often results in policy bias.⁶⁹ Hence, excluding segments of society for factors associated with population size, distinct identity markers, or marginalised historical position is indefensible, as it accentuates disenfranchisement of political representation and manufacture inequality. Representation is particularly important because it carries symbolic significance, providing minorities to see someone like themselves and someone they believe will speak for them.⁷⁰ Such descriptive representation may also result in substantive importance by promoting prudent deliberation among representatives, encouraging cooperation and thereby promoting the legitimacy of political system.⁷¹ Of course, the question of whether these representatives truly protect the interests of the groups they supposed to represent is not fully guaranteed.

It must, however, be noted that, from a liberal-democratic perspective, minority rights such as self-government, political representation, or language rights are justified forasmuch the protections are not inconsistent with the principles of liberal democracy and justice.⁷² Minority rights cannot be invoked to support claims of protection which would institute certain privileges for (members of) minority groups that cannot be justified by the demands of substantive equality.⁷³ This is why particularly devising effective protection mechanisms that result in the accommodation and not the ascendancy of minority interests becomes imperative.

Human rights are clearly important to members of minority groups, but insufficient in themselves to ensure the protection and promotion of the minority identity.⁷⁴ It has to be supplemented by comprehensive arrangements that can guarantee the effective implementation of such rights. These measures include constitutional recognition, guarantee of enforceable fundamental right and freedoms, autonomous or semi-autonomous self-administration rights, power-sharing arrangements in the executive and relevant public

⁶⁸ Wheatley S ‘Devising an Adequate System of Minority Protection; Individual Human Rights, Minority Rights and the Right to Self-Determination’ (2001) 8 *International Journal on Minority and Group Rights* 389.

⁶⁹ Horiuchi Y & Saito J ‘Reapportionment and redistribution: Consequences of electoral reform in Japan’ (2003) 47 *American Journal of Political Science* 680.

⁷⁰ Canon DT ‘Race and redistricting’ (2022) 25 *Annual Review of Political Science* 510-11

⁷¹ Canon (2022) 510-11.

⁷² Kymlicka W & Rubio MR 137.

⁷³ Henrad K (2000) 13.

⁷⁴ Wheatley S (2001) 389.

offices, minority veto power in fundamental interests, affirmative measures aimed at addressing historical inequalities in the areas such as education, healthcare, employment, or public service, and political representation in legislatures among other things. The following section focuses on electoral systems and how they can be used as mechanisms that can ensure political representation for minority groups.

2.3.Electoral Design as a System of Minority Rights Protection

As mentioned above, political representation is perhaps an essential aspect of minority rights protection regime. While it does not single-handedly guarantee the full and effective realisation of these rights, it holds a significant role in empowering members of minority groups to seek and hold official positions, and to have a voice in various levels of government.⁷⁵ This offers minority groups, not only a sense of being included,⁷⁶ but also a chance to influence over matters that affect them the most. International human rights laws are obliging states to respect the rights of minority individuals to effective participation in public affairs without discrimination.⁷⁷ To comply with such universal duty, states are required to devise a specific electoral design that aim to facilitate adequate representation of minorities.

Palermo identifies two major difficulties that any effort to devise an effective electoral design could face. The first is ‘the tension between the political representation of minorities and political representation as such’.⁷⁸ In its simplest sense, the rule of the game of democratic governance is ‘majority rule, minority protection’. This notion requires the minority group to abide by the rule of the majority. An electoral design that wishes to empower a minority section surely defies this notion. In cases where a minority group is empowered to have veto power over certain matters, the tension could worsen. The second aspect of the challenge relates with the tension between minority rights and the principle of equality. Here, too, whether a formal or substantive form of equality is envisaged under the electoral design, it may undermine, at least legally, the principle of equality and pertinent constitutional values.

⁷⁵ Reynolds A ‘Electoral systems and the protection and participation of minorities’ (2006) *Minority Rights Group International* 3.

⁷⁶ O’Brochta W ‘Ethnic representational priorities and political engagement in deeply divided societies’ (2022) 28 *Nations and Nationalism* 16.

⁷⁷ This includes Article 25 of the International Covenant on Civil and Political Rights (ICCPR); Article 5 (c) of the International Covenant for Combating Ethnic and Racial Discrimination (ICERD); Article 2 (2) of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Article 13 of African Charter on Human and Peoples’ Right (ACHPR)

⁷⁸ Palermo F & Woelk J ‘No representation without recognition: The right to political participation of (National) minorities’ (2003) 25 *Journal of European Integration* 226.

As Palermo states, ‘the fundamental choice is obviously of a political nature.’⁷⁹ Thus, any design option must find an optimal balance to navigate these challenges. We now turn to examine how various jurisdictions have addressed this challenge.

As sensibly conceptualised by Teorell & Lindstedt, electoral systems are generally determining how votes are casted and counted (the ballot structure), regulates number, hierarchy, and magnitude of electoral districts (the district structure), and establishes rules that guides how votes are translated into a parliamentary seat (the electoral formula).⁸⁰ Electoral systems are, therefore, important indicators of minority representation in the legislature, as they directly regulate matters that determine the proper realisation of representation. But there are also auxiliary measures, which may not necessarily be part of the electoral systems, that could also be considered as viable options in ensuring political representation for minorities.

The choice between two dominant families of electoral systems, namely the plurality/majority systems and the proportional representation (PR) systems, often take the major focus of ensuring political representation. The proportional representation (PR) system principally lies on a ‘conscious translation of votes into a corresponding proportion of seats in legislatures’.⁸¹ It is aimed at creating some sort of resemblance between the votes amassed by the party and the seats it is rewarded. In this sense, the system is praised for facilitating minority parties’ representation despite their limited share of the vote.⁸² The plurality/majority system, on the other hand, the oldest electoral system dating back at least to the twelfth century, is a constituency-based system.⁸³ Widely regarded as the simplest means of determining the outcome of an election, a candidate needs to win by polling more votes than any other single opponent or obtaining the majority of the vote. The stability of the government is one of the most acclimated virtues of the plurality system.⁸⁴ It is criticized on the ground that it manufactures a majority.⁸⁵

⁷⁹ Palermo F & Woelk J (2003) 226.

⁸⁰ Teorell J & Lindstedt C ‘Measuring electoral systems’ (2010) 63 *Political Research Quarterly* 435.

⁸¹ Reynolds A & et al. (2008) para 100.

⁸² It offers a range of options to establish a legislative body that is generally seen as representative of the entire population, including minorities, which helps to accommodate diversity. Widely acknowledged members of the PR system family are the Party-List PR, Single Transferable Vote (STV), and the Multi-Member Proportionality (MMP). Reynolds A & et al. (2008) para 100 & 104 (d).

⁸³ Norris P (1997) 299.

⁸⁴ Blais A ‘The debate over electoral systems’ (1991) 12 *International Political Science Review* 240.

⁸⁵ Norris P ‘Choosing electoral systems: proportional, majoritarian and mixed systems’ (1997) 18 *International political science review* 299.

Given the objective of the thesis, the focus here is facilitating minority representation in the plurality/majority system, which is constituency-based system. The rest of the chapter briefly discerns the natures of the plurality/majority electoral systems and then quickly moves to discussing the supplementary measures used to facilitate minority group representation.

2.3.1. The Plurality/Majority System and Protection of Minorities

As mentioned above, the plurality/majority system of election is a constituency-based system. A constituency refers to a specific geographic area which divides the national territory with a view to achieve an equal representation of its voters in a legislative body.⁸⁶ This system has different subcategories, which vary in their winning threshold, the number of candidates per constituency, and the availability of runoff or ranked voting arrangements. The most dominant form of this electoral system is the First Past-The-Post (FPTP) system. Under the FPTP, first and foremost, the country is divided into relatively equal constituencies from where members of the parliament will be drawn. Voters will vote for their favourite candidate who may be endorsed by a political party or run independently. In most cases, the candidates with the most votes from each constituency are declared the winner.⁸⁷ Individually each candidate or their political party nationally may not necessarily be required to secure a majority of the votes to be declared as a winner under the FPTP system. This might not be the case in some jurisdictions. In France for instance, the candidate is required to receive the majority vote to be declared as winner in a given constituency.⁸⁸ In cases where no candidate has received the majority, a runoff election will be held among the top two candidates who receive the most votes.⁸⁹ Similarly, Australia adopts another version of the majoritarian system in which its electoral system allows voters to rank their preferences.⁹⁰ Under this system, instead of a runoff election, the vote will be transferred to the next favourable voters until a candidate reaches the majority threshold.⁹¹

2.3.1.1. Gerrymandering

In the plurality/majority electoral system, irrespective of the form it takes, (re)drawing boundaries of electoral districts is a regular exercise under a process commonly referred to as

⁸⁶ ACE Electoral Knowledge Network ‘Electoral Boundaries’ available at <https://aceproject.org/main/english/lf/lfd13.htm> (accessed 10 March 2025).

⁸⁷ Reynolds A & et al. *Electoral system design: The new international IDEA handbook* (2008) International Institute for Democracy and Electoral Assistance 35.

⁸⁸ Courtney JC ‘Plurality-Majority electoral systems: A review’ (1999) 1 *Electoral Insight* 13.

⁸⁹ Courtney JC (1999) 13.

⁹⁰ Reynolds A & et al. (2008) 48.

⁹¹ Reynolds A & et al. (2008) 49.

delimitation or redistricting in various constituency-based jurisdictions. Basically, redistricting refers to a change in geographical boundaries of electoral districts in response to the population distribution.⁹² It aimed at responding to changes in demographics, election administration feasibility, political boundaries, or other relevant factors that affects proportional representation and thereby achieving equality of suffrage. In one or another, a change in electoral boundaries can alter election outcomes. When actors with conflicting interests influence the process of redistricting, it often results in what commonly describe as ‘malapportionment’ or ‘gerrymandering’ that favours a particular group, political party, or candidate over the other.

Gerrymandering Explained

From an electoral strategy that is aimed at chipping away at opponents to an electoral design that facilitates minority representation, gerrymandering has been popularised since its first conception in the United States in 1812.⁹³ Albeit in different form or recognition, it can be now found in many states with constituency-based electoral systems. Martinez & Lago found that gerrymandering is more likely to occur in single-member districts than multi-member districts system.⁹⁴

In its simplistic sense, gerrymandering can be understood as a process of deliberate skewing of electoral boundaries in favour of one party or a specific group.⁹⁵ This can be materialised in different forms. The most common forms of gerrymandering are those delimitations for partisan, bipartisan or ethnic/racial interests. Partisan gerrymandering refers to a situation where electoral boundaries skews in favour of the incumbent party who is in charge of the delimitation process.⁹⁶ Bipartisan gerrymandering on the other hand occurs when an independent delimitation process engages in a redrawing process that often maintains what each party already holds.⁹⁷ Here, the gerrymandering results an electoral outcome that does

⁹² Jovanovska TK ‘How the Seats Are Allocated in the Electoral Constituencies’ (2018) 9 *Iustinianus Primus L Rev* 11.

⁹³ The term is coined after the Governor of Massachusetts, Elbridge Gerry, approved a bizarrely shaped that is resembled a salamander redistricting plan designed to benefit his party.

⁹⁴ Martinez i Coma F & Lago I ‘Gerrymandering in comparative perspective’ (2018) 24 *Party Politics* 100. This, they suspected, has to do with the absence of redistricting in the proportional representation system. Even in a PR system with multi-member districts, they observe the challenge of foreseeing the advantage of redistricting since seat is not guaranteed due to higher number of parties entering the race and the narrower margins separating winners from losers.

⁹⁵ Jovanovska TK (2018) 12.

⁹⁶ Mehrotra A & et al. ‘An optimization-based heuristic for political districting’ (1998) 44 *Management Science* 1100.

⁹⁷ Mehrotra A & et al. (1998) 1100.

not overtly benefit one party. In other words, the aim of bipartisan gerrymandering is simply expressed as an arrangement where parties involved in the redistricting process agree to maintain the status quo.

In contrast, racial or ethnic gerrymandering refers to ‘redrawing district lines to advantage one racial or [ethnic] group of voters over another.’⁹⁸ Racial gerrymandering can be carried out in different forms,⁹⁹ but ‘packing’ and ‘cracking’ are the most widely used forms. Cracking occurs when the concentrated voting strength of a particular group is divided across one or more electoral districts, to ensure that their impact is limited in constituencies dominated by other groups.¹⁰⁰ Packing, on the other hand, refers to ‘grouping the supporters of a particular group in one constituency such that there will be a large number of votes which will foreseeably not have any impact on the election.’¹⁰¹

From the foregoing, it is clear that the essence of gerrymandering can be understood as a situation ensued from a particular constituency delimitation process. It resulted from manipulation of a redistricting process. However, the manipulation cannot categorically be regarded as problematic, as it might also results in ensuring political representation for minority groups. If and when the redistricting process is not jeopardising other equally important goals of equal suffrage, gerrymandering may rather be considered as yet another pragmatic approach to creating a more inclusive legislature. This notion presupposes that under the plurality/majority electoral system minority groups cannot be able to secure representation unless the electoral boundary is manipulated in their favour.

A very important caveat here is, of course, manipulating redistricting plans could go both ways, depending on the state’s policy towards minority groups protection. On one hand,

⁹⁸ Canon (2022) 510.

⁹⁹ Parker for instance identifies another form of racial gerrymandering, which he refers to as ‘at-large voting’ and ‘stacking’, besides ‘packing’ and ‘cracking’. For him, ‘at-large elections’, occurs where representatives are elected by the entire jurisdiction (notably city or town) rather than by smaller divisions and it can be discriminatory when the redistricting submerges minority voters within a majority group that holds overwhelming voting strength. ‘Stacking’, on the hand, occurs when ‘a large minority population concentration is put together with a larger white population with the purpose or effect of depriving minority voters of a voting majority.’ Unlike cracking, which disperses a minority population which has enough concentration that mandates separate representation across multiple districts to weaken its voting power, in stacking the map designers merge the minority population with the majority population rather than combining it with other minority community. Parker F ‘Racial Gerrymandering and Legislative Reapportionment’ in Chandler Davidson (ed) *Minority Vote Dilution* (1984) Howard University Press 86 – 99.

¹⁰⁰ Venice Commission ‘Report on Constituency Delineation and Seat Allocation’ available at [https://www.venice.coe.int/webforms/documents/?pdf=cdl-ad\(2017\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=cdl-ad(2017)034-e) (accessed 11 March 2025) para 88.

¹⁰¹ Venice Commission ‘Report on Constituency Delineation and Seat Allocation’ available at [https://www.venice.coe.int/webforms/documents/?pdf=cdl-ad\(2017\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=cdl-ad(2017)034-e) (accessed 11 March 2025) para 87.

minority voters could gain strong voting power when concentrated within the boundaries of a single electoral constituency. On the other, delimitation could result in dispersing minority voters, thereby diluting their voting strength. In the US, for instance, there have been multiple attempts to create minority-majority electoral districts—whether a White, Black, or Latino-American—for state legislatures or the House of Representatives. Yet, the outcomes of redistricting vary significantly, often resulting in either majority-majority electoral districts or minority-majority electoral districts. It is such differing effects, among other things, that concern redistricting commissions or bodies entrusted with such responsibility the most.

Electoral laws across many jurisdictions with the plurality electoral system often crafted principles that must be followed by redistricting commissions/bodies to ensure the redistricting process is not unfairly advantaging a particular group. Most importantly, these principles are imperative in scuttling the dangers of gerrymandering that negatively impacts minority groups or capitalising on its advantages in ensuring representation for minority groups. The following section therefore highlights some of these traditional principles of redistricting.

General Principles of Redistricting

As alluded earlier, the most important principle of redistricting is the principle of proportionality or what can otherwise be referred as population equality between electoral districts. This implies equal distribution of voting power among electoral districts. In other words, the population distribution ‘should be as equal as possible to ensure that all votes carry the same weight’.¹⁰² To say a voting power is proportionally distributed one could simply refer to the population quota allocated to each constituency. In this respect, the total number of the population inhabited in that constituency, the number of eligible voters, or the number of registered voters would serve as a reference point, depending on the concerned state electoral law. In any case, the voting power must be assessed with the fundamental maxim of ‘one person, one vote’.

Redistricting plan that impacts this principle of proportionality could be problematic and deemed incompatible with other equally important constitutional principles such as equality. This is why redistricting processes often invites judicial scrutiny in the US. In *Baker v*

¹⁰² Handley L ‘Challenging the Norms and Standards of Election Administration: Boundary Delimitation’ in Blanc J *Challenging the norms and standards of election administration* (2007) IFES 62.

Carr,¹⁰³ for instance, the plaintiffs claimed that the population inequality ensued from the state of Tennessee's failure to redistrict its legislative district resulted in what they referred to as a 'debasement of vote' and thereby denied the protection accorded to them by the Equal Protection of Clause of the Fourteenth Amendment.¹⁰⁴ The plaintiffs were basically concerned by the population change between 1901 and 1961 which significantly changed the number of qualified voters.¹⁰⁵ Although the court remanded the case to the district court, which had dismissed the action earlier, without considering the substantive question of equality for itself, in its concurring opinion one of the judges argued that the population distribution would imply the weight one person's vote carry and differentiation of votes weight depending on the county they are living in would constitute 'invidious discrimination'.¹⁰⁶

In another relevant case before the Supreme Court of the United States, the court held that geographical disparity must not result in unequal voting power, emphasising 'weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable'.¹⁰⁷ The plaintiffs were concerned with Alabama's legislature that remained in effect since 1900, despite the requirement of apportionment decennially.¹⁰⁸ They asserted that the population growth resulted in the population disparity among counties and thereby ensuing serious discrimination with respect to the allocation of legislative representation.¹⁰⁹ The defendants, on the other hand, argued that the apportionment may result in restructuring of the geographical distribution of seats in a state legislature. The court however dismissed this argument reasoning that the focus should not be on the change of the legislature size but rather upon ascertaining that constitutionally protected individual's right to vote is not violated.¹¹⁰ The court argued that 'if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly

¹⁰³ Before *Baker v Carr*, the issue of population equality between districts has been disputed since the oldest cases of gerrymandering. The most notable was *Wood v. Broom* in which an appeal was submitted against the 1929 congressional redistricting plan of Mississippi for alleged violation of the 1911's Apportionment Act. The Act required electoral districts to contain 'as nearly as practicable an equal number of inhabitants. However, the court dismissed the case, reasoning that the provisions of the Act on which the plaintiff's relied on had 'expired by their own limitation' by the time the appeal reached the court.

