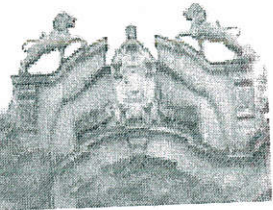
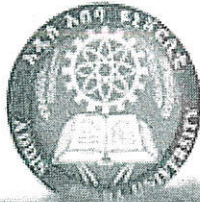


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**CONSOCIATION AND POWER SHARING AS A
GUARANTEE FOR MINORITIES**

BY

Belachew Girma



June, 2011

Addis Ababa, Ethiopia

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FOR MINORITIES**

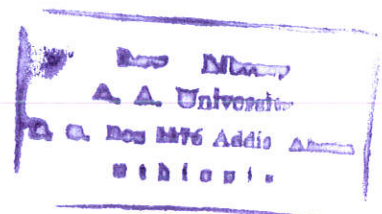
By

Belachew Girma

Advisor

Yared Legesse (LL.B, LL.M, S.J.D)

**A Thesis Submitted to the School of Graduate Studies of Addis
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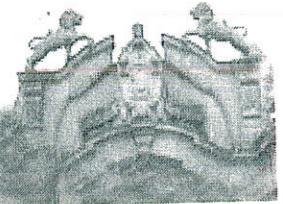
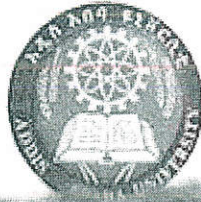
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DECLARATION

Belachew Girma, hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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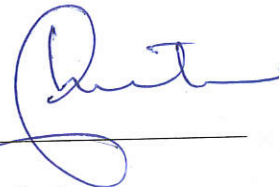
Consociation and Power Sharing as a Guarantee for Minorities

By

Belachew Girma

Approved by Board of Examiners

Advisor Yared Legesse (Dr.)


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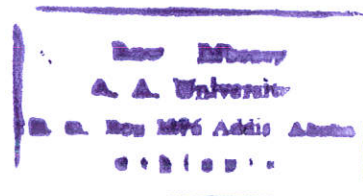

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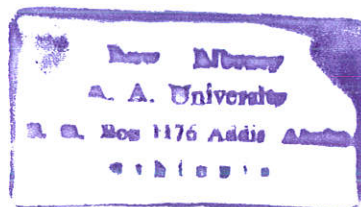
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Acronyms

CSA- Central Statistics Authority

EPRDF- Ethiopian Peoples' Revolutionary Democratic Front

FDRE- Federal Democratic Republic of Ethiopia

HoF- House of Federation

HPR- House of Peoples' Representatives

ICCPR- International Covenant on Civil and Political Rights

NNPs- Nations, Nationalities and Peoples

PDRE- Peoples democratic Republic of Ethiopia

PR- Proportional Representation

SNNP- Southern Nations, Nations, Nationalities and Peoples

UDHR- Universal Declaration on Human rights

UN- United Nations



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Abstract

The FDRE Constitution gives rights to Nations, Nationalities and Peoples (NNPs) of Ethiopia. The sovereign political power resides in NNPs. They are entitled to self-determination including secession. The right to self-determination, as enshrined under Article 39, includes the right to language, culture and history, the right to a full measure of self-government including the right to establish institutions of government in the territory that it inhabits and to equitable representation in the state and federal governments. The federal set-up is delimited predominantly along ethno-linguistic criteria. These recognition and empowerment of diversity is an important move towards accommodating the diverse nature of the society.

But, there are majoritarian characteristics in Ethiopia which convinces that the guarantees under the FDRE Constitution are not sufficient. The executive is controlled by one party which also enjoys a majority in the parliament. There is a unicameral legislature and absence of an independent arbiter of the constitution. Lack of PR electoral system for the election of members of the HPR with other problems necessitates the need to look for consociational democracy in order to achieve and maintain stable democracy and legitimacy.

Consociational democracy with four defining characteristics which includes grand coalition, autonomy, proportionality and minority vet offers sufficient representation at the center and considerable autonomy for ethno-linguistic groups. There is positive favorable condition in Ethiopia to make the current 'semi-consociational' arrangement fully consociational. The federal arrangement should be amended to give the HoF the power make laws and over-represent minorities; the electoral system should that of PR; the principle of proportionality should be applicable in military, police and civil service.

Political elites of different ethno-linguistic groups should cooperate for a negotiation with compromise and tolerance. Their role in multi-ethnic societies vital in order to bring about stability and legitimacy that is sought in bring about.