¹⁰⁴ *Baker v Carr* 369 U.S. 186 (1962).

¹⁰⁵ *Baker v Carr* 369 U.S. 186 (1962) 192.

¹⁰⁶ *Baker v Carr* 369 U.S. 186 (1962) 245.

¹⁰⁷ *Reynolds v Sims* 377 U.S. 533 (1964) 563.

¹⁰⁸ *Reynolds v Sims* 377 U.S. 533 (1964) 540.

¹⁰⁹ *Reynolds v Sims* 377 U.S. 533 (1964) 540.

¹¹⁰ *Reynolds v Sims* 377 U.S. 533 (1964) 561.

be contended that the right to vote of those residing in the disfavoured areas had not been effectively diluted'.¹¹¹

Proportional distribution of voting power also holds different meaning under single-member and multi-member districts.¹¹² In single-member districts, representatives under each district should be represented equal number of voters or general population. However, this cannot happen in multi-member districts since voters can vote more than one candidate, and more than one number of representatives are drawn from a constituency. The equality here is that not between the number of populations distributed among districts, but rather the number of representatives per constituency that should be proportional to the size of the electorate.¹¹³ In other words, the size of the electorate should be reflected in the number of representatives that ultimately become members of the legislative body, which implies that a representation would not be accepted if a smaller constituency receives more representation than its population.

Most importantly, the equality envisaged under this principle cannot be a perfect equality, as it is practically impossible. The ceiling of the disparity may be determined by the concerned state depending on its population or territorial size. To this end, several jurisdictions adopt a threshold where deviation could be acceptable. In Canada for instance this could be up to 25 per cent.¹¹⁴ Whereas in the US, there is no threshold for population deviation.¹¹⁵ This basically explains why 'a population deviation of just 19 people (0.0029%) was ruled unconstitutional in 2002 by a federal district court in Pennsylvania'.¹¹⁶

Generally, the equality of the population among electoral districts does not completely exclude the practice of gerrymandering. There must be strong justification to allow deviation from the one-person-one-vote principle. Hence, depending on justifiable goals the designers would provide, a minor percentage of population disparity between districts may not be problematic as such. However, significance disparities could be deemed unlawful, as they risk the principle of proportionality – resulting in malapportionment (unequal population disparity between districts) or gerrymandering (deliberative manipulation of districting). If deviation in population distribution cannot be justified by legitimate redistricting goals (fair

¹¹¹ *Reynolds v Sims* 377 U.S. 533 (1964) 562.

¹¹² Handley L (2007) 62.

¹¹³ Handley L (2007) 62.

¹¹⁴ Handley L (2007) 62.

¹¹⁵ Handley L (2007) 62.

¹¹⁶ Validi H & et al. 'Imposing contiguity constraints in political districting models' (2022) 70 *Operations Research* 869.

and effective representation) or mitigated through alternative measures (such as compactness, respect for political boundaries), a minor deviation in population equality would be deemed unconstitutional and as violative of the one-person-one-vote principle.

Another relevant principle of redistricting are the requirements of compactness and contiguity of electoral districts.¹¹⁷ In their simplest sense, compactness and contiguity refer to the shape and contours of an electoral district.¹¹⁸ At their core, however, both concepts involve contention when attempting to draw constituency boundaries as deciding where to begin and how to determine the end point require a deliberative assessment of population dynamics along with politically relevant identity markers within a given society. A community's shared interests and traditional political boundaries could also serve as determining factors in redistricting. In this sense, compactness and contiguity are not only essential principles that redistricting commissions must follow to ensure fairness but also necessary elements whose observance, or lack thereof, can potentially guarantee or deny political representation for minority groups.

The principle of contiguity implies that districts should be connected on all sides. This concept of connectivity has seemed unproblematic and generates little dispute, as non-contiguous constituencies are rare in practice. However, as Forest & Medeiros have rightly observed, contiguity has not occurred merely because electoral district boundary drawers are avoiding disconnection, but rather because it is often implemented as such.¹¹⁹ Fragmented electoral districts can be drawn either to strengthen the voting power of a particular group or to weaken it. One could imagine a non-contiguous electoral district designed to empower a minority group dispersed across multiple subnational or substate units. Although such fragmentation may enhance representation for minority groups, it could also imaginably result in separation of voters with similar interests. Voters who share a certain geographic area may be impacted by a redistrict plan that does not consider their shared interests. For instance, a voter in an offshore or outskirt area may benefit from a contiguous electoral district that connects like-minded individuals, as their representative could better advocate for shared concerns such as sewage and garbage disposal. Arguably, redistricting based on shared interests could also be considered as a gerrymandering, as it creates a particular

¹¹⁷ See for instance: *Gomillion v Lightfoot* 364 U.S. 339 (1960), *Karcher v Daggett* 462 U.S. 725 (1983), *Davis v Bandemer* 478 U.S. 109 (1986), and *Shaw v Reno* 509 U.S. 630 (1993).

¹¹⁸ Siegel JS 'Geographic compactness vs. race/ethnic compactness and other criteria in the delineation of legislative districts' (1996) 15 *Population Research and Policy Review* 148.

¹¹⁹ Forest B & Medeiros M 'Contiguity, constituencies, and the political representation of minorities' (2021) 39 *Environment and Planning C: Politics and Space* 881.

electoral outcome. Either way, as Forest & Medeiros have reported, ‘electoral districts with mixed populations and interests would discourage political factions and encourage political moderation’. Nevertheless, the decision to prioritise minority groups representation, community interests, or a blend of both remains a political choice that depends on the most relevant factors within that given country’s context.

On the other hand, the principle of compactness ‘attempt to measure the irregularity of a district’s shape, or, in other words, [it] captures its ugliness’.¹²⁰ Essentially, compactness is the key to fairness and obtain contiguous and proportional electoral districts. However, there is no universally agreed formula to measure whether electoral districts are compact, despite several attempts in the US and beyond.¹²¹ In *Shaw v. Reno*, for instance, the court simply affirmed that electoral districts should not have grossly irregular boundaries or bizarrely shaped. Having compact electoral districts is not of course without drawbacks. More compact districts often become safe zones for the concentrated community, which can lead to guaranteed electoral outcomes for a party that is favourable in that community. However, the relationship between compactness with fairness is contentious. Cain, who himself oversaw redistricting processes multiple times, argues that compactness has neither a logical connection nor empirical supports in respect of fairness. He argues that adjusting electoral districts to provide minority parties or groups fairer representation often requires violating political boundaries or concentrating minorities into a single district, which, in practice results in noncompact districts.¹²²

Last but not least, redistricting must respect existing political boundaries. The need to consider political boundaries during redistricting is linked to the associated benefits of persevering communal interests. Administrative units are commonly organised based on specific shared interests. For instance, urban and rural areas, or industrial and agricultural areas, each have their own distinct, defined interests. Electoral districts that respect political boundaries enables representatives to defend these clear interests more effectively, rather than blending them.¹²³ It is important to preserve local ties, thereby to build strong relationships between the members of parliaments and the local community. Non-consideration of political

¹²⁰ Altman M *Districting principles and democratic representation* (PhD Thesis, California Institute of Technology, 1998) 5.

¹²¹ Teorell J & Lindstedt C (2010) 435.

¹²² Cain BE ‘The Reapportionment Puzzle’ (1982) 45 *Engineering and Science* 9-10.

¹²³ Cain BE (1982) 7-8.

boundaries in redistricting has implication in electoral administrative implication, in terms of voter registration and ballot paper. It may also create confusion on voters.

From the foregoing, it is clear that ensuring minority group representation alone does not justify the fairness and effectiveness of the delimitation, as malapportionment violates the fundamental principle of one-person-one-vote. Similarly, concentrating minority voters within a compact electoral district may be considered arbitrary unless its impact on the remaining electoral districts is mitigated through alternative measures such as equal apportionment. The population within an existing administrative unit may share similar challenges regardless of their ethnic, racial, political background. Hence, respecting existing political boundaries is equally important, as it helps to ensure that voters with shared socio-economic interests are grouped together. In sum, the delimitation of electoral constituency boundaries must be carried out in manner that does not unduly infringe upon the proportional disparity of voting power, the compactness and connectivity of electoral constituencies, and existing political boundaries.

2.3.1.2. Seat Reservation¹²⁴

Electoral successes can be attributed to a combination of factors, including the electoral system, apportionment, or resource access, in which minority groups are often disadvantaged. Reserving seats in legislatures aimed to overcome these and other structural challenges faced by minority groups and to provide guaranteed representation is common.¹²⁵ Generally, the practice of seat reservation can be understood as ‘politically ensured’ or ‘legally guaranteed’ representation.¹²⁶ In the first case, representation is facilitated through political measures such as exemption of electoral thresholds. Germany, for example, exempted minority parties from the five per cent nationwide vote threshold that parties must secure in federal and state elections in order to obtain seats in parliament.¹²⁷ In the second case, a predetermined number of seats will be reserved for the specific group concerned with representation. In New Zealand, seven seats are guaranteed for the Maori people in the national parliament.¹²⁸¹²⁹

¹²⁴ The discussion over the practice of seat reservation often refers to the border category of vulnerable groups such as women, persons with disabilities, ethnic, language, or religious minorities, etc. However, this study focuses on minority groups with ethnic, language, or religious characteristics.

¹²⁵ Palermo F & Woelk J (2003) 235.

¹²⁶ Palermo F & Woelk J (2003) 235

¹²⁷ Federal Elections Act, Section 6 sub-3. The South-Schleswigian Voter’s Association (SSW) party has 4 seats in the State Parliament of South Schleswig, representing the Danish and the Frisian Minority. <https://www.landtag.ltsh.de/en/> (accessed on 06 April 2025).

¹²⁸ While the 1993 Electoral Law established seven Maori constituencies from which these seven representatives will be drawn, actual representation will be achieved if the Maori voters choose to enrol in these constituencies.

Some of the regional councils, particularly those areas with significant Maori populations similarly reserves certain seats in their respective councils.¹³⁰

However, seat reservation has practical intricacies. There is no reference point in determining the number of seats to be reserved, or how the electoral population should be defined.¹³¹ There is also no clarity on how the representatives should be chosen. In some cases, as in New Zealand and Fiji, the form of representation is communal in a sense that representatives of the reserved seats are elected only by members of the minority group designated in the law. In other case, like the case of Romania, the electorate is open for members of the minority group and the majority group.¹³² There was no constraint on who within the entire Romanian electorate could cast a vote for a minority electoral organisation.

Additionally, seat reservation influences how political parties or representatives behave. In such cases, the representatives might be encouraged to defend the minority group they are representing not only to secure re-election but also to ensure substantive representation.¹³³ However, when both the electorate and the candidacy closed for the general population, the quality of representation may suffer as a result of the limited candidate pool and minority voter sense of complacency in a representation thereby discouraging holding representatives accountable.¹³⁴

In some cases, the compatibility of reserved seats with the principles of equality of votes and universal suffrage are disputed. In Croatia, for instance, a petition was filed against constitutional provisions that allows minority groups comprising less than eight per cent of the country's population to have between five and seven representatives in the national parliament.¹³⁵ However, the Constitutional Court rejected the petition, holding that franchising minorities the special right to elect representatives did not discriminate between

¹²⁹ Among others, Croatia (for Serb, Hungarian, Italian, Zech/Slovak, Ruthenian/Ukrainian/German/Austrian), Fiji (Indians), India (Scheduled Castes, Scheduled Tribes, Anglo-Indian), Niger (Tuareg), and Slovenia (Hungarians, Italians), adopts similar arrangements. Reynolds A (2006) 15–8.

¹³⁰ The Bay of Plenty Regional Council, for example, created three Maori constituencies through the Bay of Plenty Regional Council (Maori Constituency Empowering) Act in 2002. Hayward J 'Mandatory Maori wards in local government: Active Crown protection of Māori Treaty rights' (2011) 63 *Political Science* 192.

¹³¹ Morris S *Mechanisms for indigenous representation, participation and consultation in constitutional systems: international examples to inspire Chile* (2021) International Institute for Democracy and Electoral Assistance 12.

¹³² King RF & Marian CG 'Minority representation and reserved legislative seats in Romania' (2012) 26 *East European Politics and Societies* 567.

¹³³ Kroeber C 'Exploring the impact of reserved seat design on the quality of minority representation' (2017) 16 *Ethnopolitics* 201.

¹³⁴ Kroeber C (2017) 202.

¹³⁵ *Constitutional Court of Croatia*: Judgement of 12.4.2001, No. U-I-732/1998, Official Gazette of the Republic of Croatia No. 36/2001.

the majority and minority population, nor among minority communities themselves.¹³⁶ The Constitutional Court argued that the application of the principle of positive discrimination is not necessarily regarded as unconstitutional as the principle of equality does always provide for sufficient protection.¹³⁷ In explaining why the principle of equality is not sufficient, the Constitutional Court stated that ‘if the principle of equality was immediately applied alone, ... the special characteristics and specific interests of the minority national and ethnic communities in the society would be neglected, which might, in certain cases, lead to discrimination’.¹³⁸ To this end, the decision affirmed that reserving a parliament seat for minority group would allow the concerned group to make its interests more visible and thereby promote its advantages.

The concerns on the practice of seat reservation also extends to its implied effect in creating separate electorate. Because minority parties are required to appeal for the concerned group only, the system of reserved seats, unless supported by other mechanism, provides the parties little to no incentives to appeal beyond their constituency. This, it is often argued, is problematic as the system might breed resentment on part of the majority population and shore up mistrust between various cultural groups.¹³⁹ An electoral design that would give rise to a representative legislature without overt manipulation of the arrangement, some argue, is therefore recommendable in lieu of a quota system.¹⁴⁰

2.3.1.3. Extraterritorial Voting Rights

The right to take part in elections is recognised under international and regional human rights systems as well as in constitutions. The Universal Declaration of Human Rights established the foundational principle that everyone has the right to participate in elections and take part in the governance of their country.¹⁴¹ It envisions an election, where everyone, through universal and equal suffrage, can freely participate in a periodic and genuine process on which government power will be based.¹⁴² Article 25 of the International Covenant on Civil and Political Rights (ICCPR) reaffirmed largely alike principles of the right to participate in

¹³⁶ *Constitutional Court of Croatia*: Judgement of 12.4.2001, No. U-I-732/1998, Official Gazette of the Republic of Croatia No. 36/2001.

¹³⁷ Petricusic A ‘Constitutional law on the rights of national minorities in the Republic of Croatia’ (2002) 2 *European Yearbook of Minority Issues Online* 611-2.

¹³⁸ Petricusic A (2002) 611-2.

¹³⁹ Reynolds A & et al. (2008) para 152.

¹⁴⁰ Reynolds A & et al. (2008) para 153.

¹⁴¹ Article 21(1) UN General Assembly Universal Declaration on Human Rights (1948) 217 (III) A.

¹⁴² Article 21(3) UN General Assembly Universal Declaration on Human Rights (1948) 217 (III) A.

elections.¹⁴³ The obvious change in the ICCPR's formulation is the shift from 'everyone' to 'every citizen'. Other human rights instruments also provide complimentary recognition to participatory rights, including the right to vote within the context of their respective thematic focus and protected groups.¹⁴⁴ The right to public participation encompasses both aspects of participating in election, as voters (active voting rights) and candidates for election (passive voting rights). While an act of casting a vote implies voters right to elect, the latter pertains the right to stand for election.

Article 25 of the ICCPR as well as the rest of the rights regimes reveal essential components of the right to participate in elections. To begin with, unlike other political rights, such as freedom of association, the protection accorded to the right to vote under Article 25, does not extend to everyone but are confined to individual citizens. Nonetheless, it does not mean differential treatment is not allowed between citizens in the enjoyment of their voting rights. This may be allowed under exceptional situations. The phrase 'without unreasonable restrictions' implies this exception.¹⁴⁵ In General Comment 25, the United Nations Human Rights Committee observes that conditions attached to the enjoyment of the right to elect and be elected, or the permanent exclusion or temporary suspension of these rights, may be permitted on objective and reasonable grounds established by law.¹⁴⁶ The Committee implies that age limitation or mental capacity are not discriminatory grounds to limit or deny enjoyment of these rights.¹⁴⁷ Nevertheless, in some countries, discriminatory legislation and practices have been observed most commonly against prisoners and minority voters. The European Court of Human Rights, for instance, found deprivation of minority voters the right to vote in a number of cases. In *Aziz v. Cyprus*, the Court found that electoral rules denying the applicant, a member of the Turkish Cypriot community, registration in the Greek Cypriot

¹⁴³ Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
- (c) To have access, on general terms of equality, to public service in his country.

¹⁴⁴ Article 7 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Articles 5 and 18, United Nations Declaration on the Rights of Indigenous Peoples; Article 29, United Nations Convention on the Rights of Persons with Disabilities.

¹⁴⁵ Fox GH 'The right to political participation in international law' (1992) 17 *Yale journal of International Law* 554.

¹⁴⁶ UN Human Rights Committee International Covenant on Civil and Political Rights, *General Comment No. 25*, 12 July 1996, UN Doc CCPR/C/21/Rev. 1/Add. 7 para 4.

¹⁴⁷ UN General Comment No. 25 (1996) para 4.

community electoral roll treated the applicant differently, based on his community membership, thereby constituting discrimination.¹⁴⁸

Further, article 25 requires the observance of universal and equal suffrage in genuine periodic elections held by secret ballot, guaranteeing the free expression of the will of the electors. The importance of this requirement is evident in the fact the Covenant's *travaux préparatoire* demonstrates that the various requirements of the article that elections must be 'genuine', 'periodic', and 'by secret ballot', did not give rise to much discussion, except for the principle of 'universal and equal suffrage'.¹⁴⁹ The delegates were concerned that the terms 'universal' and 'equal' might be redundant, given the introductory clause and non-discrimination section of the article.¹⁵⁰ The principle was, however, retained as majority of the delegates were convinced that universal and equal suffrage is a fundamental aspect of a fair election. In short, the notion of universal and equal suffrage guarantees the inclusivity of all eligible voters, ensuring that each vote carries equal value. The equality aspect of suffrage implies the electorate's equal participation and proportional representation.¹⁵¹ The universality, on the other hand, require an inclusive suffrage of the electorate.

However, the suffrage has been limited as it was an 'exclusive right' of a certain group who possessed qualifying attributes, like property, or the 'right'-religion, sex, or race in the past.¹⁵² Despite the widespread recognition of universal and equal suffrage in electoral laws worldwide, suffrages are still limited due to factors such as incompetency (like age, mental/psychosocial and intellectual disability) or disenfranchisement (like citizenship, residency, and criminal conviction). Of these, the following paragraphs focus on one of the grounds for limitation of the right to vote – residence – owing to its paramount importance to the case study this thesis will elucidate in forthcoming chapters.

Who can vote? This is one of the one of the most crucial questions in any electoral system. Often, residency, in addition to citizenship, plays a key role in determining eligibility to vote. As noted in Chapter One, the electoral system used in Harari, however, deviates from the requirement of residency. The electoral design enfranchised members of a minority group with the right to vote on the basis of their ethnicity regardless of their residency, which is

¹⁴⁸ *Aziz v Cyprus*, Application No. 69949/01, Council of Europe: European Court of Human Rights (2004).

¹⁴⁹ Annotation by Secretary-General of the Draft International Covenants on Human Rights, U.N. GAOR, 10th Sess., Supp. No. 19, U.N. Doc A/2929 (1955) para 174.

¹⁵⁰ UN Annotation (1955) para 174.

¹⁵¹ Venice Commission (2017) para 88.

¹⁵² Pearse H 'Children, Voting, and the Meaning of Universal Suffrage' (2024) 22 *Political Studies Review* 823.

required under the Ethiopian electoral system to determine voter eligibility. One of the questions this study examines in chapter three relates to the justification for the deviation from the residency requirement in determining voter eligibility for a subnational legislature election. To the author's knowledge, there is no parallel case study that fits this situation for a comparative discussion. Given that, this section will briefly discuss the traditional understating of residency requirements and contemporary debates that revolve around the irrelevance (or otherwise) of the residency requirements in determining suffrage. The aim is to elucidate principles and considerations that must be considered in examining the decision to deviate from the residency requirement.

Traditionally, suffrage has been limited on the grounds of residency, despite the lack of explicit recognition of objectivity and reasonableness of residency-based restrictions on the right to vote under the international human rights system.¹⁵³ The Committee observes that the right to stand for election cannot be restricted based on residency,¹⁵⁴ although it does not explicitly recognise whether such notion is extended to active voting rights, the right to vote. Besides, the Committee refers to residency while explaining the State's duty regarding the right to vote. It notes that 'States must take effective measures to ensure that all persons entitled to vote can exercise that right'.¹⁵⁵ In implying what those measures might include, the Committee takes homeless persons as an example and, implies that if the residency requirement for voter registration results in the exclusion of such persons from participating in elections, it cannot be regarded as a permissible restriction.

But what mostly concerned us in this study is what explains the relevance of residency requirements in exercising the right to vote. The answer to this question would come from different perspectives, which also turns the focus of the following discussion into contemporary debates on residency-based limitation of the right to vote. The issue of whether residence should be relevant (or otherwise) in determining eligible voters holds at least three aspects. One aspect of the discussion focuses on the issue of whether non-citizen permanent residents, immigrants, for instance, should be allowed to exercise the right to vote in their residing country. Similarly, another aspect of the discussion questions whether non-resident citizens should be allowed in their country of origin. Lastly, the discussion on residency also

¹⁵³ Lappin R 'The right to vote for non-resident citizens in Europe' (2016) 65 *International & Comparative Law Quarterly* 861.

¹⁵⁴ UN General Comment No. 25 (1996) para 15.

¹⁵⁵ UN General Comment No. 25 (1996) para 11.

must be seen from an electoral system perspective. The following discussion, therefore, assesses these three aspects of residency.

As noted above, unlike other civil and political rights, the right to vote is associated with citizenship. As is true for many countries, citizens residing overseas do not get the chance to participate in elections, which implies suffrage limitation based on residency. However, the suffrage that started its expansion initially towards expat government and military personnel gets a momentum with ‘the aftermath of international wars or transition of democracy’ and has now become a global phenomenon.¹⁵⁶ First introduced in Australia in 1902, voting from abroad¹⁵⁷ in national elections has become a common practice, with about 19 countries providing it some form of recognition.¹⁵⁸ Interestingly, in some countries, the right has been extended to include the right to stand for election from abroad.¹⁵⁹

This extended application of voting rights is often justified by arguments based on universal suffrage, consolidation of democracy, and peacebuilding. First, international human rights laws and national constitutions’ references to ‘every citizen’ and ‘universal suffrage’ is invoked to support voting from abroad as it implies similar treatment of citizens in the enjoyment of voting rights.¹⁶⁰ This argument mainly relies on the nature of the obligation the right imposed on the government to ensure that every citizen has equal opportunity to participate in constituting a government. To this end, proponents of the extension of suffrage for overseas voters opined that the state must take necessary measures to ensure every right holder participates in elections, thereby ensuring equality and protecting against statelessness.¹⁶¹ Direct or indirect participation of the citizens in public affairs is also often viewed as contributing to democratic consolidation.¹⁶² Similarly, expatriates’ involvement, particularly in post-conflict elections, is believed to help enhance the legitimacy and

¹⁵⁶ Lappin R (2016) 870.

¹⁵⁷ ‘The practice of casting votes from outside the national territory has been given many names, including external voting, emigrant voting, expatriate voting, diaspora voting, absentee voting, out-of-country voting, transnational voting, distance voting, and remote voting.’ Lafleur JM ‘The enfranchisement of citizens abroad: variations and explanations’ (2015) 22 *Democratization* 841.

¹⁵⁸ Lappin R (2016) 870.

¹⁵⁹ Lafleur JM (2015) 845.

¹⁶⁰ Lappin R (2016) 873.

¹⁶¹ Lappin R (2016) 873.

¹⁶² Ellis A & et al. *Voting from abroad: The international IDEA handbook* (2007) International Institute for Democracy and Electoral Assistance 137.

sustainability of a post-conflict government that imaginably would be ill-equipped to consolidate peace and security.¹⁶³

However, the extension of the suffrage to expats raises two interrelated and recurring objections. These are related to the issue of whether the extension solely depends on citizenship or whether this should solely extend to those who can establish a bond with and are 'temporarily' absent from their origin of country or everyone without a period of limitation.¹⁶⁴ In other words, should a person who has resided abroad for several years be allowed to vote simply because s/he is a citizen? Or should there be a time limit? For how many years? Or should he have to show some interest in voting in the country of his citizenship? What kinds of circumstances can be regarded as evidence of such interest? Can we regard paying taxes, sending remittances, transferring skills acquired by living in another country, investing the wealth he has generated, or returning to the country from time to time, etc., as plausible reasons for a person to establish a bond with her/his country of origin? The practice raises these and several other questions.

While the world has come a long way towards recognizing the practice of voting from abroad, another critical issue was parallelly unfolding from the non-citizen permanent resident perspective. With migration becoming an undeniable phenomenon around the globe, the traditional practice of denying non-citizen permanent residents the right to vote based on citizenship has come under scrutiny. Over the years, naturalization has served as the only option for non-citizen permanent residents to participate in elections.¹⁶⁵ However, it is argued that the exclusion of migrants from voting based solely on the grounds of citizenship is problematic based on the claim that 'the principle of democracy requires that 'all affected persons' must be included in the demos'.¹⁶⁶ The argument is that since migrants are directly affected by the laws and decisions of politicians, and they have the potential to establish the tie non-resident citizens expected to show, the suffrage must be extended for non-citizen permanent residents. It is against such backdrop that many European democracies have relaxed their electoral laws and allowed EU citizens to vote in local elections, and some other

¹⁶³ Ellis A & et al. (2007) 137.

¹⁶⁴ Lappin R (2016) 873.

¹⁶⁵ Le Roux W 'Residence, representative democracy and the voting rights of migrant workers in post-apartheid South Africa and post-unification Germany (1990-2015)' (2015) *Verfassung und Recht in Übersee* 273.

¹⁶⁶ Le Roux (2015) 274.

countries now allow non-citizens permanent or long-term residents to participate in national elections. This is the case, for example, in New Zealand.¹⁶⁷

Finally, relevance of the residency requirement has also a link with the electoral system in place. In countries with constituency-based electoral system, residence plays a key role in determining voter eligibility and establishing representative's accountability. To this end, electoral laws may require voters to cast their vote in the area where they are residing. Similarly, in those jurisdictions where prior voter registration is required, citizens who do not reside in a specific area for a certain period of time may be ineligible to vote.¹⁶⁸ For example, in Australia, voters must provide proof of residence for at least one month in the area they wish to register and vote.¹⁶⁹ As warranted under the international human rights system, voters who temporally leave their residence may be provided with a chance to vote from the place of their temporal location.¹⁷⁰ The list may vary in every jurisdiction, but this protection may be extended for government officials, students, military personnel, and internally displaced persons whose residence temporarily changed for various reasons. Partly the reason electoral laws give emphasis for residence has a lot to do with the essence of political representation. In this regard, the logical link between residency and constituency-based representation can easily be discernible from the fact that representation indeed implies to territorial scope of the interest to be represented. Perhaps it may be such territorial connection of the electorate and the representative that explains the widely acknowledged advantage of the plurality/majority electoral system in holding individual representatives accountable. Additionally, residence could also be important for the person who wants to be the representative of a particular constituency. Here too, it assumes a person can only represent a given constituency in an effective manner if only that person is residing in that area. Some countries with the plurality/majority electoral system also allow anyone who was born and grown in that particular constituency to run for the election even though s/he at the time of the election was not residing there.

¹⁶⁷ Lenard PT 'Residence and the Right to Vote' (2015) 16 *Journal of International Migration and Integration* 121. For a wider discussion about New Zealand's suffrage model see, Barker F & McMillan K 'Constituting the democratic public: New Zealand's extension of national voting rights to non-citizens' (2014) 12 *New Zealand Journal of Public and International Law* 61-80.

¹⁶⁸ ACE Electoral Knowledge Network 'Residence' (2025) available at <https://aceproject.org/main/english/lf/lfd01b.htm> (accessed 10 March 2025).

¹⁶⁹ <https://www.aec.gov.au/enrol/#basics> (accessed 10 March 2025).

¹⁷⁰ Lappin R (2016) 885.

2.4.Concluding Remark

Devising fair and effective electoral design that accommodates both minority and majority group interest is a Sisyphean exercise, as determining who the minorities are is itself a challenge. Constitutional designers must first engage with the question of ‘who are the minorities?’ before addressing what sort of design option best accommodating is. This may not be problematic in countries with a clear majority population, but it is a significant case in Ethiopia, or most countries with federal characteristics.

A key consideration for those designing constitutions is how to protect minority groups. Specifically, the choice of an electoral system—typically between the plurality/majority model and the proportional representation system—requires thorough deliberation. It is essential to ensure that minority groups are represented while also considering how the chosen system will influence political culture and voter behaviour, along with broader concerns about governance efficiency and sustainability.

Various jurisdictions adopt a range of electoral arrangements aimed at ensuring fair and effective representation for minority groups. Arguably, gerrymandering offers a way to empower minority population by strengthening their voting power through deliberate boundary adjustments. However, strict cautions are required to ensure equal populations distribution across electoral districts, geographic compactness and contiguity, respect for existing political boundaries, and regular updates to reflect actual changes in circumstances. Failure to observe these principles risks unfairness and distorted political representation. Additionally, practices such as seat reservation, special voting arrangements, and other affirmative measures have been implemented in different jurisdictions with a view to facilitate or guarantee minority groups political representation.

Chapter Three: Seats Reservations, Gerrymandering, and Extraterritorial Voting Rights in Harari: Origin, Compatibility, and Prospect

3.1.Introduction

This chapter deals with the genesis, implementation, and prospects of the electoral design in Harari. The composition of its bicameral legislative council is the focus of the discussion. One chamber of the state council is reserved for members of the Harari ethnic group. The other chamber is open to the general population, where the state's residents would be elected. The right to vote in the election of members of each assembly is also different. Members of the first assembly are only elected by voters belonging to the Harari ethnic group. The second chamber is composed of members elected by all eligible state residents. This chapter, therefore, seeks to inquire about the justifiability and compatibility of the electoral design with the fundamental principles of the constitutional framework in place, as well as the principles of seat reservation, gerrymandering, and voting rights. Both the historical and contemporary position of the Harari people in the Ethiopian polity serve as a defining measurement in examining the electoral design's compatibility and speculating its future.

The chapter is organised in five sections. The discussion commences by looking into Harar's positions in historical Ethiopia and the political structure in place since 1991. This is vital to understand the background for the adoption of gerrymandering and special voting rights schemes in Harari. The second section recapitulates the state of Harari and its electoral design, followed by a discussion that outlines the justifications provided by the Council of Representatives of the Transitional Government and the state officials for adopting such a design. The third section examines the normative compatibility of the arrangements with both federal and state constitutions as well as general principles applicable to electoral systems. This section briefly reminds how the gerrymandering, seat reservations, as well as the extraterritorial voting rights are functioning in Harari, discern the benefits and challenges associated with each arrangement, and engage with the question of whether these arrangements are valid against the principles discussed in the previous chapter. Before the concluding notes, section four speculates on the design's constitutional and extraconstitutional prospects. The last section provides concluding remarks.

3.2. Overview of the State of the Harari People

3.2.1. Historical Harar (Harari before 1991)

Harar¹⁷¹ has moved through different historical epochs over the past millennia. While accounts claim its ancient history dates back to some 7,000 years,¹⁷² its heyday is associated with the expansion of Islam and the rise of medieval period Muslim Sultanates in today's southern, eastern, and central Ethiopia, between the 9th and 15th centuries.¹⁷³ Harar's dominance was particularly evident between 1415 and 1577 under the Adal Sultanate, the mighty Muslim empire. Trimingham reported that 'throughout this period there was an expansion of the slave trade and a corresponding development of Muslim coastal trading centres' that includes Zaila and Berbera harbours.¹⁷⁴ It was a time when Harar's brilliant civic life was evident through the 'richly laden caravans from religious procession, the brilliance of the sultan's courts, and the encouragement of Islamic learnings and the arts.'¹⁷⁵

Harar's zenith started declining in the 16th century that was marked by internal strife and series of incursions, first, from Ahmed Ibn Ibrahim (1517-1543) and then, the Oromo movement (1522-1604), both imperilled Harar's link with Zaila and brought upon state of economic decline.¹⁷⁶ Amir¹⁷⁷ Ali ibn Daud (1647-1662) revived the Muslim Kingdom and changed it from militant kingdom into city-state of trade, culture and Islam propagation that is confined within stone wall.¹⁷⁸ It is widely recorded that Amir Nur built the Wall, locally known as the Jugol, to further strategic defence against the serious risk posed by successive plundering by the nomadic Afars, Somalis, and the Oromo. To make things worse, however, Harar's dynasties were further weakened by Egyptian occupation between 1875 and 1885.¹⁷⁹ After the Egyptian withdrawal in 1885, Menelik, King of Shewa, the Southern end of the Ethiopian Christian Kingdom, began to march to Harar. In 1887, Amir Abdullahi bin

¹⁷¹ The term 'Harar' refers to the historical land of the Harari people.

¹⁷² Ahmed W *History of Harar and the Hararis* (2015) Harar: Harari People Regional State Culture, Heritage and Tourism Bureau 39.

¹⁷³ Ahmed W (2015) 45-6.

¹⁷⁴ Trimingham JS *Islam in Ethiopia* (1952) Oxford University Press 61.

¹⁷⁵ Trimingham JS (1952) 95.

¹⁷⁶ Trimingham JS (1952) 95.

¹⁷⁷ The term is used to refer the title of the ruler, equivalent to 'King'.

¹⁷⁸ Balkew ET *Human Rights and Exogenous Ethnic Minorities in the Federal Democratic Republic of Ethiopia: The Case of Harari People's State* (LLM Thesis, Addis Ababa University, 2010) 60.

¹⁷⁹ Ahmed W (2015) 85-90.

Muhammad, the last Amir of Harar, was defeated by Menilek's forces at the Battle of Challanqo, which led to Harar's incorporation into the Ethiopian empire.¹⁸⁰

The incorporation of Harar into the Ethiopian empire was marked 'the establishment of permanent Amhara administrative centres' in Harar and neighbouring Oromo areas.¹⁸¹ It also marked by the confiscation of the land owned by the Amirs and the local population. The land was distributed among the empire's government officials, soldiers, and the Church.¹⁸² It is believed that this largely changed the ethnic dynamics, and Christianity began to spread both within and around the city.¹⁸³ It attracted the attention of successive leaders of Ethiopia and 'became the centre of government institutions next to the Capital, Addis Ababa.'¹⁸⁴ This further increased the ethnic diversity of the City due to centralisation and modernisation, individuals migrated from other place in search of better life. However, subsequent historical episodes under the reign of Emperor Haile Selassie (1930-1974), the last emperor of Ethiopia, and the Marxist Derg regime (1974-1991) had their own impact on the ethnic composition of present-day Harar.¹⁸⁵ In particular, the Italian invasion in 1935, the Derg regime's policy of forced conscription of youth, and the 1977/8 Ethio-Somali War led to a mass exodus and dispersal of Hararis throughout Ethiopia and overseas.¹⁸⁶

3.2.2. Harari in Post-1991

By 1991, when the seeds of the current constitutional dispensation were being planted, Harar was demographically dynamic. The Hararis, whose population size shrunk and remained inside the Jugol over the past historical epochs, were overwhelmingly dominated by the Amharas and Oromos, who predominantly resided in the newly expanding urbanist and rural areas outside of the Jugol. The removal of the military regime by rebel groups in May 1991 marked the dawn of a new political chapter for Harar. The Transitional Government of Ethiopia (TGE/the transitional government), which was established on June 02, 1991, upon the adoption of the Transitional Period Charter (the Charter), was the main architect of Harar's current political position. In 1992, the Council of Representatives, the legislative body of the Transitional Government established by the Charter, redesigned the country's

¹⁸⁰ Ahmed W (2015) 90-98.

¹⁸¹ Hassen M 'Testing the Thesis of The Invention of Ethiopia: Reinterpreting Menelik's Conquest of Harerge and Its Impact on the Oromo' (2011) 18 *The Journal of Oromo Studies* 124.

¹⁸² Ahmed W (2015) 109-10.

¹⁸³ Balkew ET (2010) 61.

¹⁸⁴ Balkew ET (2010) 61.