CHAPTER ONE

Introduction

1.1 Background of the Problem

The issues of minorities have ceased to be solely a domestic issue. It is becoming the issue of international law as well. Attempts under international law have been made to define and identify different category of 'minorities'. The initial approach was to protect members of minorities with different ethnic, religious, cultural, and linguistic background from discrimination which was later changed progressively to a debate on whether to give primacy to individuals or to minorities as groups.¹

Minorities in different parts of the world have been battling with the state- peacefully or violently- over issues of political representation, language rights, self government, control over resources and internal migration.² The responses of states to such claims of minorities vary tremendously from state to state. While it is a question of justice in the Western states, others like East and Central Europe consider it a threat to integrity and hence a question of security.³ The extreme consequences of the failure to address the challenges of ethno-cultural and political interests of minorities adequately are well-known: discrimination and exclusion, forced assimilation, civil war, ethnic cleansing, and even genocide.⁴

The interests and claims of minorities become questionable in countries where there is majoritarian democracy. In majoritarian form of government, it is the majority who enjoys political power by establishing a government. Majority rule suffers from a serious contradiction between its theory and its practice: in theory, majority rule tends to be regarded as the crucial

¹ Tom Hadden, *Integration and Autonomy: Minority Rights and Political Accommodation*, in (ed.) Ian O'Flynn and David Russell (2005), *Power Sharing: New Challenges for Divided Societies*, Pluto Press, London, p.32.

² Will Kymlicka, *Emerging Western Models of Multi-nation Federalism: Are they relevant in Africa?* David Turton ed. (2006), *Ethnic Federalism: the Ethiopian Experience in Comparative Perspective*, Eastern African Studies, James Carrey Ltd. Oxford.p. 32.

³ Will Kymlicka, *Justice and Security in the Accommodation of Minority Nationalism*, in (ed.) Stephen May, Turiq Modood, Judith Squires (2004), *Ethnicity, Nationalism and Minority Nationalism*, Cambridge University press, Cambridge, p. 144.

⁴ Sujit Choudhry (*Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies* in (ed.), Sujit Choudhry (2008), *Constitutional Design for Divided Societies: Integration or Accommodation?* Oxford University Press, Oxford p. 5.

decision [making] rule- and hence as the defining criterion- of democracy and in practice, however, strict application of majority rule is extremely rare.⁵ This is mainly because its effectiveness in a society with ethnic, cultural, linguistic and religious diversity where there are permanent majorities and minorities unlike the hope that the present minorities will be majorities in the next election that is prevailing in Westminster model. The one who passes decisions in such societies are bare majorities. This indicates that the minorities have no say in the government and decision making even if the matter under consideration has direct effect on them.

The situation becomes much worse and complex where that nation is a deeply divided society on grounds of ethnicity, religion or language which creates permanent majorities and minorities. Deep divisions, in this sense means, not mere diversity but political claims are refracted through the lens of ethnic identity, and political conflict is synonymous with conflict among ethno-cultural groups.⁶ Each identified groups needs their political interests be satisfied. Majoritarian democracy cannot answer interests of each identified group and it becomes an abstract principle.⁷

There are six identified characteristics of majoritarian government according to Lijphart.⁸ Firstly, one political party, supported by a majority in the legislature, controls the cabinet and hence executive power concentrates in the hands of one party. Secondly, this one-party majority cabinet predominates over the legislature, in which one or more other parties will also be represented. This means that the voices of other parties will not be heard as the rule is the winner-take-all-mentality. Third, the legislature is unicameral in order to ensure that there is only one clear majority, that is, in order to avoid the possibility of competing majorities that may occur when there are two chambers. Fourth, the governmental system should be unitary and centralized in order to ensure that there are no clearly designated geographical and/or functional areas which the cabinet and the parliamentary majority fail to control. Fifth, the cabinet and the parliamentary majority should not be constrained by constitutional limitations; this means that there should not be any constitution at all, or merely an "unwritten" constitution, or a written constitution that can be amended by simple majority vote. Sixth, the courts should not have the

⁵ Arend Lijphart (2008), *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice*, Routledge Pub. New York, p.111.

⁶ Choudhry, *supra* note 4, p. 5.

⁷ Lijphart, *supra* note 5, p. 115.

⁸ These characteristics of majoritarian democracy are discussed in Lijphart, *ibid*.

power to limit the majority's power by exercising judicial review, though if the constitution can be amended by majority vote (according to the previous characteristic), the impact of judicial review would be minimal anyway because it can easily be overridden by the majority.

These all indicates that majority rule cannot adequately accommodate differences specifically where the grounds are ethnicity, culture or religion and as such it will be detrimental to those whose number does not justify assuming such dominant position. They will be over-ruled even on matters of vital interests relating to their identity. This win-or-lose policy, what is commonly named 'zero sum game' excludes minorities permanently from decision making and political participation which may create political instability as we are observing these days.

The question then becomes how constitutional designers can handle these issues in order to build a stable democracy and legitimate government in such societies where majority rule cannot do so? Lijphart introduced a consensus type of democracy, to use a technical political science term 'consociational' democracy as an option. He argues that the interests and demands of communal groups can be accommodated only by power sharing⁹ as opposed to the above described majoritarian system. The mode of decision in consociational democracy is consensual through negotiations made among political elites.

The concept of consociational democracy was discussed in academic terms by Lijphart in his book entitled '*The Politics of Accommodation*' (1968)¹⁰. He took the Netherlands as a case study and described that the Dutch politics is the politics of accommodation whereby elites from different religious, cultural and linguistic groups, who understand the danger of non-cooperation, come together for negotiation. This is the secret of a successful and stable democracy that prevailed in the Netherlands which is divided with religion, language and culture.

Lijphart identifies four key principles of consociational democracy: Grand coalition-elites of each pillar come together to rule in the interests of society because they recognize the dangers of non-cooperation; segmental autonomy-where each segment enjoy a high degree of autonomy to run their own internal affairs; proportionality- as a principal standard of political representation,

⁹ Arend Lijphart, *Constitutional Design for Divided Societies*, Journal of Democracy, Vol.15, No. 2, April 2004, p. 96.

¹⁰ Arend Lijphart (1968), *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, Berkeley, University of California Press.

civil service appointments, and allocation of public funds; and minority veto- which serves as an additional protection of vital minority interests.¹¹

Consociational democracy, which is also called power sharing democracy, has been claimed to have resulted in superior government performance. This might be attributed to the inherent characteristics of consociational democracy: broad multi-party coalitions; a balance of executive and legislative power; multiparty system; decentralized and federal government, where (regional) minorities have considerable independence; proportional representation, to allow minorities to gain representation too; incongruent bicameralism, where it is difficult for one party to gain a majority in both houses; judicial review, and rigid constitution.¹²

These all characteristics of consociational democracy enable political actors, specifically ethnic, religious and linguistic groups to protect their interests. There will not be a principle of a 'winner-take all mentality' unlike the majoritarian democracy.

The FDRE Constitution grants rights to Nations, Nationalities and Peoples (herein after NNPs). The sovereign power resides in them (Art.8). And this very Constitution is the expression of their sovereignty.¹³ NNPs are defined under Art. 39 (5) as a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

The Constitution establishes a federal structure, which is composed of nine regional states mainly based on ethno-linguistic criteria as a reaction to past repression and atrocities. The criteria for statehood are settlement patterns, identity, language and consent of the people concerned.

The NNPs have the right to self-determination which is an organizing principle of the federation.¹⁴ Art. 39 is a bundle of rights which includes the right to language, culture and

¹¹ Arend Lijphart (1977), *Democracy in Plural Societies: a Comparative Exploration*, Yale University Press, New Haven, p. 25.

¹² Donley T. Studlar and Kyle Christensen, *Is Canada a Westminster or Consensus Democracy? a Brief Analysis*, Journal of Political Science and Politics, Volume 37, No. 4 (October 2006) American Political Science Association, <http://journals.cambridge.org> accessed on 03/12/2010, p. 834.

¹³ Art. 1 (2) of the FDRE Constitution.

¹⁴ Paragraph 1 of the Preamble of the FDRE Constitution.

history, the right to a full measure of self-government including the right to establish institutions of government in the territory that it inhabits and to equitable representation in the state and federal governments, and the right to self determination up to secession. NNPs have also the right to establish their own state.

It adopts a parliamentary form of government where the popular house (the lower house) controls the executive (Art. 45). There are two Federal Houses: the House of Peoples' Representatives (HPR) and the House of Federation (HoF). The HPR is the highest authority of the Federal government with legislative power on matters falling under the jurisdiction of the federal government.¹⁵ Its members are elected by the people through plurality of the votes cast.¹⁶ 'Minority nationalities', which are not defined under the Constitution, are entitled to at least 20 seats in the HPR.

The HoF is composed of representatives of NNPs of Ethiopia. Each NNP is represented one member and there should be one additional representative for each one million of its population (Art. 64). The HoF is a House vested with the power to interpret the Constitution but has no legislative power.

While the Constitution grants these protections, there are arrangements that are similar with Westminster model. The mode of decision is predominantly majoritarian; the electoral system is plurality of vote; unicameral legislature; single party dominance of the cabinet; and absence of an independent organ umpiring federation. These have made for the insufficient protection granted to NNPs.

1.2. Statement of the Problem

Ethiopian is comprised of different ethnic and religious groups. The current federal set-up of the government delimits boundaries of regional states based on settlement patterns, language, identity and consent. The question here is how the minorities can be protected while the prevailing principle is majority rule and other characteristics of Westminster model? As it has been observed through experience of many countries, majoritarian democracy cannot answer

¹⁵ Art. 51 and 52 of the FDRE Constitution.

¹⁶ Art. 54 (2) of the FDRE Constitution.

interests of groups especially in deeply divided societies. Therefore, there must be something to be done to curb the problem; a type of democracy which accommodates differences and share powers where policy matters are decided by consensus and agreement among all significant political actors.

The thesis will have the following basic questions:

- What are constitutional guarantees belong to the current political arrangement regarding minority groups, in the Constitution and in practice?
- Are these guarantees sufficient in addressing the problems associated with minorities?
- Can consociational democracy accommodate such diversity in the Ethiopian context?
- What specific measures shall be taken to rectify the problems and build stable democracy?

The last basic question includes exploring the relevance of consociationalism to Ethiopia as an alternative to the current arrangement in the FDRE Constitution.