¹⁸⁵ Ahmed W (2015) 135-40.

¹⁸⁶ Vaughan S *Ethnicity and power in Ethiopia* (PhD Thesis, The University of Edinburgh, 2003) 235.

territorial units. Harar became one of the 14 self-governing national/regional administrative units.¹⁸⁷ The decision to establish the state of Harari is ostensibly linked to the commitment of the Charter to the right to self-determination, which included the right of ethnic communities to establish a government of their own in the territory they inhabit.

The political and constitutional dispensation ushered in 1991 was inspired by the so-called ‘Nationality Question’ of the Ethiopian students movement in the 1960s and early 1970s.¹⁸⁸ For the most part, the movement was concerned with claims of cultural subjugation of ethnic groups, socio-economic marginalisation and political inequality.¹⁸⁹ To address these concerns, the Charter bestowed ethnic groups with extensive autonomy of self-rule within territorially defined subnational or local jurisdictions that are recognised as their ‘own’.¹⁹⁰ Ethnic groups are thus conferred with the right to self-government, that included the promotion of culture, language and identity, as well as an unconditional right to self-determination, which may include secession.¹⁹¹

Officially, the state, or as it is commonly referred, the region, is known as the Harari National Regional State.¹⁹² It is the smallest member state of the Ethiopian federation, which is now constituted of 12 autonomous subnational states and two semi-autonomous federal city administrations.¹⁹³ Unlike other subnational units named after a single numerically dominant ethnic group¹⁹⁴ such as Afar, Somali, or Oromia, the titular ethnic group in Harari, the Harari,

¹⁸⁷ See Article 3/1/64 of National/Regional Self-governments Establishment Proclamation No. 7/1992.

¹⁸⁸ For a wider discussion about the Ethiopian student movement see Zewude B *The Quest for Socialist Utopia: The Ethiopian Student Movement c. 1960-1974* (2014) Vol. 18. Boydell & Brewer Ltd James Currey 198–221.

¹⁸⁹ For a comprehensive picture about all the questions posed by movement Zewde B (ed) *Documenting the Ethiopian Student Movement: an exercise in oral history* (2010) African Books Collective.

¹⁹⁰ See generally Van der Beken C ‘Ethiopia: Constitutional protection of Ethnic minorities at the regional level’ (2007) 20 *Afrika focus* 105-151; Adegehe AK *Federalism and Ethnic Conflict in Ethiopia: A Comparative Regional Study* (2013) Milton Park Abingdon Oxfordshire: Routledge 54-77; Fiseha A ‘Intra-unit minorities in the context of ethno-national federation in Ethiopia’ (2017) 13 *Utrecht Law Review* 170–189.

¹⁹¹ Fasil N *Constitution for a Nation of Nations: The Ethiopian Prospect* (1997) Addis Ababa: The Red Sea Press Inc 39–41 & 49–53.

¹⁹² See Art 47/1/9 of the Constitution of the Federal Democratic Republic of Ethiopia, 1995. (The Federal Constitution of Ethiopia, henceforth).

¹⁹³ The states of Sidama, South-West Ethiopia, South Ethiopia, Central Ethiopia are the new additions of the federation’s members list, while the state of South Nation Nationality People is now dissolved. The remaining subnational units of the Ethiopian federation are: Afar, Amhara, Benishangul Gumuz, Gambella, Harari, Oromia, Somali, and Tigray. Addis Ababa and Dire Dawa city-administrations are semi-autonomous federal cities.

¹⁹⁴ This includes the states of Afar, Amhara, Oromia, Somali, Tigray and Sidama. Despite of their ethno-cultural diversity, such geographical configuration empowered the titular ethnic group (in whose name the state is called) to constitute a significant numerical and political majority. The only exception to the numerical majority is Harari where non-Harari inhabitants are account for more than 90 per cent of the state’s population. Fessha Y & Van der Beken C ‘Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia’ (2013) 21.1 *African Journal of International and Comparative Law* 35.

do not form numerical majority of the state's population.¹⁹⁵ According to the last census, the largest ethnic group is the Oromo, who account for 52 per cent of the population, followed by the Amhara, who make up 37 per cent.¹⁹⁶ The Hararis account for about 10 per cent of the state's population. Gurages, Somalis, Tigrayans and other ethnic groups constitute the rest of the population. Ethnic groups other than the Hararis, therefore, constitute around 90 per cent of the state's population.¹⁹⁷ Yet the state is named after the Hararis that account for less than ten per cent of the population.

The unique ethnic and demographic dynamics of the state has continued to make Harari's statehood contentious among observers of the Ethiopian federal arrangement. Partly, the law enacted to design the territorial units of the transitional period, Proclamation No 7/1997, is the *raison d'être* that contributed to the emergence of the contention over Harari's statehood. Although all 14 territorial units of the transitional government are regarded as subordinate entities to the Central Transitional Government in all respects, Harar, along with Addis Ababa, was made accountable to the central government.¹⁹⁸ Put simply, during the transition period, Harar and Addis Ababa were not autonomous self-governing units. The law further provided that since both units are within Oromia, special interests and political rights over these two units are reserved for the Oromo.¹⁹⁹ As a result, Harari's status as a fully autonomous self-governing subnational unit, with the adoption of the 1995 federal constitution, was unanticipated.²⁰⁰ For many, the decision to make Harari a state is unconvincing. They argue that it is too small to be a state compared to other ethnic groups that did not receive similar treatment despite significantly greater population and territorial size.²⁰¹

¹⁹⁵ Central Statistical Agency *Summary and Statistical Report of the 2007 Population and Housing Census Results* (2008) available at [https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft\(1\).pdf](https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf) (accessed 15 April 2025).

¹⁹⁶ Central Statistical Agency *Summary and Statistical Report of the 2007 Population and Housing Census Results* (2008) available at [https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft\(1\).pdf](https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf) (accessed 15 April 2025).

¹⁹⁷ Central Statistical Agency *Summary and Statistical Report of the 2007 Population and Housing Census Results* (2008) available at [https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft\(1\).pdf](https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf) (accessed 15 April 2025). Recent population projections, however, estimate the state's population at around 276,000. https://www.citypopulation.de/en/ethiopia/admin/harari/ET130105_harari/ (accessed 15 April 2025).

¹⁹⁸ See article 3 (3-4) of the National/Regional Self-governments Establishment Proclamation No. 7/1992.

¹⁹⁹ See article 3 (3-4) of the National/Regional Self-governments Establishment Proclamation No. 7/1992.

²⁰⁰ Balkew ET (2010) 62.

²⁰¹ Balcha B *Restructuring state and society: Ethnic federalism in Ethiopia* (PhD Thesis, Aalborg University, 2007) 93.

With the noticeable obsession of the post-1991 political dispensation with the right to self-determination of ethnic groups, regardless of size, the drafters of the constitution sought to match the country's ethnolinguistic map with its constituent units. Yet, they carved out only six constituent units though the country is home to eighty plus ethnic groups. Many of the remaining ethnic groups are provided with the option of combining to form a multi-ethnic state or attached to a state dominated by a titular/eponymous ethnic group. Some of them are given their own ethnically defined local government where they can exercise their right to self-determination.

What makes the case of Harari unique is that they are allowed to form a unit that looks like a 'city-state.' Arguably, the only explanation one may provide concerning Harari is that 'historical factors seem to have supplanted language as the primary criterion for political and administrative boundary making.'²⁰² If economic feasibility was one of the constitutional designer's criteria for the cartography, it was unlikely that Harar would make it a constituent unit based on that criterion. Perhaps that was why members of the Council of Representatives issued a directive for Harari and Oromo political organisations to study the state boundary and propose a solution.²⁰³

It was reported that a total of 6 representatives from the Harari National League (HNL) and the Oromo People Democratic Organisation (OPDO), three from each, held a townhall consultation.²⁰⁴ Accordingly, a total of 170 representatives from the Oromo and Harari ethnic groups, 85 from each, attended the public consultation.²⁰⁵ They recognised that historical Harar was a 'city-state' that included both urban and rural areas, that the farmers in the rural areas were members of both ethnic groups, and that there was a long-standing economic, cultural, historical, and marital bond between the urban and rural population, and that ensuring the socio-economic viability of the state of Harari is essential.²⁰⁶ The participants affirmed that both communities consensually agreed to the incorporation of Hundene *woreda* in the state of Harari, later adopted by the TGE Council of Representatives. It is believed that

²⁰² Vaughan (2003) 229.

²⁰³ The directive was issued on its 36th Regular Session held on 03 March 1992.

²⁰⁴ Representatives of the political organisations were Ato Gemechu Abdisa, Ato Yonas Waqo, and Ato Belay Regasa from the Oromo People Democratic Organisation, while Ato Abduslem Abdisa, Ato Mustefa Hassen, and Ato Abdulahi Addis were from the Harari National League. Minute submitted to the TGE Council of Representatives to Determine Boundaries of 'Region Thirteen' 6 October 1992.

²⁰⁵ Transitional Government Ethiopia Council of Representatives Minute submitted to the Council to Determine Boundaries of 'Region Thirteen' (1992) 1.

²⁰⁶ Transitional Government Ethiopia Council of Representatives Minute submitted to the Council to Determine Boundaries of 'Region Thirteen' (1992) 3.

the incorporation allowed Harari to have sufficient additional space for the state's public administration and urban services (e.g., housing, agriculture, urban waste disposal, etc.). Nevertheless, Harari lies outside the general criteria for statehood in the Ethiopian Federation and continues to be a touchstone by political elites who push for their ethnic groups' statehood status.

Perhaps it is because of such contentious status and idiosyncrasies that Harari's subnational constitution is also replete with many unique features. Its first subnational constitution was adopted in 1995, immediately after the inauguration of the federal constitution.²⁰⁷ It was later revised in 2004 as part of a nationwide process of subnational constitutional revision led by the ruling party at the time, and it remains effective to this date.²⁰⁸ Structurally, subnational constitutions in Ethiopia exhibit no significant variance from the federal constitution.²⁰⁹ Specifically, the rights catalogue, fundamental principles, constitutional amendment and review processes, or emergency provisions are largely similar. Harari is not an exception to this. For instance, its rights catalogues are verbatim of the federal constitution, except for the right to freedom of movement²¹⁰ and the newly added right to engage in public office and governmental occupation.

However, the constitution has several unique features, setting it apart from other subnational constitutions. The constitution recognises both Harari and Affaan Oromo as the state's working languages, making it the only subnational constitution to adopt a bilingual language policy.²¹¹ Unlike the other states, the Constitution of Harari provides for the establishment of a bicameral legislature, composed of the Harari National Assembly (HNA) and the Peoples Representative Assembly (PRA).²¹² For the purpose of this thesis, the most important unique

²⁰⁷ Van der Beken C 'Sub-national constitutional autonomy in Ethiopia: On the road to distinctive regional constitutions' (2014) In *The IXth World Congress of Constitutional Law' Constitutional Challenges: Global and Local* 4.

²⁰⁸ Van der Beken reports that between the period of 2001 to 2004 all the subnational constitutions underwent a 'significant revision'. Van der Beken C (2014) 4-5.

²⁰⁹ This, of course, does not mean all subnational constitutions are ignorant to their regional realities. Van der Beken (2014) comparative study in this regard offer valuable insights on notable differences in political institutions configurations (like the bi-cameral council in Harari or the Clan Leaders and Elders Council in Afar and Somali), or in constitutional recognition of local government structures, or in regional protection mechanism that offers for intra-unit minority ethnic groups. Van der Beken C (2014) 6–20.

²¹⁰ Subnational constitutions, including Harar's, complements freedom of movement with the right to work and to acquire property in the respective region. The federal constitution only provides the liberty to movement and freedom to choose the residence. See more on Van der Beken C (2014) 10.

²¹¹ See Art 6 of the Revised Constitution of the State of Harari People, 2005.

²¹² Although bi-cameral legislatures are common in multi-ethnic states, such as the states of South Ethiopia, Central Ethiopia, and South-West Ethiopia Peoples, in an attempt to resemble the two houses at the federal level, a house exclusively composed of a single ethnic group is only the case in Harari. In the case of multi-

feature of the Harari state constitution has to do with the election and composition of these two houses of the state legislature. The next section, therefore, focuses on the nature of electoral design adopted by Harari, how it functions, and what justifies the adoption of such electoral model.

3.3.Harari's electoral design and its justifications

As noted above, Harari's electoral design is yet another intriguing feature of the state constitution. It combined distinct options of electoral designs that are usually available for the protection of minority rights. These include seat reservation, gerrymandering, and special voting rights provided for members of a minority ethnic group. Some of such scheme may be found in some other state, albeit in different form. However, Harari is the only subnational unit whose state council is elected under such distinct electoral arrangement.

3.3.1. Overview of the design

The Constitution of Harari provides that the Harari People State Council (HPSC) would have a total of 36 members.²¹³ The HPSC's term of office is for five years.²¹⁴ As indicated earlier, unlike other states, the Harari People State Council (HPSC) is a bicameral parliament, composed of the Harari National Assembly (HNA) and the Peoples Representatives Assembly (PRA).²¹⁵ The HNA is an exclusive body for the Harari people, while the PRA represents the state's general population.

The HNA consists of 14 members exclusively elected from members of the Harari people living inside and outside the state. The electorate of the HNA is restricted. It is only open to the Harari people, while non-Harari residents of the state cannot vote in the election of 14 members. Moreover, the residence place of the voter is unimportant in determining the electorate that constitutes the HNA. A person who attains a voting age and resides in the state is not eligible to vote unless the person belongs to the Harari ethnic group. Yet, a Harari

ethnic states, while the upper house, the Council of Nationalities, is composed of representatives of 'indigenous' ethnic groups of the state, the lower house, the State Council, is composed of the representatives of 'the people of the state as a whole'. See for instance Art 51 of the South Ethiopia State Constitution.

²¹³ See article 48 of the Revised Constitution of the State of Harari.

²¹⁴ See article 7 (1) of Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019.

²¹⁵ In the states of Afar, Amhara, Oromia, Sidama, Somali, and Tigray the legislature is unicameral, whose members are representatives of the people of the state as a whole, with the exception of guaranteed representation for certain ethnic minorities in Afar, Amhara, and Tigray State Councils. For further discussion Van der Beken C *Decentralisation and Ethnic Diversity in Africa with a Case Study of Ethiopia* (PhD Thesis, Ghent University, 2006) 225-232.

individual who lives outside of the state, elsewhere in Ethiopia, is eligible to cast his vote for candidates of the HNA for the mere reason of belonging to the ethnic-Harari group. Hence, the right to constitute members of the HNA only belongs to the Harari people who live inside and outside the state. To put it simply, ethnicity serves as the basic criterion in determining voter eligibility concerning the election of the HNA.

To be exact, the constitution nowhere states that non-Harari are not entitled to vote in constituting the HNA. It instead provides that any resident of the state has the right to vote and stand for election without discrimination based on ethnicity, sex, language, religion, or any other proscribed grounds.²¹⁶ Nevertheless, practically speaking, the suffrage for electing HNA members is restricted to non-Harari residents of the state. In the past six rounds of national elections, it is only ethnic Hararis who are voting for the candidates running for the 14 seats of the HNA. This practical exclusion of the non-Hararis from the electorate contradicts the state constitution, which does not discriminate against voters based on ethnicity. The basis for such unconstitutional practice is a group of experts' report approved by the TGE Council of Representatives in its 102nd Regular Session held on to the 15th of March 1995. While the legal nature of such a decision is contentious, the decision was passed based on a report prepared by a group of experts²¹⁷ tasked to study an electoral design for the state of Harari.²¹⁸ The report provides that any member of the HNA must be a member of the Harari ethnic group and a resident of the state upon his/her election.²¹⁹ It also states that members of the assembly will only be elected by members of the Harari ethnic group living in the state and other parts of Ethiopia.²²⁰

The other key feature of the electoral design is the special voting rights extended to members of the Harari people to exercise their right to vote outside of the state. Running for membership of the HNA from outside the state is not unique to HNA. The electoral law that regulates candidacy extends the right to stand for election regardless of residency on particular grounds. Ideally, the law requires the candidate to be a resident of the constituency

²¹⁶ See article 37 of the Revised Constitution of the State of Harari.

²¹⁷ Balkew reported that members of the committee are Ato Kefele Wedajo (the Chairperson) from Ethiopian National Democratic Organization (ENDO), Dr. Gebreab Bernabas (the Secretary) (EPRDF), Ato Tadele Dufera (EPRDF), Ato Muhamed Yesuf from Afar Liberation Front (ALF), Ato Buh Hussein from Issa and Gurgura Liberation Front (IGLF), Ato Nersedin Muhamed from Harari National League (HNL) and Ahmed Hassen (EPRDF). Balkew ET (2010) 63.

²¹⁸ The experts group composed by the decision of transitional parliament in its 95th Regular Session held on June 23rd, 1994. Balkew ET (2010) 63.

²¹⁹ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 3.

²²⁰ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 3.

of the person's intended candidature. However, a person may run in an election of his/her place of birth.²²¹ Hence, in the case of the HNA, any member of the Harari ethnic group is regarded as eligible to contest as a candidate regardless of residency upon fulfilling some other criteria the law requires.

Conversely, residency is key for determining voter eligibility. The electoral law entitles individuals to exercise their right to vote without discrimination upon fulfilling voter eligibility requirements. Accordingly, a person can register to vote upon the provision of sufficient evidence to prove his/her Ethiopian citizenship, attainment of minimum voting age on the day of registration (18), and residence within the constituency for at least 6 months.²²² The territorial nature of the right to vote under the Ethiopian electoral framework is, therefore, evident. However, for election of members of the HNA, Hararis are not required to be a resident of the state in order to vote for the HNA. It is why this thesis refers to the special voting right conferred on the Hararis as an extraterritorial voting right (EVR).

Again, it is important to note that the state constitution does not guarantee Hararis EVR. The constitution only refers to passive voting rights. However, in practice, Hararis residing in Addis Ababa, Adama, Dire Dawa, or elsewhere in Ethiopia are allowed to vote for the election of the HNA. On election day, the election management body establishes special polling stations in a designated area, and a Harari individual who is registered to vote for the election could go to that polling station and vote for his/her favourite candidate of the HNA. Hararis have been practicing EVR since 1995, beginning from the first round of the state council elections. The TGE Council of Representatives decision, which is passed based on the group of expert's recommendation, is the basis for such practice of voting from outside the state. It provides that members of the HNA will be elected by Hararis residing inside and outside the state.²²³ It further noted that the voting rights of a person who participated in the election of the HNA from outside the state would be unaffected. In other words, a person who participates in the election of the HNA is allowed to vote or be elected in the election of the respective body in his/her area of residence.