1.3. Proposed Objectives of the Study

The main purpose of this study is to deal with the option of consociational democracy in order to build stable democracy and legitimacy amid diversity and as such protecting minorities in multi-national Ethiopia. In dealing with this issue, the study will also:

- Deal with the Westminster democracy prevailing in Ethiopia and its failure to accommodate diversity;
- Analyze constitutional guarantees for NNPs and practicability especially in the Federal legislative and executive organs;
- Deal with consociationalism and power sharing democracy as an alternative to the current prevailing system;
- Analyze its role in accommodating diversity and creating stability and legitimacy; and
- Address major challenges and suggest feasible solutions

1.4. Literature Review

There are many influential works of Arend Lijphart on consociational democracy. In his book entitled *the Politics of Accommodation*, he addresses the arrangements made in the Netherlands in building stable democracy amid deep divisions along language, culture and religion. He explains the Dutch politics as the politics of accommodation and this is the secret of the success of such democracy.¹⁷ He presents an extended theoretical analysis of the Dutch politics, focusing on the conditions which enhance stability.

In 'Democracy in Plural Societies', Lijphart identifies four major characteristics of consociational democracy: grand coalition, autonomy, proportionality and minority veto. These are described as consociational elements. He cites Netherlands, Switzerland, Austria and Belgium as examples of consociation while Canada and Israel as semi-consociational democracies. He also addresses favorable factors by which a consociational democracy can be successful: factors that are not necessary and sufficient but merely favorable.

Lijphart addressed the criticisms against consociationalism as a normative model in an elaborate manner in his book 'Power sharing in South Africa',¹⁸ which was written during the Apartheid era, in his way while proposing it for South Africa. He considers power sharing as a realistic option for South Africa.

There are also writers that argue recognition and empowerment of diversity like consociation will entrench ethnic cleansing. Accordingly they propose for single public identity

Aberra Dagafa in *the Scope of Rights of Nations, Minorities under the Constitution of the Federal Democratic Republic of Ethiopia* has made a thorough examination of the FDRE Constitution to determine the extent to which its stated protection of the rights of minorities has been effective. Tsegaye Regassa, in his LLM Thesis entitled *Ethnic Federalism and the Right to Self-determination as a Constitutional Legal Solution to the Problem of Multi-ethnic Societies* tries to address the introduction of ethnic federalism as a solution for Ethiopia. Assefa Fiseha, in his book *Federalism and the Accommodation of Diversity in Ethiopia* has addressed issues in the Ethiopian federalism and recommends for power sharing in Ethiopia as the 'zero sum game' politics cannot be afforded.

¹⁷ Lijphart, *supra* note 10.

¹⁸ Lijphart uses power sharing as synonymous with consociational democracy in many of his writings.

1.5. Methodology

The study employs a multi-method in nature so as to clearly show the relevance of consociationalism rather than majoritarian system in Ethiopia. Accordingly, the author has reviewed literatures and analyzed the necessary documents. All sources served to provide information on the basic research question.

- **Literature Review-** The literature review of this study consists of reading and analyzing library and online resources. In reading references, the author has attempted to find information specific to the research topic in order to give a frame of reference for its effective evaluation of the topic.
- **Document Analysis-** the author has tried to analyze documents relevant to the topic. Some of them include the FDRE Constitution, Minutes of the Constituent Assembly, and the decisions of the HoF with regard to claims of NNPs.

The study also involves analysis of the experience of other countries regarding consociational democracy by specifying on those countries with similar democratic culture and current government set-up.

1.6. Significance of the study

This study has tried to look at the guarantees for minorities under the FDRE Constitution and exploring the relevance of consociation to Ethiopia. The findings and recommendations of this study will serve as a stepping stone for constitutional designers to the consideration of consociation as an option to the accommodation of ethnically diversified society. The author is of the opinion that the research will influence the practicability of the rights of NNPs enshrined in the Constitution. It will be used by the legislature and the executive branch of the government as reference material in their attempt to give due consideration for the rights of NNPs. This research will also serve as reference to the future researchers that will be conducted in the area of the relevance of consociation as an option to the current arrangement.

1.7. Scope and Limitations of the Study

The study mainly focuses on showing the need to lean towards consociational democracy in protecting minority rights and creating stable democracy and legitimacy. Its main focus is the executive and legislative branches of the Federal government. And as such, proportionality in the judiciary, military and police are not covered in a detail manner.

There are no prior works written on the relevance of consociational democracy to Ethiopia in order to sufficiently accommodate diversity along with ethnicity, language and culture. Literatures that deal with the Ethiopian federalism rarely raise consociation as an option. This is one among the limitations the author has faced in conducting this study. Power sharing embraces related concepts like federalism, electoral laws, sociological aspects of the society etc. The author has also faced time and financial constraints that limited the scope of the study to the legislative and executive organs of the Federal government.

1.8. Organization of the Study

In short, this study has attempted to explore consociational democracy as a policy choice in order to accommodate diversity in Ethiopia. In doing so, it has six chapters having sections and sub-sections and structured the chapters as follows. Chapter One, this very chapter, introduces the statement of the problem, objectives of the study, literature review, methodology employed in conducting the study, significance, scope and limitation of the study.

Chapter Two tries to identify the definitions and types of minorities. And as such it looks in to attempts made in international law and the rights granted to minorities thereof along with its background. It also introduces the policy choices to be made in countries where minorities inhabit through which the international community tries to influence.

Chapter Three deals with consociational democracy as a normative model as adopted by Switzerland and Belgium. It discusses the four consociational elements: grand coalition, segmental autonomy, proportionality and minority veto. It also attempts to discuss favorable and unfavorable conditions for consociational democracy and the criticisms made against it. This Chapter identifies the distinctive features of consociationalism from federalism as some of their elements coincide.

Chapter Four analyzes thoroughly the rights of NNPs under the FDRE Constitution in general and emphasizing their right to representation in the Federal government. This includes legal and institutional guarantees provided for the protection of minorities. The practicability of some of these rights and the necessity to consider other options has also been explored.

Chapter Five addresses issues of design under the Constitution and practical problems that calls for looking consociationalism as a solution for incomplete rights of NNPs. It answers why consociation and power sharing are stated as solutions in order to build stable democracy and legitimacy. It evaluates what elements of consociational democracy are present under the FDRE Constitution and which of them are lacking.

Chapter Six, the last part of this study, is devoted to providing conclusions and recommendations sought to rectify the problems addressed in the preceding chapters.

CHAPTER TWO

Minorities and Their Protection under International Human Rights Instruments

2.1. General

The issues of minorities have been dealt with from different aspects both at the national, where the minorities dwell in, and international level. The international community plays an increasingly important role in shaping the debates between integration and accommodation for countries with problems of minorities by endorsing one and discouraging others.¹ It is, therefore, an international issue to deal with minorities even if the extent may depend on the political will of countries.

International law has attempted to address the issues of minorities from the inclusion of rights in the major international human rights instruments to defining what constitutes 'minorities'. The approach followed indicates that it is more of individual approach in that it grants protection to individual members of minorities than to the group. It was through progress that minorities as groups were granted rights like language rights, right to identity, self-government, the right of participation in governmental decisions.

States with multi-ethnic societies face challenges in handling such groups. There are two principal policies in this regard: integration or accommodation. The rights of minorities recognized at the international level may be affected by the policies that the country adopted. These all issues will be addressed in this Chapter.

2.2. Definition and Types of Minorities

It is necessary, at this juncture, to define 'minorities' as it puts parameters to include a certain group as 'minority' or not. This in itself contains the decision either to grant or otherwise rights considered as 'minority right.' The beneficiaries of the rights and protections may be identified

¹ Will Kymlicka, *The Internationalization of Minority Rights*, in (ed.) Sujit Choudhry (2008), *Constitutional Design for Divided Societies: Integration or Accommodation?* Oxford University Press, Oxford, p.111.

through definition. One cannot speak about protection of minorities leaving undefined the subject-matter of protection, since such an attempt would have no practical point of reference.²

Even if there are some commentators who argue that the absence of clearly formulated definition at the international level amounts to the absence of a legal definition, the prevailing view is that it is possible to find some elements of the concept of minorities and therefore to determine the scope of application of the respective rules.³ These elements were employed in the decisions of the Permanent Court of International Justice and studies of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission of Human Rights.

The Permanent Court of International Justice arrived at the definition of community in the *Greco-Bulgarian Communities* case which concerned the extent of an emigration convention between these two countries:

*By tradition... the 'community' is a group of persons living in a country or locality, having a race, religion, language, and traditions of their own and united by this identity or race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their forms of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.*⁴

This definition of the court has shown, to the international community, that the practical importance of defining the term 'minorities.' It includes important elements like having their own 'race, religion, language and tradition,' united by this identity and their view to preserve their identity.

² See V. Grammatikas (1999), *The Definition of Minorities in International Law: A Problem Still Looking for a Solution*, Hellenic Review of International Law, 52nd year, Ant. N. Sakoulus Publishers, cited in Aberra Dagafa, *The Scope of Rights of National Minorities Under the Constitution of FDRE*, Series on Ethiopian Constitutional Law, Addis Ababa University Press, p.20.

³ Gaetano Pentassuglia (2002), *Minorities in International Law*, Council of Europe Publishing, Germany, p. 55

⁴ [1930] PCIJ Series B, No. 17 at 19 cited in Malcolm N. Shaw (1992), *The Definition of Minorities in International Law*, in (ed.) Yoram Dinstein (1992), *The Protection of Minorities and Human Rights*, Martinus Nijhoff Publishers, Netherlands, p.9. This definition has also been repeatedly cited in Pentassuglia, *supra* note 2, p.55, Javaid Rehman (2000), *The Weaknesses in the International Protection of Minority Rights*, Kluwer Law International, Great Britain, p.14.

Such an approach, according to Shaw, links the objective and subjective criteria represent to large extent the pattern that has been subsequently maintained, even though the Permanent court's elaboration was founded upon a particular conventional framework.⁵ Shaw adds the *Minorities Schools in Albania* case, where the court followed a similar pattern.⁶

The Sub-Commission on the Prevention of Discrimination and Protection of Minorities has made subsequent attempts to reach at definition of minorities. Such attempts failed because of the feeling that the concept is inherently vague and imprecise and that not proposed definition would even be able to provide for the innumerable minority groups that could possibly exist.⁷ It is, however, noteworthy to see the definition given by Special Rapporteur Francesco Capotorti in the Sub-Commission who undertook a study on the Rights of Persons Belonging to Ethnic, Linguistic and Religious Minorities. He defined 'minorities' as a:

*'group numerically inferior to the rest of the population of a state in a non-dominant position, whose members being nationals of the state-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, as sense of solidarity, directed towards preserving their culture, traditions, religion or language.'*⁸

This definition of Capotorti includes objective elements (numerical size, non-dominant position, ethno-cultural distinctive characters, citizenship) and subjective elements (sense of solidarity directed towards preserving one's own cultural identity)⁹ even if these elements are identified so.