²²¹ See article 31 (c) of Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019.

²²² Article 18/1 of Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019.

²²³ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 3.

What makes such an arrangement unique is not only that it constitutionally reserves legislative body seats for members of a particular ethnic group. The legislative body elected in this way exercise exclusive powers granted to them by the state constitution. For instance, this Harari-only assembly can issue laws and policies regarding the Harari language and culture, as well as directives for the preservation of cultural monuments, cemeteries, mosques, and religious sites.²²⁴ It also decides on matters of Harari's right to self-determination (including secession).²²⁵ The constitution empowers the assembly to nominate the state's president and deputy house speaker of the state council and to elect members to represent the Harari people in the federal upper house, the House of Federation.²²⁶ It worth to note here that these powers of the assembly are in addition to the powers it enjoys jointly with the other house of the state's council.

Finally, for the purpose of this thesis, the most intriguing aspect of Harari's electoral design is the gerrymandering of the state's electoral constituency. As noted above, HNA is composed of 14 members while the PRA holds 22 members, putting the number of members of the bicameral state council at 36. Insofar as the constitution is concerned, the gerrymandered electoral districts the state constitution referred to are the districts from where members of the PRA are elected. Members of the PRA are drawn from two multi-member districts, each electing 4 and 18 representatives. The Jugol wall, the state's landmark fortification in the inner part of the city, serves as a distinctive marker of the electoral map.

The first electoral constituency where four members of the PRA are elected covers Amir Nur *woreda* inside the Jugol, which is predominantly inhabited by the Hararis. On the other hand, the second constituency covers seven *woredas* that fall outside the Jugol area, which is inhabited by the non-Harari population. These *woredas* are Dire Teyara, Errer, Sofi, Aboker, Shenkor, Jinela, and Hakim. Voters from these *woredas* will vote for the election of 18 members of the PRA. The electoral map shape would reveal gerrymandering. The Jugol has an area of 48 hectares, while the state of Harari has a total area of 33,400 hectares (an equivalent 334 km²).²²⁷ It is safe to conclude that the electoral districts are indeed gerrymandered in favour of concentrating Harari's voting power inside the Jugol, while the non-Hararis voting power accumulates in one sprawling district.

²²⁴ See article 59 (1–2) of the Revised Constitution of the State of Harari.

²²⁵ See article 39 and 59 (7) of the Revised Constitution of the State of Harari.

²²⁶ See article 59 (3–4) of the Revised Constitution of the State of Harari.

²²⁷ https://www.citypopulation.de/en/ethiopia/admin/harari/ET130105_harari/ (accessed 15 April 2025).

Unlike the HNA, ethnicity is not a ground attached to the right to stand for election of the PRA. Any resident of the state, regardless of their ethnic background, can run for election. As alluded to earlier, even if a candidate lives far away from the constituency he wishes to contest, he can still contest the election since he proves that his place of birth is in that constituency. In this sense, there is a possibility that the elected representatives in both assemblies could be from outside the region.

Similar to the case in the HNA, the state constitution has empowered the PRA with political powers that it can exercise exclusively. The list includes the powers to formulate economic and social development policies, levy agricultural taxes, and review the regional budget.²²⁸ In what appears to be balancing the power distribution between the two assemblies, the power to nominate the house speaker of the HPSC joint assembly is another power of entrusted to the PRA.²²⁹ The joint assembly, among other things, assume legislative power on matters of local government structure, peace and security, land use, and income taxes.²³⁰ Furthermore, the joint assembly has the power to appoint the state's president, house speaker and deputy house speaker of the state's council, president and vice president of the state supreme court, judges, auditor general, police commissioner, as well as other state officials as nominated by respective authorities.²³¹

From the foregoing, it is clear that Harari's electoral design constitutes distinct features that combined seat reservation, gerrymandering, and special voting rights in constituting its bicameral state council. The council embodies two assemblies, representing the Harari people and the state's general population. While the HNA is exclusively elected by and from the Harari people inside and outside the state, members of the PRA are elected by any state residents regardless of ethnicity. The general condition of residency required to exercise the right to vote is practically waived for the Harari people despite the lack of a clear constitutional basis for such an arrangement. Similarly, the restriction laid on non-Harari voters in electing candidates of the HNA lacks a constitutional basis. However, a decision passed by the TGE Council of Representatives based on a recommendation provided by a group of experts to consult the transitional parliament serves as the main instrument that maintained the practice of Harari's EVR and restriction of the electorate for HNA's election. The justifications put forward by that decision form the subject of the next section

²²⁸ See article 58 (1–3) of the Revised Constitution of the State of Harari.

²²⁹ See article 58 (4) of the Revised Constitution of the State of Harari.

²³⁰ See article 51 of the Revised Constitution of the State of Harari.

²³¹ See article 51 of the Revised Constitution of the State of Harari.

3.3.2. Justifications of the design

The special voting rights arrangement conferred to the Harari people, as well as the seat reservation and gerrymandering, is not without explanation. In this respect, the expert's report serves as the basis to describe what justifies the adoption of these arrangements. The case²³² between the National Election Board of Ethiopia (NEBE) and the HNA provides further insight into the justification for the design. This section focuses on two of the main rationales often invoked to justify why the electoral design in Harari must be acceptable.

3.3.2.1. Guaranteed self-determination

One of the reasons provided by the electoral designers in defence of Harari's electoral arrangement is the constitutionally recognised right to self-determination. The argument is that the electoral design will help Hararis to guarantee their right to self-determination. The reason is that they are in a disadvantageous position to get political representation owing to their population size. Another reason argues that the complication posed by the state's multi-ethnic profile necessitates special measures to provide space for the Harari to exercise their right to self-determination.

These arguments should be understood in line with the post-1991 political dispensation in Ethiopia. As alluded to earlier, the transition period Charter and the 1995 Federal Constitution emphasise ethnic groups' collective rights subsumed under the right to self-determination. These rights have been comprehensively proclaimed under Article 39 of the Federal Constitution, which includes language and cultural rights, political representation rights, and territorial autonomy, which consists of the right to secede from the state.²³³ As the Constitution of Harari has made it clear, these rights belong to the Harari people, in whose name the state is constituted.²³⁴

The expert report argued that to ensure Harari's political representation and, thereby, right to self-determination, they need to secure a majority in an electoral district. The report highlights two main concerns that create difficulties regarding the political representation of Hararis. The first one is its population size. The report claimed that the Harari people's size is

²³² National Election Board of Ethiopia (NEBE) v. Harari National Assembly (HNA) Federal Supreme Court *National Electoral Board of Ethiopia v Harari National Assembly (2021) Federal Supreme Court Cassation Division File No. 207036* (hereafter, *NEBE v HNA (2021)*), challenged the constitutionality of extraterritorial voting rights granted exclusively to the Harari people.

²³³ See Art 39 of the Federal Constitution of Ethiopia.

²³⁴ Art 39 of the Revised Constitution of the State of Harari.

depleted owing to successive wars and migration.²³⁵ The Harari would face difficulty securing political representation given the fact that FPTP electoral system, favoured since the transition period, naturally disadvantages numerically smaller groups. If the state is divided into equally apportioned constituencies under the FPTP, the Harari could easily lose representation due to the overwhelming dominance of the non-Harari population residing in the state.

Another, and perhaps most important, concern, has to do with the historic marginalisation of the Harari. According to the expert group, the Harari ethnic group has almost entirely fallen under the influence of ‘settlers’, which emerged due to successive waves of migration since the late 19th century. By way of example, the report claims that out of 3,952 civil servants in the state at the time, only 88 were Harari origin.²³⁶ The report argued that the non-Harari population could undermine Harari’s newly found right to self-determination unless special measures are taken to counter the risk.²³⁷ Without the g putting in place special measures, the Harari would not be able to fully enjoy the right to self-determination, constraining Hararis’ right to vote and be elected for office, and endangering the state’s identity.²³⁸

The group recommended ‘gerrymandering’ as a special measure to ensure a Harari majority in electoral districts and, consequently, in the legislature.²³⁹ The report argued that the gerrymandering would safeguard Harari’s electoral participation, ensuring their representation and majority status in the state council.²⁴⁰ Although the report says nothing to explain the justification for the seat reservation or EVR arrangements, it is clear that these two arrangements were added later to further bolstering the gerrymandering. This is supported by the fact that the expert’s initial proposal included drawing five gerrymandered multi-member districts, each electing 10 members to form a state council that has 50 members. However, as can be discernible from the document, the TGE Council of Representatives rejected the proposal and reduced the number of districts to two.²⁴¹ To this end, one can conclude that the electoral design in Harari intends to guarantee political representation for the Hararis thereby allowing them to be in a position in order to full enjoy their right to self-determination.

²³⁵ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 7-8.

²³⁶ The report claimed that from a total of 3,952 civil servant by the time the Harari’s were only 88 of them. TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 8.

²³⁷ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 7-8.

²³⁸ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 9.

²³⁹ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993) 9.

²⁴⁰ TGE Council of Representatives *Minutes of the 102nd Regular Session* (1993)10-11.

²⁴¹ As discussed earlier, each district elects 14, 4, and 18 members respectively, forming a bicameral legislature with a total of 36 members. See Art 46 – 59 of the Revised Constitution of the State of Harari.

3.3.2.2.Minority Rights Protection – ‘Preserving Ethnic Identity’

The second justification of the electoral design is the need to guarantee the survival of the Harari as a minority group. Preservation of [a minority] group identity is an objective consistent with both the transitional charter and the 1995 federal constitution, which guarantee ethnic groups the right to preserve their history and identity, to develop and to promote their culture and language.²⁴² Harari's claims of minority protection often stem from its historical position in pre-and post-modern Ethiopian history and its numerical position in the country's contemporary polity.²⁴³

As noted in earlier discussions, ethnic Hararis are in a numerical minority position as they constitute a significantly small part of the total population at both federal and state governments. The Harari possess a distinctive language, culture, and a shared sense of solidarity to preserve its distinctiveness. As Vaughan aptly notes, ‘members and outsiders agree that Hararis share distinctive and defined language, culture, territory, history, and economic life... if any group in Ethiopia was to qualify as a ‘nation’, rather than just a ‘nationality’ or ‘people’, it was surely the minuscule population of Harar.’²⁴⁴ In 1991, at the time when the discussion for the electoral design began, Harari's socioeconomic and political position of dominance was in a minority position compared to the nation's mainstream culture and socio-politically dominant ethnic group.

The electoral design is, therefore, intended to equip the Harari people with necessary institutions that help them to ensure the survival and promotion of their group identity. This same argument was also raised before federal courts by the HNA in its case against the National Election Board of Ethiopia, which the thesis will discuss in further detail below.²⁴⁵ In it, the HNA defended the electoral design, more specifically, the EVR, arguing that the arrangement would allow the Hararis to protect and promote their language, culture, and heritage through a chamber designated to preserve their interests.

²⁴² Article 2/a of the Transitional Period Charter of Ethiopia Proclamation No. 1 of 1991. Article 39/2 of the Federal Constitution of Ethiopia

²⁴³ Vaughan S (2003) 232-3.

²⁴⁴ Vaughan (2003) 238.

²⁴⁵ National Election Board of Ethiopia (NEBE) v. Harari National Assembly (HNA) Federal Supreme Court *National Electoral Board of Ethiopia v Harari National Assembly (2021) Federal Supreme Court Cassation Division File No. 207036.*

3.4. Compatibility of the Design

The forthcoming discussion shifts the focus to examining the compatibility of Harari's electoral design in line with other equally essential principles enshrined under the state and federal constitutions and fundamental cannons and/or features of seat reservation, gerrymandering, and special voting rights arrangements. A detailed discussion will follow under each arrangement. The discussion starts by briefly reminding how each design functions, highlighting the benefits and challenges associated with the design or its impact on the behaviours of the voter, political parties, or other concerned groups.

3.4.1. Reserving seat for the Harari People

As far as design is concerned, 14 seats of the bicameral state council are regarded as reserved seats. This is, of course, a reference to the 14 member HNA. As repeatedly said, these 14 members of the state council are representative of the Harari people. They are elected by and from the Harari people. Both the electorate and candidacy rules exclude the general population.

Establishing a house of parliament that is exclusively composed of Hararis and armed with the power to promote the language and culture of the Harari undoubtedly puts the Harari in a better position to preserve and promote their language, culture and other group interests. In fact, there has been significant progress in the promotion of the Harari language. Notably, Amharic, Harari, and Oromo languages are formidable competitors of the linguistic landscape in the state. In his detailed account in Harari's language policy in school system, Moges assess the historical position of these three competing languages and places them into three categories. His account reveals that the historically dominant position of the Harari language was replaced by Amharic, which has become socially and institutionally dominant.²⁴⁶ Affan Oromo has significant presence in the surrounding area, given the numerical and physical presence of the Oromos in these areas.²⁴⁷

Thanks to the post-1991 dispensation that introduced a change in education policy, the vernaculars, Oromo and Harari, have come to the forefront as identity-forming and identity-preserving languages.²⁴⁸ In fact, Harari transitioned away from Amharic languages

²⁴⁶ Yigezu M *Language Ideologies and Challenges of Multilingual Education in Ethiopia: The Case of Harari Region* (2010) Organisation for Social Science Research in Eastern and Southern Africa 83-4 & 98-9.

²⁴⁷ Yigezu M (2010) 83-4 & 98-9.

²⁴⁸ Yigezu M (2010) 98

institutional dominance in a more cohesive and structured manner.²⁴⁹ In 2005, the state council established a ‘Harari Langue Academy,’ a body accountable to the council and responsible for overseeing the standardisation, modernisation, and development of the Harari language.²⁵⁰ The Harari language has become visibly empowered in the state council’s parliamentary businesses, official government communications, courtrooms, and state-funded media. As part of the promotion of the Harari language, the state’s Civil Service Commission also required civil servants to speak either of the working languages.²⁵¹ Furthermore, the assembly issued a law that regulated business organisations to use the state’s working language in advertising their business in different forms, including billboards.²⁵² It also issued several other laws which aimed at strategizing preservation and development of Harari culture and heritages, including a law to Establish Trust Office for Protection of Tangible and Intangible Heritages of Jugal Walled-City and Preserve Books, Video and Audio Castes.²⁵³

The state council has also facilitated efforts to promote group interests. Harar is perhaps among a handful of, if not the only, Ethiopian cities to have two heritages in UNESCO’s repository. One is the fortified Jugol wall along its urban ensemble. The other is the annual Shuwal Eid festival, during which the Harari community gathers on the streets of the city at the end of the holy-Ramadan season for religious prayer, accompanied by traditional music.²⁵⁴ The preservation and celebration of these heritages is facilitated by the electoral design that ensures Hararis self-rule in the state council and the executive which influence the adoption and implementation of language, cultural, and tourism management and promotion policies.

The reservation of the HNA to the Harari has allowed them to engage in self-governance, including overseeing state officials’ appointments. Although the HNA holds exclusive mandate over matters language, culture, social development and related matters, its power extends equally to executive formation – a power as significant as its legislative functions. As the HNA has the power to nominate the state president and the state council’s deputy house speaker, that alone gives the Harari community strong influence in the executive and legislative arm of the government. The state president, which can only be nominated by the

²⁴⁹ Yigezu M (2010) 72.

²⁵⁰ Yigezu M (2010) 72.

²⁵¹ Endaweke (2017) 73.

²⁵² Endaweke (2017) 74.

²⁵³ Endaweke (2017) 74.

²⁵⁴ UNESCO ‘Shuwalid Festival’ available at <https://ich.unesco.org/en/RL/shuwalid-festival-01845> (accessed 15 April 2025).

HNA, wields substantial powers, including nominating the state's supreme court president and vice president, nominating cabinet members, appointing police commissioner and auditor general, and nominating six members of the Council of Constitutional Inquiry.²⁵⁵ Ultimately, this design endows the HNA considerable leverage, as it effectively determines the composition of state's entire executive branch. Under normal circumstances, the HNA is expected to elect such state officials from amongst its members, which affirms the ethnic identity of the individual to be nominated. That is also what the practice over the past three decades shows. All seven Presidents of the state to date are ethnic Hararis drawn from a Harari political party.²⁵⁶

However, the decision to reserve the entire seats of the HNA to the Harari is not without problems. First, there is no clear explanation as to how the designers determined the size of the HNA or the number of seats reserved for Harris. Minutes of the TGE Council of Representatives does not shed light on that. Neither does the report prepared by the experts even when they were initially proposing to draw five gerrymandered multi-member districts.

Second, the exclusion of non-Harari residents from the HNA electorate raises questions of compatibility with the constitution's principle of universal and equal suffrage. As noted in Chapter Two, ensuring political representation for minority groups is vital as it allows them to ensure political equality, enhance a sense of belongingness, and develop a trust that they have representatives that voice their interests. It may have substantive importance since it provides minority groups a space to engage with majority parties, promoting interactions for mutual benefits. Restricting the right to stand for election of the HNA would be justifiable as failure to do so may result in underrepresentation or marginalisation of the Harari people owing to their population size, the electoral system in place, and their non-dominant position at the time of the design. However, extending the restriction on the right to vote for HNA candidates seems problematic, given that laws or policies passed by the HNA have impacts beyond the Harari community. As Assefa aptly argues, the HNA is not as apolitical as the drafters of the Constitution of Harari intend to present it.²⁵⁷ The HNA has significant mandates that may affect the state's general population, including the secession of Harari from the federal republic or that of constitutional amendment. The suffrage restriction,

²⁵⁵ See article 64 (1) (c) of the Revised Constitution of the State of Harari

²⁵⁶ The list includes Ali Abdullahi Gutu, Abdulahi Idris Ibrahim, Ghazali Mohammed, Nuria Abdulahi, Fuad Ibrahim, Murad Abdulhadi, and Ordin Bedri. 'Ethiopia Administrative Divisions' available at https://www.worldstatesmen.org/Ethiopia_Regions.html (accessed on 15 June 2025).

²⁵⁷ Assefa SK 'Comment: Legitimizing Gerrymandering in the Harari Regional State Contrary to the Principle of Equality of Votes' (2021) 15 *Mizan Law Review* 279–80.

therefore, denies the very right of the non-Harari population to be heard in decision-making matters that affect their interests. It restricts residents from electing representatives who ultimately decide matters affecting their lives.