The broad view fundamentally differs from the one described above by abandoning the requirement citizenship and easing the necessity of a long stay on the territory of the state.¹⁰ This view seems to include foreigners and migrant workers within the domain of minorities. There is no doubt that ethnic, religious, and linguistic minorities are protected under Article 27 of the ICCPR. Issues which are not clear here are definitions of ethnic, religious or linguistic groups.

⁵ Shaw, *supra* note 4, p.9.

⁶ Ibid.

⁷ Rehman, *supra* note 4, p.14.

⁸ Shaw, *supra* note 4, p.12

⁹ Pentassuglia, *supra* note 3, p. 57.

¹⁰ Ibid. p. 59.

Another proposal concerning a definition of the term to the Sub-Commission was submitted, in 1985, by M. Deschênes using Article 27 of the ICCPR as framework even if it was not approved.¹¹ It reads as follows:

*A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.*¹²

Regarding what constitutes 'ethnic' minorities, the Sub-Commission decided to replace the expression 'racial' with 'ethnic' on the basis that the latter expression was wider in referring to all biological, cultural and historical characteristics whereas the former term seemed to be restricted to inherited physical characteristics.¹³ But the Genocide Convention, under Article 2, employed both 'racial' and 'ethnic'. Shaw argues that employing both expressions is better practical approach in order to prevent unfortunate gaps appearing in the Convention.¹⁴ The 1965 International Convention on the Elimination of All Forms of Racial Discrimination also follows a similar pattern pending the problems of identifying the two notions.

Religious groups are one among the groups that are indisputably protected under international law. Religious minorities, in the meaning of united nations law may be considered as a group of persons who manifest (profess) religious thoughts which differ from a state religion; differs from the religion manifested by the majority of a people, which in opposition to an atheistic behavior of the majority of a population in particular if there is not complete freedom of religious tolerance in a given country and if the members of the religious group want to uphold their religion.¹⁵ What poses problems here is the meaning to be given to 'religion' even if there is a general assumption that religion is necessarily a belief in a supernatural being.

¹¹ Shaw, *supra* note 4, p. 12.

¹² *Ibid.*

¹³ *Id.* p. 17.

¹⁴ *Id.*

¹⁵ See Felix Ermacora (1983), *The Protection of Minorities before the United Nations*, Collected Courses of The Hague Academy of international law, IV, p. 295. The definition has been presented by Capotorti and accepted by the Commission on Human Rights.

Linguistic minorities are groups whose persons use a language in writing or orally; in private or in public which differs from the use of the language in a given territory and which is not considered the national language; the aim of this group is directed towards upholding and taking care of this language.¹⁶ The existence of multiple languages may complicate the situation especially where the languages are spoken in a variety of dialects. Language, as the main vehicle of expression and influence, remains a divisive issue, an integral part of many conflicts: Sri Lanka's failure to recognize the Tamil language;¹⁷ no official recognition accorded to ethnic linguistic minorities in Pakistan;¹⁸ the problem of the Basques of Spain¹⁹ etc.

National minorities have something to do with citizenship. Article 27 of the ICCPR provides for 'persons belonging to ethnic, religious or linguistic minorities rather than the expression 'nationals'. This has its own implication on the persons given protection under this provision. The expression 'national minorities' has been traditionally employed in Eastern Europe to refer to minorities.²⁰ Regarding the definition of minorities, Ermacora has pointed out that national minorities, besides the characteristic of an ethnic minorities, have the will to exercise as a group those rights which give minorities the possibility to take part in the policy decisions process within a given territory or even in the national context of a state without being on an equal footing with other ethnics in this state.²¹ The particularity of national minorities is the politically expressed will to be a people.²² They have the will to participate in the government. Will Kymlicka identifies the issues over which national minorities are battling with the states, including Ethiopia, as political representation, language rights, self-government, control over resources, and internal migration.²³ He argues that in the West, the claims of national minorities is primarily assessed in terms of *justice*, while a similar claims of minorities are primarily

¹⁶ Ibid.

¹⁷ Rehman, *supra* note 4, p. 23.

¹⁸ Ibid.

¹⁹ Shaw, *supra* note 4, p. 18.

²⁰ Ibid p. 22.

²¹ Ermacora, *supra* note 15. p. 295.

²² Ibid. p. 294.

²³ Will Kymlicka, *Justice and Security in the Accommodation of Minority Nationalism*, in (ed.) Stephen May, Turiq Modood, Judith Squires (2004), *Ethnicity, Nationalism and Minority Nationalism*, Cambridge University press, Cambridge, p.144.

assessed in terms of *security* in the East and Central Europe.²⁴ There is a tendency that such claims are perceived as a threat to territorial integrity of the state.

While these expressions have no precise definitions, the above description shows some elements to identify those groups as minorities and to grant them protections under international law. It would, therefore, be appropriate to identify some defining characteristics of minorities. These characteristics are more or less included in the definitions presented by Capotorti and Deschênes.