Finally, the practical intricacies of ethnicity determination may pose serious challenges for the election management body in establishing a person's eligibility for candidacy. Of course, ethnicity in Harari seems the most important identity marker, as evident from how the Harari maintained their identity amidst a high degree of historical interaction experienced by a mercantile and proselytising community. In this aspect, Vaughan alluded that:

*'It seems that the Jugol wall acted as a trigger and marker of a circular pattern of difference exacerbating difference, to the point at which endogamy became something of a cult in the Harari population, even amongst the large contemporary diaspora. As Harar's walls marked a community relatively wealthier and more educated and urbane than those surrounding it, in-group dynamics strengthened.'*²⁵⁸

This may prompt one to conclude that establishing Harari ethnicity would not be as problematic as the case in other ethnicities who, on numerous historical occasions, have mixed with other ethnicities through marriage, trade, and the like. However, as society evolves, the way its members perceive ethnicity may be changed and start to mix with other communities. This hypothesis, however, needs further analysis, which falls outside the scope of the thesis. Perhaps a case in which a Harari-based political party invoked a question of the ineligibility of candidates in the election of the HNA shows how far the restriction on candidacy may go.

The petition was filed before the Federal High Court by a regional political party,²⁵⁹ Harari Democratic Organisation (HDO), against the decision of the Election Board, which had dismissed the party's claim that nationwide parties cannot list candidates for the HNA.²⁶⁰ The HDO opposed candidates registered under the Prosperity Party and Freedom and Equality Party, both of which are nationwide political parties, claiming that HNA is only composed of

²⁵⁸ Vaughan S (2003) 237.

²⁵⁹ Under the Ethiopian electoral law, the distinction between 'nationwide' and 'regional' political parties is primarily based on the total number of founding members and their geographic distribution. Among other things, a party must have at least 10,000 founding members from at least four regional states to register as a nationwide political party. For a regional political parties, it requires 4,000 founding members, with 60% of them from one state. See article 63 and the following of Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019.

²⁶⁰ *Harari Democratic Organisation (HDO) v. National Election Board of Ethiopia (NEBE) Federal High Court file no. 269450 (HDO v. NEBE (2021) henceforth).*

ethnic-Hararis. The Election Board dismissed the party's claim that nationwide parties cannot list candidates for the HNA. The High Court rejected the petition by the HDO on the ground that there is no legal framework that restricts nationwide parties from running in the HNA. In so far as candidates listed by these parties have Harari identity and meet the general criteria for candidature, the court concluded, there is no legal basis for the Board to reject a request for candidate registration.²⁶¹ From the decision, it appears that the court does not want to engage with the question of how Harari ethnicity is determined, which would have invited further studies to check whether there is any flexibility, or even unconstrained individual discretion, in defining ethnicity, particularly for individuals of mixed ethnic heritage.

3.4.2. Gerrymandering electoral constituencies of the PRA

As noted above, members of the PRA are elected from two electoral districts gerrymandered to skew electoral outcomes. Four members of the PRA are elected from an electoral district located inside the Jugol. The remaining 18 members of the assembly are drawn from the largest electoral district which is outside of the Jugol. Considering to their respective population size, while Harari candidates found themselves in a better position to secure all four seats from the first constituency, Oromo or Amhara candidates would be in a better position to win on those 18 seats of the PRA.

Gerrymandering the electoral constituencies is not without benefits. It created a minority-majority districts and thereby guaranteeing *de facto* representation for Hararis in the PRA, though this is not certainly guaranteed. Four seats of the PRA combined with the *de jure* representation guaranteed in the HNA, which is composed Harari representatives, makes the Hararis control half of the seats of the state council. Such political representation not only allows Harari's to exercise their constitutional right to self-determination, but it also makes it possible to influence each law and policy decisions and their implementation within the state.

However, the gerrymandering as adopted by the state raises serious concerns. The first concern is associated with the principle of proportionality/population equality between the districts. The distribution of voting power between two of the PRA electoral constituencies is problematic as the population inequality between electoral districts is conspicuously visible. While 4 members of the state council are drawn from two electoral districts where less than 9 percent of the state's population resides, the other half are drawn from a single district where about 90 percent of the state's population are residing.

²⁶¹ *HDO v. NEBE* (2021) 6.

The gerrymandering violates the equality of suffrage, which connotes the ‘one-person-one-vote’ principle. This notion implies that each vote carries equal value. It demands the electorate’s equal participation and proportional representation. Equality of suffrage is deemed violated when the population disparity between the constituencies is significantly disproportionate. The delimitation of electoral districts in Harari results in disproportionate representation of Harari’s and non-Harari residents. This is evident from the proportion of the vote share each representative receives under both constituencies in the last election.²⁶² A candidate with the highest number of votes in one of the districts where four members of the PRA are drawn receives 10,043 votes, whereas the leading candidate in the second eighteen-seat PRA district amasses 77,954 votes. Taking the highest vote a representative received in the first district, the total population of that particular constituency might not be something greater than 20,000 thousand, while a similar educated guess for the second district might be somewhere between 150,000 and 200,000.²⁶³ This guess implies that a representative from the first district would, on average, serve some five thousand inhabitants, while a representative from the second district would serve more than eleven thousand inhabitants.²⁶⁴

Third, the electoral map of the districts seems to also overlook fairness of electoral outcomes. Arguably, the compactness of the district for the four seats of PRA results in guaranteed electoral outcomes where surprises in candidate pools and election results are rare. This raises a question of ethnic voting and, thereby, the issue of fairness. For the gerrymandering to work, the presumption is that a Harari will only vote for a Harari candidate, and a non-Harari will not vote for a Harari candidate, despite the fact that the election is open to the general population. Over the past six election rounds, Hararis consistently maintained the representation intended by the electoral design. As in the national parliament and other state legislatures, the Ethiopian People's Revolutionary Democratic Front (EPRDF) – a collation of four major and several other allied groups – overwhelmingly dominated the previous five election rounds. In earlier rounds, the state council’s seats were evenly split between the HNL and OPDO, both of whom were EPRDF’s agents²⁶⁵ in the states of Harari and Oromia,

²⁶² National Election Board of Ethiopia *Harari Regional Council Election Result* (2022) available at https://drive.google.com/file/d/1zb3OjtJ3_rz0WrqAf7cfF9YUXX75HDyX/view (accessed 15 April 2025).

²⁶³ Assuming that the voter turnout was about 70 per cent and the voting population represents about 60 per cent of the total population.

²⁶⁴ I took the highest estimation of the total population in each case to reach to this number.

²⁶⁵ OPDO is a formal member of the EPRDF that operates in Oromia region, while the HNL is an affiliate party in Harari. See generally, Aalen L ‘Ethnic federalism in a dominant party state: The Ethiopian experience 1991-2000’ available at <https://www.cmi.no/publications/file/769-ethnic-federalism-in-a-dominant-party-state.pdf> (accessed on 16 May 2025) 81-5.

respectively. For instance, in 1995, in the first round of national elections since the inauguration of the constitution, the HNL won all 14 seats of the HNA along with the other four seats of the PRA, while OPDO won all 18 seats of the PRA.²⁶⁶ What appears to be a backdoor intra-party arrangement in the past five rounds of elections, the OPDO secures 18 seats of the state council, while the HNL took the remaining 18 seats owing to the seat reservation and gerrymandering schemes.²⁶⁷ Perhaps the power-sharing dynamic may stem from the negotiations that fixed Harari's territorial boundaries during the transitional period. Additionally, the state's constitution reference for a shared-ruling as well as the historical social ties between the two communities, shared natural resources, trade relations, and government services²⁶⁸ likely influenced this informal seat-splitting agreement.

The major concern with the intra-party arrangement is, however, that it has left a significant portion of the state's population without representation. Together, the Harari and Oromo people constitute around 65 per cent of the state's population. Although opposition parties participate in the contestation, their success rate is almost non-existent. Surprises in candidate pools and election results are rare. The exception may be the 2005 national election, one of the most competitive elections in the country's history that delivered an unprecedented outcome. By then, two opposition parties secured four seats in the PRA, while the HNL and OPDO/EPRDF parties won 18 and 14 seats, respectively.²⁶⁹ The last election was fully controlled by the Prosperity Party,²⁷⁰ which also secured almost 98 per cent of the national parliament seats. Hence, the previous state councils do not often accurately mirror the ethnic dynamics of Harari. It rather reflects ethnic Harari and Oromo's face of the state's residents.

The delimitation of electoral districts in Harari risks cementing ethnic consciousness and cultivating apathy among the rest of the state's population, who are neither Hararis nor Oromos. On one hand, it reinforces Harari or Oromo identity as the primary means to safeguard collective interests within the Harari. On the other hand, Amharas, Gurages,

²⁶⁶ Lyons T 'Closing the transition: the May 1995 elections in Ethiopia' (1996) 34 *The Journal of Modern African Studies* 138.

²⁶⁷ Davison W & Teweke L 'Anguish for Harari as Oromo claim rights' Ethiopia Insight 2 January 2019 available at <https://www.ethiopia-insight.com/2019/01/02/anguish-for-harari-as-oromo-claim-rights/> (accessed 26 November 2024).

²⁶⁸ It is worth to note here that the administrative seat of Eastern Hararghe Zone of Oromia is located in Harar city.

²⁶⁹ National Election Board of Ethiopia *Summary of Winner Parties of State Councils* available at <https://web.archive.org/web/20060525233101/http://www.electionsethiopia.org/PDF/results/Regional%20Council%20Summary.pdf> (accessed on 20 April 2025).

²⁷⁰ In 2019, the EPRDF dissolved and reemerged as the Prosperity Party (PP), which went to secure all 36 seats in the HPSC in most recent election as a unified party.

Somalis, Tigrayan resident of the state are pushed to the periphery, left with no alternatives but to wait for a constitutional amendment or some other political shift. Unless for unexpected voter behaviour, the incumbent party has little incentive to disrupt the status quo, maintaining ethnic balance in the council through a system that prioritize only the Harari and Oromo communities.

More importantly, the absence of regular redistricting casts doubts on the compatibility of the electoral designs with the constitutional framework and fundamental principles of redistricting. The electoral districts have been in effect for the past three decades without any change despite a significant demographic change. Due to socio-economic factors and individual freedom, population mobility is inevitable. Unless the geographic concentration or dilution of Hararis is regularly checked by census data, distortion of voting strength is not unlikely. But the decennial census that has been due in 2017 is yet to be conducted. Given that the country persists to face armed conflicts in many parts of the country, the census does not seem likely to be conducted in the near future.²⁷¹ This further complicates any attempts to redraw the boundaries of the electoral constituencies. Hence, the apportionment is not yet known. For the time being, however, there is no record of Hararis being left unrepresented in those four PRA seats, meaning their representation in the PRA remains *de facto* guaranteed.

From the foregoing, it is clear that the gerrymandering in Harari is replete with several challenges. Although the design enables the Hararis to achieve representation, the most visible population inequality between electoral districts implies an unfair distribution of voting power between these two electoral districts. Similarly, gerrymandering overlooks equality of suffrage as envisaged under the state and federal constitutions, as the population disparity between the constituencies is significantly disproportionate. Although measuring compactness may require scientific models, a reference to the electoral outcomes over the past five rounds of elections informs that the compactness and vastness of the two electoral districts play a part in creating an already determined electoral outcome, which in most cases produced representation for Harari and Oromo population. Moreover, an intra-party arrangement that splits the state council's seat between two parties representing the Harari and Oromo ethnic groups leaves a significant portion of the state's population without representation. Such an arrangement may cement ethnicity and promote exclusion.

²⁷¹ Kinfu Y 'In-depth analysis: The postponement of the 4th Ethiopian census: Was it justified and what next?' Addis Standard 5 April 2019 available at https://addisstandard.com/in-depth-analysis-the-postponement-of-the-4th-ethiopian-census-was-it-justified-and-what-next/#google_vignette (accessed 15 April 2025).

3.4.3. Extraterritorial voting rights conferred to the Harari People

As explained earlier, the EVR is the other key feature of Harari's electoral design. It is a right conferred only to the Harari people. A person that belongs to the Harari ethnic group is entitled to vote for members of the HNA from anywhere in Ethiopia, regardless of place of residency. The condition of residence, a key criterion to determine voter eligibility, is waived for members of the Harari in so far as voting for the HNA is concerned. The justification often cited for such an arrangement is that the HNA is a cultural body with mandates of preserving and promoting the Harari language, culture, history, and heritage. Any Harari is allowed to vote from outside the state as constituting the body held symbolic importance for the Harari. The enfranchisement is also explained by the fact that a substantial number of Hararis live outside the state. The 2007 census, for instance, revealed that a slim majority of the Harari actually reside outside Harari, predominantly in Addis Ababa, Oromia, Dire Dawa, and (the now defunct) SNNP.²⁷²

Arguably, as a form of nonterritorial autonomy enjoyed by Hararis, the EVR represents a clear departure from the federation's focus on territorial autonomy. As alluded earlier, the federal arrangement bestowed ethnic groups extensive self-determination powers within their respective 'homelands'. There are few areas where ethnic groups can exercise autonomy without being tied to specific geographical location. Sharia courts serve as a prime example of nonterritorial autonomy, catering to individuals from religious and cultural background.²⁷³ On the main, however, the approach is territorial. Within their own territories, ethnic groups enjoy broad autonomy, encompassing lawmaking, governance, judiciary functions, and the promotion of language and identity. Once individuals leave their designated 'ethnic homeland' or happen to be born in a state that is not considered as their 'homeland', they have no claim to language protection or ethnic based rights.

For non-resident-Hararis who vote for members of the HNA, the EVR represents a form of extraterritorial participation in Harari community affairs. However, if nonterritorial autonomy entails enjoying group rights beyond ethnic group's designated homeland, it remains unclear how the Harari EVR qualifies as such. While Hararis can freely elect HNA representatives,

²⁷² Central Statistical Agency *Summary and Statistical Report of the 2007 Population and Housing Census Results* (2008) available at [https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft\(1\).pdf](https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf) (accessed 15 April 2025). In 1994, Harari's who live outside of the state was accounting up to 46% of the total of 21,757. Vaughan S (2003) 230.

²⁷³ Dessalegn B 'Experimenting with Non-Territorial Autonomy: Indigenous Councils in Ethiopia' (2019) 18 *JEMIE* 4.

this alone does not equate to practicing cultural or linguistic rights from afar. Neither the HNA nor the state council can enforce Harari language policies or other state-specific regulations outside the state of Harari. Thus, the electoral design merely grants Hararis in Addis Ababa, Adama, Dire Dawa, or elsewhere in Ethiopia a symbolic voting right – one that preserves a political tie to the Harari community but falls short of enabling them to exercise their cultural or linguistic autonomy beyond their homeland.

The problem with the EVR is that, of course, represents a deviation from the residency requirements and associated principles of democracy. First and foremost, in what appears to be a clear deviation from the constitutional protection for universal and equal suffrage,²⁷⁴ the suffrage for the election of the HNA is limited to individuals that belong to a particular ethnic group. The EVR is not only inconsistent with residency requirements but also contradicts the constitutional commitment to democratic principles. A person of Harari background living in Addis Ababa,²⁷⁵ Adama²⁷⁶ or elsewhere in Ethiopia has the right to vote for a representative in their place of residence. However, on election day, that same person may go to two different polling stations – casting one vote for the HNA and another for the state council where he or she resides. This creates a situation of ‘double representation’, with a person belonging to Harari ethnic group getting representation in two different houses.

Moreover, it remains unclear for how long the practice of EVR can continue. The intention, as it can be inferred from the expert’s report, was to ensure that all Hararis, both at ‘home’ and ‘outside’, participate in self-governance, given the circumstances at the time of the beginning of the federation. Yet, after three-decades, the purpose of maintaining the EVR is unclear. For instance, a person born and raised in Addis Ababa, with no discernible tie to the Harari beyond ancestral ties, can still vote in Harari state election upon reaching voting age. The tie with the ‘home’ state, however, may not go beyond genetic attachment. Arguably, the EVR practice is cementing ethnicity as a rigid and unchanging identity. Related to this, one

²⁷⁴ Article 38 of both the Revised Constitution of the State of Harari and the Federal Constitution of Ethiopia.

²⁷⁵ According to the last census data, Addis Ababa, the country’s capital city, is home to around 20 per cent of overall Harari population, both within and outside the state of Harari. Central Statistical Agency *Summary and Statistical Report of the 2007 Population and Housing Census Results* (2008) available at [https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft\(1\).pdf](https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf) (accessed 15 April 2025).

²⁷⁶ Adama, one of the largest cities in Oromia, was another city that hosted a special polling station for Harari voters during the 2021 national election along with Chiro, Kombolcha, Gursum, Fedis, Deder, and Haromaya city of Oromia and Addis Ababa and Dire Dawa city administrations. https://www.bbc.com/amharic/58316232?at_custom3=BBC+News+Amharic&at_campaign=64&at_medium=custom7&at_custom2=facebook_page&at_custom4=9334191C-05A6-11EC-826C-76063A982C1E&at_custom1=%5Bpost+type%5D&fbclid=IwZXh0bgNhZW0CMTEAAR4S0D9YA_0EDYA_UXJNkrwB7X7uN9gCMwa791fVaj5MINqdSLYJBPCj1kxCO_aem_QMTRTS1JrUzz7WsuF4rCOW (accessed on 12 May 2025).

must note that further practical intricacies could arise as to how the Election Board go about checking belongingness and on what standards. One may even question the Board's mandate to ascertain ethnic identity.

Furthermore, conferring a special right to members of a particular ethnic group creates differential treatment between individuals on the basis of ethnicity. The EVR is conferred to ethnic-Hararis only. Anyone who considers Harar as home but does not belong to the Harari ethnic group, who temporarily or permanently resides outside Harar, does not get similar treatment. Yet, the federal constitution guarantees the right to equality and non-discrimination under Article 25. Harari's constitution extends similar protection to this fundamental part of the Bill of Rights. It guarantees equal treatment before the law, without discrimination. The question is whether the differential treatment that the EVR represents constitutes a discrimination.

According to the United Nations Human Rights Committee, discrimination should be understood as implying any distinction, exclusion, restriction, or preferences on grounds proscribed under Article 2 of the same Covenant. The effect of differential treatment could be varied to include nullifying or impairing the enjoyment of fundamental rights and freedoms on an equal basis with others.²⁷⁷ Of course, this does not mean that individuals will receive identical treatment in every instance.²⁷⁸ Differential treatment may be necessary to protect vulnerable groups or to address inequalities through affirmative action. As the Committee notes, not every differentiation amounts to discrimination, insofar as the criteria for such differentiation are reasonable and objective, and the aim is to achieve a legitimate purpose.²⁷⁹ Similarly, the right to vote is a fundamental political right which individual free will is expressed in the process of constituting a governing body. As such, it should be available to every adult 'citizen'.²⁸⁰ Any limitation can only be justified on objective and reasonable grounds, such as age limit in certain cases.²⁸¹

²⁷⁷ UN Human Rights Committee International Covenant on Civil and Political Rights, *General Comment No. 18*, 10 November 1989, HRI/GEN/1/Rev.9 (Vol. I) p.195 para 7.

²⁷⁸ UN General Comment No 18 (1989) para 8.

²⁷⁹ UN General Comment No 18 (1989) para 13.

²⁸⁰ UN Human Rights Committee International Covenant on Civil and Political Rights, *General Comment No. 23*, 8 April 1994, UN Doc CCPR/C/21/Rev.1/Add.5 para 4. In fact, the traditional notion of disfranchising non-citizen permanent residents from voting based on citizenship has been challenged since the Committee's observation. The world has since evolved toward a new model of denizenship, which centres on residency and the principle of 'all affected persons' in determining eligible voters. For further discussion see Le Roux W 'Residence, representative democracy and the voting rights of migrant workers in post-apartheid South Africa

The prohibited ground of discrimination in both the state and federal constitutions includes those inherent characteristics of human beings (such as, sex, race, or colour), and other grounds that has to do with being a member of a particular group (such as ethnicity, social origin, religion, or opinion).²⁸² Visibly, the electoral design in question treats ethnic-Harari and non-Harari residents of the state differently in the state parliament's election. One may argue that these distinctions are justified by the right to self-determination, the constitution's fundamental principle, and further supported by the state's demography and the imperative of protecting a minority group. But does this mean that the right to self-determination prevails over individual rights to equality and non-discrimination? If not, how does the inconsistency be seen from the individual equality framework envisioned under the constitution? Or, if so, what prevents other minority ethnic group, whose significant portion of their populations reside outside their designated state or sub-state units, from demanding similar treatments?

The design obviously differentiates between individuals based on the ground of ethnicity. The differential treatment is intended to guarantee representation for Harari, thereby ensuring their right to self-determination, a legitimate aim that is consistent with the national and sub-national constitutional framework. The central question is, therefore, whether the means employed to achieve this objective (i.e. the voting right entitled to non-resident Harari) is proportionate. As explained earlier, the electoral design entitles Hararis to vote for and run in all 36 seats of the state parliament, while non-Harari residents exercise the same rights with respect to 22 seats. In fact, the latter can only contest for 18 seats, given that the electoral district for four PRA seats have been gerrymandered to favour Harari representation. This entails underrepresentation of non-Harari residents, who constitute 90 per cent of the state population. Although the extension of voting rights to non-resident Harari does not entirely exclude non-Harari residents from participating in the state council's election, it does result into disproportionate representation. This is problematic because proportional representation matters. Both underrepresentation and overrepresentation can create distress for majority and minority interests. The underrepresentation of majorities risks exclusion, while the overrepresentation of minorities raises questions of fairness.

and post-unification Germany (1990-2015)' (2015) *Verfassung und Recht in Übersee/Law And Politics In Africa| Asia| Latin America* 263-283.

²⁸¹ Nowak M *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (2005) 2nd rev. ed. Kehl am Rhein: Engel 547.

²⁸² Article 25 of both the Revised Constitution of the State of Harari and the Federal Constitution of Ethiopia.

The impact of the disproportionate representation is particularly evident in power allocation. As Assefa rightly observed, the HNA's exclusive authority over self-determination, including secession and language policy, as well as its veto power over constitutional amendments, makes it difficult to argue that the non-Harari population is fairly represented.²⁸³ The power allocated to the PRA only have a purpose of mitigating the harm resulting from underrepresentation of the non-Harari. Although the powers entrusted to the PRA allowed the non-Harari population to possess considerable leverages, its power could not be as powerful as the HNA, even if the Hararis lose the four seats. This does not make a difference in the substantive representation that each group receives, no matter how much the number of non-Harari members of parliament exceeds that of Hararis. It must also be noted that members of other ethnic groups that live outside their 'homeland' do not benefit from a similar measure. In the case that was brought before the highest court of the land, the National Electoral Board of Ethiopia challenged the EVR rights of non-resident Hararis on the ground that there is no constitutional basis to accommodate similar demands if other minority group members living outside their designated 'home' wish to vote for representatives in their own 'homeland'. Such a claim is likely to arise particularly from minority groups with a significant population residing outside their designated state or sub-state territorial units. The Yem people, for instance, counted as 160, 447 during the last census, with 52 per cent of them living in the Oromia region while 48 per cent are living in Yem *Leyu Woreda*.²⁸⁴ Several other minority groups with significant populations residing in Addis Ababa or elsewhere in Ethiopia could demand to benefit from the special voting right available for Hararis. After all, as alluded earlier, the right to self-determination devised under the constitution envisages the equal treatment of all ethnic groups in the country. Thus, the Board would leave with no option but to accommodate such claims.

These were the central issues brought before the case between the HNA and the National Election Board of Ethiopia (NEBE/the Board). The case had loomed out of the Board's decision to terminate the practice of Harari's EVR during the 2021 national election. In explaining its decision, the Board stated that the practice of treating Hararis differently from other minority ethnic groups lacked constitutional basis, rendering the continued application

²⁸³ Assefa SK (2021) 279–80.

²⁸⁴ The most common administrative unit in multi-ethnic states that designated to accommodate a specific ethnic group.

of the practice both unfair and determinantal to the Board's impartiality.²⁸⁵ The HNA took the case before the Federal Supreme Court (FSC), the country's apex court, and able to reverse the Election Board's decision.²⁸⁶

The Board plea the FSC Cassation Division (the Cassation Court) against the decision of the FSC for alleged fundamental error of law. The HNA argued that EVR is a positive measure adopted to safeguard the Harari people's right to self-determination, which also aligns with minority rights protected under international human rights instruments ratified by Ethiopia.²⁸⁷ The HNA further argues that the primary mandate of the HNA is to ensure the preservation of the Harari language, culture, heritage, and identity, which assures the survival of the ethnic group. Allowing non-resident Hararis to participate in constituting the HNA, the argument goes, therefore aimed at ensuring that Hararis, both inside and outside the state, are strengthening ties with their state and ethnic group and thereby allowing the HNA to discharge its mandate provided by the constitution.²⁸⁸

The Board, on the other hand, insisted on the requirement of residence to determine voter eligibility and the exclusive authority of the federal government to issue electoral laws.²⁸⁹ Strikingly, the Board also argued that the FSC failed to properly consider the 'territoriality' of the protection granted to ethnic groups under the federal constitution.²⁹⁰ Here, the Board implies that the constitution accords ethnic groups with protection confined to the territory where they belong. In other words, once members of the concerned ethnic groups leave the territory, they are no longer eligible for the protection the constitution envisages.

The Cassation Court, however, upheld the FSC's position and sustained the practice of voting from outside of Harari. The decision states that the EVR serves as a mechanism enabling the Harari to exercise their social, cultural, and linguistic rights, as guaranteed under both the state and federal constitutions.²⁹¹ The design, the court goes with the argument, aligns with international obligations on minority rights protection to which Ethiopia is a party, as it

²⁸⁵ National Electoral Board of Ethiopia *Decision on Voting Rights for Harari People Living Outside the Region* available at <https://nebe.org.et/am/node/520> (accessed 11 April 2025) para 3 and para 7-8.

²⁸⁶ The FSC rejected the Board's argument, arguing that the practice must be seen as an exception to the general rule provided under the federal constitution. *NEBE v HNA* (2021) para 5.

²⁸⁷ *NEBE v HNC* (2021) para 9. The respondents invoked article 27 of the ICCPR

²⁸⁸ *NEBE v HNC* (2021) para 18.

²⁸⁹ *NEBE v HNC* (2021) para 7.

²⁹⁰ *NEBE v HNC* (2021) para 7.

²⁹¹ The Cassation Court invoked Article 5 (1) and Article 39 (2) of the Federal Constitution which declares equal recognition of all Ethiopian languages and protects ethnic groups' right to speak, write, and develop their language to promote their culture and to preserve their history, respectively

warranted under article 27 of the ICCPR and the Declaration on the Rights of Minorities.²⁹²²⁹³ Although the decision discerns no inconsistency between the exclusive composition of the HNA and the practice of EVR, the rulings interpreted the electoral design, particularly the EVR, and composition of the HNA as a protection scheme provided for minority groups to safeguard the group's survival and identity which affects those who live at home or afar.

3.5.Prospect of the Design

As discussed in the previous section, it is clear that the electoral design in Harari needs a reassessment to address the challenges highlighted under each arrangement. The design may align with the right to self-determination, but the differential treatment between residents on ground of ethnicity creates distortions in representation. Proportional representation at the PRA alone cannot fully address concerns of fairness, as the HNA retains key powers over issues affecting the state's population. Perhaps removing the limitation on non-Harari resident right to vote for HNA members could mitigate feelings of exclusion or representation. This change would allow HNA candidates to appeal beyond their immediate constituency, potentially fostering inter-ethnic cooperation. In this way, Hararis collective right to self-determination and non-Harari residents' individual rights to equal voting could be upheld without compromising one for the other.

However, maintaining the design would undermine the right of the non-Harari population to equality, political representation, and participation in public affairs, thereby engendering a sense of exclusion. When seen from the Harari's vantage point, it may also undermine the very purpose of the design. The demographic, socio-political, and economic situation is definitely not the same as that of 1991. New challenges require further deliberations. An electoral design that accommodates the interests of all concerned stakeholders is required to address the challenges. This section, therefore, seeks to highlights present-day challenges of the state of Harari and speculates what the future holds regarding Harari's electoral design. It will pinpoint where the reform proposal would emerge, what potential challenges would come out, and whose interests must be considered while reforming the electoral design. To this end, in reforming the electoral design, constitutional and extraconstitutional routes will be briefly discussed in the subsequent part.

²⁹² UN General Assembly *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 20 December 1993, United Nations, A/RES/48/138.

²⁹³ *NEBE v HNC* (2021) para 19.

3.5.1. Present-day Harari: Challenges and Dilemmas

Except for reports of protests in the early days of the federation against the electoral design,²⁹⁴ political violence, ethnic conflicts, and religious clashes have been rare over the past three decades in Harai. As in previous rounds, the 2015 national election resulted in a landslide victory for the EPRDF.²⁹⁵ However, the following year saw civil unrest that began in Oromia and later spread to the Amhara region.²⁹⁶ Harar City hosted several of these protests against the government between 2016 to 2018.²⁹⁷ During this period, reports emerged of fatalities and physical injuries, implicating government forces in the excessive use of force.²⁹⁸

In March 2018, the protests led to an unprecedented political shift, resulting in the ascension of Abiy Ahmed to the premiership, the first Oromo to assume such a position, following an internal power transition within the ruling party.²⁹⁹ However, as was the case in many other parts of the country, the period from 2018 to 2020 was marked by outbreaks of violence directed against ethnic and religious minorities, which resulted in deaths, injuries, and property destruction of Amharas, Gurages, and Orthodox Christians.³⁰⁰

At the same time, many other incursions from the Oromia into the political and cultural autonomy of Harari have also been reported.³⁰¹ Several accounts allege the dispossession of Hararis from farmlands, illegal land seizures and mass construction, disruption of water supply and garbage disposal services, as well as the appropriation of historical institutions and memories.³⁰² These claims of political aggression partly mirror the contentious debate on

²⁹⁴ Kjetil T 'Ethiopia: A New Start?' (2020) *Minority Rights Group International* 22.

²⁹⁵ 'Ethiopia's ruling party wins by landslide in general election' *The Guardian* 22 June 2015 available at <https://www.theguardian.com/world/2015/jun/22/ethiopias-ruling-party-win-clean-sweep-general-election> (accessed on 17 May 2025).

²⁹⁶ Gardner T 'Freedom: the mysterious movement that brought Ethiopia to a standstill' *The Guardian* 13 March 2028 available at <https://www.theguardian.com/global-development/2018/mar/13/freedom-oromo-activists-geerroo-ethiopia-standstill> (accessed on 17 May 2025).

²⁹⁷ Armed Conflict Location and Event Data 'Ethiopian Peace Observatory' available at <https://epo.acleddata.com/data/> (accessed 20 April 2025).

²⁹⁸ Armed Conflict Location and Event Data 'Ethiopian Peace Observatory' available at <https://epo.acleddata.com/data/> (accessed 20 April 2025).

²⁹⁹ 'Abiy Ahmed sworn in as Ethiopia's prime minister' *Al Jazeera* 2 April 2018 available at <https://www.aljazeera.com/news/2018/4/2/abiy-ahmed-sworn-in-as-ethiopias-prime-minister> (accessed on 17 May 2025).

³⁰⁰ Ethiopian Human Rights Council 'Ethiopia: On the Verge of Genocide: 147th Special Report' 06 November 2020 available at https://drive.google.com/file/d/15rt96_bmGShP63p5PfS62DOnZF-cL5cA/view (accessed 15 May 2025).

³⁰¹ Sherif A 'Harar without Hararis' (2020) available at <https://www.ethiopia-insight.com/2020/03/11/harar-without-hararis/> (accessed 26 November 2024).

³⁰² Sherif A 'Hararis in Harar are being erased and dispossessed' (2023) available at <https://www.ethiopia-insight.com/2023/12/07/hararis-in-harar-are-being-erased-and-dispossessed/> (accessed 26 November 2024).

constitutionally entrenched but legally undefined concept of Oromia's 'special interest' over Addis Ababa, the country's capital, which is similarly surrounded by Oromia, akin to Harar.

In fact, Proclamation No. 7/1992 of the transitional period proclaims that 'a special national interest and political right of the Oromo over [Harari] and [Addis Ababa] are reserved'.³⁰³ The 1995 federal constitution includes similar provision regarding Addis Ababa.³⁰⁴ However, Harari's constitution makes no reference of Oromo's 'special interest,' except to acknowledge, in its preamble, a shared history of oppression and the need for a power-sharing arrangement between the Hararis, Oromos, and other ethnic groups to promote the state's economic development.

Apart from the 'balanced representation' of Hararis and Oromos in the state council, reports indicate that similar arrangements have been made in the executive branch. Davison and Tewele, for instance, assert that the presidency and vice-presidency of the state have been held by the HNL and OPDO parties, respectively, for over 25 years.³⁰⁵ Citing Hararis rights advocates, the authors further note that during the same period, 55 and 45 per cent of the state's cabinet positions were held by Hararis and Oromos respectively, while the public service was dominated by Oromos, followed by Amharas, Hararis, and other ethnic groups.³⁰⁶ However, in 2019 a constitutional reform proposing a 'fifty-fifty consociational power-sharing arrangement' was reportedly agreed upon by the HNL and the OPDO's successor, the Oromo Democratic Party, though this is yet to be implemented.³⁰⁷

Be that as it may, the future of the electoral design, and the constitutional framework more broadly, must account for these and numerous other challenges facing contemporary Harari society. While any regression under the guise of reform could seriously threaten Harari self-

³⁰³ Article 3 sub 4 of Proclamation No. 7/1992 to Provide for the Establishment of National/Regional Self-Governments.

³⁰⁴ Article 49 sub 5 of the Federal Constitution which reads as "the special interest of the state of Oromia in Addis Ababa, regarding the provision of social services or the utilisation of natural resources and other similar matters, as well as joint administrative matters arising from the location of Addis Ababa within the state of Oromia, shall be respected. Particulars shall be determined by law."

³⁰⁵ Davison W & Tewele L 'Anguish for Harari as Oromo claim rights' Ethiopia Insight 2 January 2019 available at <https://www.ethiopia-insight.com/2019/01/02/anguish-for-harari-as-oromo-claim-rights/> (accessed 26 November 2024).

³⁰⁶ Davison W & Tewele L 'Anguish for Harari as Oromo claim rights' Ethiopia Insight 2 January 2019 available at <https://www.ethiopia-insight.com/2019/01/02/anguish-for-harari-as-oromo-claim-rights/> (accessed 26 November 2024).

³⁰⁷ Davison W & Tewele L 'Anguish for Harari as Oromo claim rights' Ethiopia Insight 2 January 2019 available at <https://www.ethiopia-insight.com/2019/01/02/anguish-for-harari-as-oromo-claim-rights/> (accessed 26 November 2024).

determination rights, maintaining the current arrangement also perpetuates a profound sense of injustice and exclusion for non-Harari residents.

Additionally, the relationship between the states of Harari and Oromia demands reimagining that is grounded in reciprocity and mutual benefit for a shared future. Ultimately, constitutional reform must aim to create inclusive scheme, forged through the dynamic interplay of the Harari, Oromo, Amhara, Somali, Gurage, Tigrayan, and several other communities, rather than being imposed through one-sided design.

3.5.2. Constitutional fate

It is true that a constitution, national or subnational one, is not made for eternity. It can be changed or amended whenever the constituent power wishes to write a new one or make some adjustment on the existing one. The change can be initiated upon the belief that the existing configuration has been obsolete and needs to be aligned with the existing socio-economic and political context. In this sense, Harari's constitution indeed provides two layers of constitutional amendments. While the first one is concerned with chapter three of the constitution, the second targets the rest of the constitution's chapters.

Chapter three of the state's constitution, which contains fundamental rights and freedoms of individual, including the right to self-determination, can only be amended based on the procedure laid down by the federal constitution.³⁰⁸ The latter provides that all rights and freedoms specified in Chapter Three of [the] constitution can be amended upon fulfilling three conditions.³⁰⁹ First, the proposal should be approved by a majority vote of all State Councils.³¹⁰ Second, the HoPR must approve the proposal by a two-thirds majority vote.³¹¹ And, finally, the proposal must be submitted before the HoF for a final approval, which can only be succeeded if the house vote in favour of the proposal by a two-thirds majority vote.³¹²

Amendments to the remaining chapters of the state constitution, including those parts that directly pertain to Harari's electoral designs, require approval by a two-thirds majority vote in the joint assembly of the state council.³¹³ But, before reaching to this stage, both the HNA and PRA must separately review and approve the proposed amendment by a two-thirds

³⁰⁸ Article 79/1 of the Revised Constitution of the State of Harari.