2.2.1. Objective Characteristics

Firstly, the group in question, in order to constitute a minority, must be an objectively distinct group, with features distinguishing it from other groups within the state.²⁵ The existence of such groups as distinct is a question of fact and not of law.²⁶ They should be distinguished from the rest of the population, according Article 27, ethnic, religious or linguistic factors, while it is 'historical and traditional'²⁷ characteristics to *indigenous groups*. Such distinct features of groups, however, may be difficult to identify in states where there are large number of groups.

Secondly, what distinguishes a group as minority is the *numerical factor*. Capotorti, in his definition, puts numerical inferiority to the rest of the population while Deschênes of numerical minority simpliciter. The question here might be how many people constitute a minority? Even if this is left to states to determine on a practical level, Article 27 should not apply to groups numerically so small that would be a disproportionate burden up on the resources of the state.²⁸

There are scholars that argue for the proper consideration of numerical factor as minorities may be undermined not so much by their weaknesses in numbers, but by their exclusion from power as a fact of *realpolitik*.²⁹ Such exclusion from power aggravates the problems of minorities and may claim secession emanating from such sense of exclusion.

The third distinguishing feature of minorities relates to *non-dominance*: minorities who dominated the center of politics should not be protected. There is little need in protecting a

²⁴ Ibid p. 145.

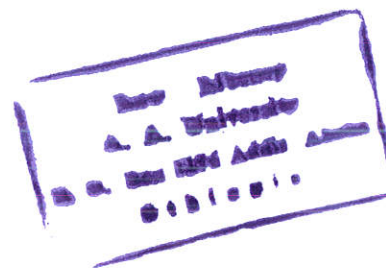
²⁵ Shaw, *supra* note 4, p. 23.

²⁶ (1930) PCIJ Ser. B, No. 17, at 22 cited in Shaw, *supra* note 4, p. 24.

²⁷ Shaw, *supra* note 4, p. 24.

²⁸ Ibid, p.25.

²⁹ Rehman, *supra* note 4, p, 16 (emphasis original).



minority in such a position of power, like the South African Apartheid government, that dominates the state in question.³⁰

Fourthly, the *existence* of ethnic, linguistic and religious minorities within the state should be taken in to consideration. The minorities must exist as such within the territory.³¹ But, the question for how long should such groups exist within the territory is something to be dealt in a case-by-case approach. The existence of minorities is not expected to be recognized by the state in question.³² As many states deny such status to groups to evade from obligations, this objective characteristics of minorities is suspected by many scholar not to exclude foreigners and migrants from the ambit of the Article 27 of the ICCPR. Pentassuglia argues that it protects individuals and should be interpreted broadly to include these groups.³³

These characteristics, i.e. distinct groups, numerical inferiority, non-dominance and existence within the state help to define a certain group as minority. The characteristics are objective in that their presence or absence can be observed factually. There are also subjective criteria which a group has to satisfy to be considered as a group.

2.2.2. Subjective Characteristics

Such characteristics should be seen in a case-by-case approach as it is difficult to pinpoint in concrete. The first from among these criteria is the desire to continue to exist as a group and not to be assimilated in to the surrounding population.³⁴ There should be some sort of sense of solidarity among the members of the group. Their collective wish to survive as a group and preserve their distinct identity is usually self-evident,³⁵ even if Capotorti preferred that this requirement could be implicit. Deschenes clearly says, as may be understood from his definition, that this sense of community should exist with the aim of achieving 'equality with the majority'. Capotorti puts that the sense of solidarity should be directed towards preserving their culture, traditions, religion or language to preserve their distinct characteristics in general. The latter seems better in stating the goal of such sense of community-to preserve their distinct identity-

³⁰ Shaw, *supra* note 4, p.26.

³¹ *Ibid.* p.18.

³² *Id.*

³³ Pentassuglia, *supra* note 4, p.60.

³⁴ Shaw, *supra* note 4, p.27.

³⁵ *Ibid.*

rather than 'equality with the majority as this would be difficult to create equality with their numerical inferiority and other characteristics that made them be defined as minorities.

Shaw raises the issue whether an analogous rule for self-identification as indigenous groups in the ILO Convention would be desirable for minorities.³⁶ This would be, according to him, counterproductive as well as unjustifiable in law as the requirement of sense of solidarity would be suffice.³⁷

2.3. Protection of Minorities under International Law

2.3.1. Historical Background

The ideals of national unity and stable democracy were aimed to creating a homogenous society³⁸ through the centralization of power intolerant attitudes and repression of those who were perceived as 'others'.³⁹ Such groups became the concern of international law long before the establishment of the United Nations.

Felix Ermacora Argues that term 'minority' existed already in some national and international instruments: he cites Article 19 of the Austrian Fundamental Law of 21 December 1857 concerning the General Rights of citizens.⁴⁰ He adds protection of religious groups within the framework of peace treaties during the 16th century and Austrian-Hungarian Monarchy in which national pluralism was a basic principle and many constitutional and administrative instruments for the protection of the rights of nationalities and their member existed.⁴¹

The nineteenth century was the period that protection of minorities through treaties became tradition while no multi-lateral instrument was devised.⁴² The majority of the treaties were to guarantee religious liberty of groups. Some of such treaties include: The Convention of Constantinople (1879), between Austria-Hungary and Turkey to respect the rights of

³⁶ Id. P. 30.