³⁰⁹ Article 105/1 of the Federal Constitution of Ethiopia.

³¹⁰ Article 105/1/a of the Federal Constitution of Ethiopia.

³¹¹ Article 105/1/b of the Federal Constitution of Ethiopia.

³¹² Article 105/1/c of the Federal Constitution of Ethiopia.

³¹³ Article 79/2/b & c of the Revised Constitution of the State of Harari.

majority vote in their respective chambers, after which it is submitted to the joint assembly for final approval. Either chamber may initiate an amendment proposal.³¹⁴

The procedures outlined in both the federal and state constitutions make constitutional amendments arduous. Chapter three, in particular, can only be amended through the federal channel. Putting aside the lack of empirical evidence regarding past amendment attempts or political will for constitutional reform, the procedural and substantive complexities that any proposal might introduce to the constitution's basic structure further diminish the likelihood of reforming the Hararis' electoral design. For the remaining chapters as well, the required voting thresholds present a procedural hurdle, assuming political will exists. While this might not be a problem in a council fully dominated by a single party, reaching consensus in a divided assembly, where each chamber acts as a guardian of their respective ethnic interests, proves far more difficult.

More importantly, substantive questions regarding the constitutionality of subnational constitutions and legislation governing electoral constituencies and state parliamentary elections remain unresolved. A recent constitutional case pending before the Council of Constitutional Inquiry (CCI) illustrating this contention. The case challenges the Benishangul Gumuz State Council's decision to: (1) increase electoral districts from three to five; (2) expand the number of representatives per constituency from a range of 4 – 6 to a range of 5 – 11; and (3) raise the Council's total seat from 99 to 165.³¹⁵ The application argues that the power to delimit electoral districts reside exclusively on the HoF and NEBE. For the same reason, any similar attempt to modify Harari's electoral design could face the same constitutional challenges before the CCI or federal courts.

3.5.3. Extraconstitutional alternatives

In well-functioning democracies, constitutional routes may be effective. But this is not the case in emerging or fragile democracies, where the dominant political party often play the major role in shaping the political order through informal practices.³¹⁶ Many observers agree that Ethiopia's constitutional order is heavily influenced by the dominant party at the centre.

³¹⁴ Article 79/2/a of the Revised Constitution of the State of Harari.

³¹⁵ 'Benishangul Gumuz opposition petitions constitutional Inquiry over regional constitution amendment, seat allocation' Addis Standard 5 March 2025 available at <https://addisstandard.com/benishangul-gumuz-opposition-petitions-constitutional-inquiry-over-regional-constitution-amendment-seat-allocation/> (accessed on 20 April 2025).

³¹⁶ Carbone GM 'Political parties and party systems in Africa: themes and research perspectives' (2007) 3 *World Political Science* 10.

As opposed to the constitutional principles of shared rule and self-rule, the federal government assumes strong power. Consequently, a top down, centre-to-the-state reform proposal may not be surprising in the context of reforming Hararis legislative arrangements. Grand initiatives aimed at addressing the social and political challenges that the country has faced and continues to endure might lead to a new electoral system that addresses the limitations of Harari's electoral design. While the outcomes of such initiatives remain to be seen, the study below briefly highlights key considerations for parties involved in the process.

The incumbent party, PP, like its predecessor the EPRDF, centralises power at the centre, arguably in the hands of the party's president.³¹⁷ Despite differences in their spheres of influence, the party's branches at state level remain potent within their respective state. As previously reported, an intra-party agreement between the Harari and Oromia branches of the PP is highly likely, given ongoing tensions over natural resources, land issues, and more. However, this alone does not adequately address the challenges faced by Hararis and non-Harari populations. Most importantly, it risks excluding Amharas, Gurages, Somalis, Tigrayans, and several other residents, including individual with mixed backgrounds, from the conversation that also affects them. This replicates the same oversight made by the architects of the arrangement during the transitional period.

The ongoing national dialogue, if successful, could provide a critical opportunity to address on Ethiopia's intricate web challenges and deep-rooted fault lines. As of May 2025, the agenda collection process has been finalised in all but one state, Tigray, with the main dialogue forum expected to convene shortly. During regional consultations in Harari and Oromia, Harari's electoral design was tabled as an agenda item for discussion. In Oromia's forum, participants proposed discussing Harari's statehood status, proposing for sub-state 'semi-autonomous' status within Oromia. The dialogue may also resolve the longstanding debate about transitioning from the current majoritarian/plurality to a proportional or mixed electoral representation.

Any reform of electoral system at the national or subnational level must thoroughly account for the Harari's unique ethnic dynamic and the challenges facing its population. An arrangement that excludes or limits any segment of society from representation in the state parliament on the basis of ethnicity risks replicating the shortcomings of the current electoral

³¹⁷ Balehegn M 'The politics and problems of Prosperity Party Gospel' Ethiopia Insight 4 April 2021 available at <https://www.ethiopia-insight.com/2021/04/04/the-politics-and-problems-of-prosperity-party-gospel/> (accessed on 20 April 2025).

design. Similarly, the absence of protective schemes to ensure or facilitate Harari's political representation would undermine their right to self-governance, expression and cultural promotion. Conversely, an electoral system designed to foster inter-ethnic cooperation, rather than reinforce ethnic voting, could enhance social cohesion among the state's diverse community.

3.6.Concluding Remark

The chapter traced the origin of the electoral arrangements in Harari, discussed the justifications offered by the designers, examined how valid the systems are against constitutional principles and reflected on what the future holds for the design. Harari's socioeconomic and political position at the time when a new political dispensation emerged in 1991 appears to explain the adoption of an electoral design unmatched elsewhere in Ethiopia, which combines gerrymandering with special voting rights and a legislative chamber exclusively reserved for the Harari ethnic Group.

The architects of the design argue that this arrangement ensures that the Harari people can exercise their right to self-determination and preserve their cultural identity. However, when examined against the principles of universal and equal suffrage, individual equality, and other important criteria, practices such as seat reservations, gerrymandering, and special voting rights raise significant concerns. Although these designs offer benefits to the Harari community, they also create unequal treatment among individual members of the subnational unit based on ethnicity. In some instances, this differentiation further extends to the political representation rights of the non-Harari population.

Reforming the electoral design is the first step in the right direction to address these challenges and several other present-day challenges facing the state and its multi-ethnic residents. To this end, the chapter highlights that the design may be amended by the procedure laid down in the state constitution. Alternatively, a change to the design and, thereby, the state's constitution may likely emerge either from an inter-party agreement or a broader political settlement resulting from Ethiopia's ongoing national dialogue process. Either way, the chapter argues that reforming the electoral design must take several interests into account, which may include the Hararis and non-Harari residents. Expanded consideration should be given to the non-Harari population, as the Oromos receive constitutional accommodation and representation as they occupy half of the state council through party channels.

Chapter Four: Conclusion and Recommendation

The focus of this study was to determine the extent to which Harari's electoral design ensures or facilitates the protection of minority rights. The thesis explored the issue from various perspectives, including for adopting different electoral designs and their compatibility with the constitutional framework and principles of electoral systems. After considering the question from all these angles, the thesis concludes that Harari's electoral design requires reform if it is to adequately represent both Hararis and non-Hararis. This chapter provides a brief overview and summary of the arguments leading to this conclusion. Finally, the chapter wraps up the study by outlining the necessary reforms needed to address the drawbacks and issues arising from the current electoral design.

4.1. Conclusion

Chapter Two focused on two essential components of the main research question. First, it laid the groundwork for understanding the concept and identification of minorities. This discussion was crucial for recognising the interests of specific groups that require protection. In this context, the thesis explored both the objective and subjective elements outlined in Special Rapporteur Francesco Capotorti's report, along with various scholarly contributions that clarify what constitutes a minority. It concluded that key indicators of a minority group's status can include an ethnic group's numerical representation, its dominance in a given setting, and its unique characteristics, such as ethnic, religious, or linguistic features. While these indicators are often debated, the subjective elements involve perceptions and social attitudes toward the distinctive traits of the minority group. A comprehensive consideration of both objective and subjective elements serves as the foundation for determining the definition of a minority.

Protecting minority groups is essential for preserving and promoting their identities and cultures. This protection is necessary because minority groups often find themselves in disadvantaged positions, making it difficult for them to sustain and advocate for their unique identities. Without such protections, social coexistence may suffer, and the overall security of society can be undermined. As a result, many constitutions include provisions for targeted support aimed at achieving equality for disadvantaged groups, enabling their participation and representation in the political process. One such mechanism is to put in place an electoral system that allows minority groups to achieve receive political representation without adversely negating equally significant principles of a constitution. To address this challenge,

some jurisdictions adopt gerrymandering, while others reserve seats in the legislature for a particular group. Special voting rights aimed at facilitating or guaranteeing representation to a minority group may also be another option worth considering.

Chapter Three focused on a unique electoral model that one of Ethiopia's subnational units have adopted. The fact that people who once had a glorious history are reduced to a minority position due to successive state policies and historical events, and are at risk of losing their common identities, such as language and culture, is presented as the justification for devising a distinct electoral design. The design is aimed at making the Hararis visible in the state legislature, allowing them to exercise their constitutional right to self-government, equitable representation in governments, and promotion of language, culture, and history in their habitual state.

The electoral model is characterised by seat reservation, gerrymandering, and special voting rights conferred on a minuscule population. The right to stand in the election for the HNA is reserved for the Harari people. The right to vote for members of the HNA is also limited to the Hararis regardless of their residence. Particularly, the voting right conferred on the Hararis residing outside the state of Harari to elect members of the HNA is another key feature of the electoral design. Furthermore, the second chamber of the state council, the PRA, is composed of representatives of the state's general population, elected from two gerrymandered districts. While a district predominantly inhabited by the Harari people sent four members to this chamber, the remaining 18 members are drawn from the second district, overwhelmingly dominated by the Oromos, Amharas, and several other ethnic groups.

This study concludes that the electoral design has enabled Hararis to secure representation in half of the state council, thereby placing them in a position to promote their language and culture and exercise their right to self-governance. The electoral system has provided significant benefits to the Harari community, including guaranteed representation in both chambers and the elevation of the Harari language to a dominant vernacular status. Additionally, they can engage in self-governance, which includes overseeing the appointments of state officials and managing the executive branch through officials appointed by the state council. In addition to the symbolic value attached to it, the voting rights conferred on those members of the Harari ethnic group residing outside the state to vote and stand for election to the HNA allowed them to have a say in matters of Harari culture, language, and heritage.

However, the electoral design is not without problems when examined against fundamental principles of redistricting electoral districts, constitutional right of equality and non-discrimination, and underlying notions of suffrage. The system has unfairly treated other residents of the state by diluting the voting strength of other segments of the community in terms of their numerical superiority during elections with the view of giving the Harari, a numerical minority, significant representation in the state assembly. Although it is ostensibly designed to redress historical cultural inequalities by empowering Hararis through preferential political rights, Harari's electoral design has ended up replicating the very injustice it claims to remedy. How the design influences the behaviour of the electorate and political parties is also another vantage point to assess the design's compatibility with constitutional aspirations for democratic governance grounded in peace and security.

Some might to defend the decision to reserve a chamber of the state council to the Harari on the ground that the mandate of the chamber is limited only to matters that concern the Harari. However, that is not true as the HNA's mandate under the state constitution extend to matters that affect the state's general population. In fact, the mandates of the chamber warrant the representation of affected groups in the table where the decision deliberates. The non-Harari population is, however, excluded even from voting for members of the HNA. The designers seem to limit both passive and active voting rights of the non-Harari out of fear for the numerical position of the non-Harari population.

The state's gerrymandering scheme is also problematic. First, the way Harari's electoral map is redistricted violates the principles of proportionality/population equality between districts. Hararis, whose population accounts for less than 9 per cent of the state's population, has voting power concentrated in an electoral design. The rest of the state resident voting power, which accounts for more than 90 per cent, is congested outside the Jugol. Moreover, a vote inside and outside the Jugol area has no equal value. A vote inside the Jugol wall is way stronger than two votes outside the Jugol, which implies that the distribution of voting power among the electoral districts is incompatible with the notion of 'one-person-one-vote'. In all cases, except for the 2005 election, the electoral outcome in those two districts was the same. Hararis secured those four seats from the first gerrymandered district. This *de facto* representation, facilitated by gerrymandering, implies that it presupposes ethnic voting, where Hararis only vote for a Harari candidate. Perhaps surprises in the electoral outcome are expected in the other gerrymandered district, where anyone from any ethnic group could stand for election and be elected by everyone. However, the HNL and OPDO parties have

split the state council's seats equally over the past six rounds of national elections, influenced by a backdoor political agreement between the two parties.

Gerrymandering has a differentiated impact on non-Harari residents. The size of the second electoral district, where 18 members of the PRA are drawn, advantages ethnic-Oromo residents over members of other ethnic groups. Demographically, Oromos constitute around 56 percent of the state's population and predominantly reside outside the Jugol and throughout the city's hinterland. The state constitution recognises a power-sharing arrangement with the Oromos. The inter-party agreements, which has resulted in a balanced representation of the Hararis and the Oromos in each chamber, risks cementing ethnic consciousness and cultivating apathy among the rest of the state's population. In fact, members of the Amhara community were apprehensive about their status in the new state that their representatives proposed, during the transition period, the establishment of three concentric districts designed to ensure separate representation for the Harari, Amhara, and Oromo electorates.³¹⁸ However, the proposal was not accepted. The situation is compounded by the absence of regular redistricting, which has left most of the challenges unaddressed for decades, perpetuating its unfairness.

Harari's EVR is another manifestation the electoral design overreaching its purpose. First, it creates a situation where an individual gets representation before two state councils simultaneously. Such a unique arrangement is problematic because it is only extended to the Hararis, despite several other ethnic groups who might face similar challenges. It is difficult to reconcile the differential treatment extended to non-resident Harari with the constitution's promise of treating ethnic groups equally, regardless of size, history and political consciousness.

The arrangement is also constitutionally suspect for the distinction it creates between non-resident voters based on having a Harari or non-Harari background. The federal structure seems to have created Harar as the 'homeland' of the Hararis. This is even though many other ethnic groups inhabit the state. Indeed, Harar is a home for hundreds of thousands of ethnic groups across the country. The fact that a person born and raised in Harar does not have this special voting right even if he or she has left Harar for a short or long period of time is another indication of the unfairness of the design. Hararis, who have no ties to Harar except for their ethnical heritage, on the other hand, can exercise their rights, which makes the

³¹⁸ Vaughan (2003) 232.

design worth reconsidering. In this regard, the design of a system that allows Hararis living outside the state to have their votes counted in this powerful council solely based on their ethnic identity is further evidence of the bias created by the design.

The fact that only Hararis participate in the HNA elections deprives non-Hararis of the right to participate and represent the state's affairs equally. Of course, non-Hararis still have the 'legal' right to be represented in at least 22 seats of the state's council. They have a good chance of being represented in at least 18 of those seats due to gerrymandering. However, the power given to the chambers has distorted the representation that, at face value, seems balanced. This is evident in the fact that the HNA is given the power to nominate the state president, thereby, wielding strong influence in the president's extensive executive powers.

4.2. Recommendations

The study makes the following recommendations.

- While the right to stand for election in the HNA is still reserved for Hararis, extending the right to vote to non-Hararis may allow candidates to appeal beyond their ethnic constituency. Since it is necessary to get more votes than other candidates to win an election with a large electorate under a first-past-the-post system, the efforts of candidates to get enough votes can lead to better-qualified candidate winning the election. This candidate pool will, in turn, help both Hararis and non-Hararis to obtain substantive representation. Above all, it will help non-Hararis have representation and have their voices heard in decisions that affect their interest, too. Perhaps extending such an active voting right of non-Hararis in the election of the HNA members may give a symbolic sense of accommodation to the non-Hararis. Moreover, this extension does not negate the very purpose of the electoral design as it does not affect Harari's representation. Therefore, the joint assembly of the state council must initiate a constitutional amendment process to ensure that non-Hararis have the right to elect members of the HNA.
- Constituencies need redistricting. Regular diagnosis and drawing of electoral maps ensure that the voting power of Hararis and non-Hararis is proportionally, if not equitably, distributed between each district. This distribution is a crucial requirement for ensuring equality of votes. To this end, it appears that creating an additional constituency is necessary, considering that residents outside the Oromo and Harari

ethnic groups have received no or minimal representation in the past six rounds of elections. However, it is important to ensure that drawing additional constituencies does not encourage segregation. If the state were divided into three constituencies, as proposed by Amhara representatives during the transition period, there is a high probability that it would have a segregation result that reflects the ethnic settlement of the state in 1991.

Although detailed data on the current population distribution is needed, it is possible to assume that the settlement pattern has not changed significantly from the days of the transition period. Jugol and its surrounding areas are still predominantly inhabited by the Hararis. In the outskirt areas of the city, Oromos may still be dominant, as was the case at the time of the incorporation of those 17 *kebeles* into the state. The remaining outer core of the city, located between Jugol and the outskirts of the city, is predominantly inhabited by Amharas and other ethnic groups. Therefore, the third or fourth constituency should take this demographic into account. To this end, the National Election Board of Ethiopia and the House of Federation, as the bodies with the power to delimit electoral constituencies, must engage with the state council, the executive, political parties, the civil society, and other stakeholders to ensure that the state's electoral constituencies are drawn up in a manner that protects the needs of all residents.

- The special voting rights granted to the Hararis is inconsistent with the country's electoral law, which stipulates that residency is necessary for voter eligibility, promotes individual equality, and upholds a federal structure that ensures equal treatment of all ethnic groups. Therefore, abolishing this practice could help address concerns about differential treatment based on ethnicity, which is prohibited by both regional and federal constitutions.

Concluding remarks

The author acknowledges that political will is essential for executing the recommendations presented. However, given the current political landscape in Ethiopia, the state parliament and its government may be reluctant to introduce changes to the electoral system. Therefore, civil society organizations, the media, and academic institutions should engage in ongoing advocacy to highlight the impact of the electoral design on the non-Harari population.

Additionally, ethnic-based regional and national parties should also participate in this lobbying effort.

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