³⁷ Id. P. 30.

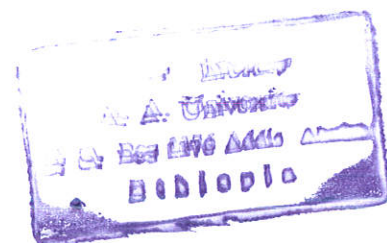
³⁸ Arend Lijphart (1977), *Democracy in Plural Societies; a Comparative Exploration*, Yale University Press, New Haven, p. 1.

³⁹ Patrick Thornberry (1991), *International Law and the Rights of Minorities*, Oxford University Press, New York, p.1.

⁴⁰ Ermacora, *supra* note 15, p.257.

⁴¹ Ibid.

⁴² Thornberry, *supra* note 39, p.30.



Mussulmans in Austria-Hungary; The Convention for the Settlement of the Frontier between Greece and Turkey (1881) providing, under its Article III, for the protection of Mussulmans, the Treaty of Paris (1763), under Article 4, provides for the Great Britain agreed to grant freedom of religion to Canadian catholic.⁴³

The protection of minorities by treaties faced problems like its tendency to be localized in Eastern Europe, and its focus only on religious groups and its failing implementation mechanism through intervention.⁴⁴

The issue of the protection of minorities continued unanswered after the establishment of League of Nations. One among the attempts in this period was Woodrow Wilson's proposal interposing minorities as collective with special claim on the state to act in a positive manner.⁴⁵

This proposal faced resistance as a general principle and rejected by many states. There were in fact treaties that were concluded between victorious powers in WWI and Poland, Czechoslovakia, and the Kingdom of Serbia, Slovenia and Croatia independently.⁴⁶ Even if these treaties provided for the protection against discrimination, access to public life, liberty to use mother tongue in private life and in press, they had not directly established rights for groups and individual.⁴⁷ Specific 'rights' were also introduced for a number of minorities including the Jewish minorities of Greece, Romania, and Lithuania; the Vlachs of Pindus of Greece; the non-Greek minority communities of Mount Athos; the Muslim minorities of Albania; Greece and the Serbo-Croat-Slovene state; the non-Muslim minority in Turkey and the non-Muslim minority in Iraq.⁴⁸

Another attempt to address issues of minorities was the League's framework imposing obligations both internally and internationally: states should internally entrench minority protection in their constitutional set-up and obligations of 'international concern.'⁴⁹

⁴³ See for details of treaties in Thornberry *supra* note 39, p. 25-28.

⁴⁴ *Ibid* p.32.

⁴⁵ *Id.* p.39.

⁴⁶ Ermacora, *supra* note 15, p. 258.

⁴⁷ *Ibid*, p.259.

⁴⁸ J. Robinson (1971), *International Protection of Minorities: A Global View*, IYHR, Vol. 1 p.61 cited in Javid Rehman, *supra* note 4, p.40.

⁴⁹ J. Rehman, *supra* note 4, p.40.

Constitutional entrenchment of rights of minorities was an important framework of the League even if it was difficult to enforce it.

There were procedural steps in the League of Nations system of protecting minorities. The petition was examined by the League secretariat and passed to a committee of the council which conduct investigation and as certain the response of the accused state.⁵⁰ This system of protection of minorities failed because of many reasons. Some of them include discriminatory and inequitable set-up, prevailing view of state sovereignty, abuse by some groups which were 'disloyal' and 'privileged' and, exploiting minority issues for their expansionist purpose like Germany.⁵¹

2.3.2. Post-Second World War

The international community in the aftermath of WWII concentrated more on human rights in general. Neither the UN Charter nor the Universal Declaration of Human Rights (herein after the UDHR) dealt protection of minority directly. The UDHR, under Article 2 prescribed for equality and non-discrimination on grounds of race, sex, language, or religion. It was up on the adoption of the UDHR that the General Assembly recognized that the UN could not remain indifferent to the 'fate of minorities'.⁵² The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (herein after the Genocide Convention) benefited minorities in the sense that it protects national ethnical, racial or religious minorities in the sense that it protects national, ethnical, racial or religious groups from mass killings. Ermacora argues that the Genocide Convention is a *real group protection act*: otherwise it would be called 'homicide' had it not been for the group in general.⁵³

Thornberry puts the Genocide Convention as an instrument recognizing the right to existence of minorities as group.⁵⁴ Existence is a notion which has a special sense for a collectivity.⁵⁵ He argues that minority exist as a group through the shared consciousness of its members, manifested perhaps through language, culture or religion, a shared sense of history, a common

⁵⁰ Pentassuglia, *supra* note 3, p.45.

⁵¹ *Ibid*, p. 41-42.

⁵² GA Resolution 217 A (III) of 1948 cited in Pentassuglia, *supra* note 3, p. 31.

⁵³ Ermacora, *supra* note 15, p. 313 (emphasis original).

⁵⁴ *Ibid*, p. 57.

⁵⁵ *Id.*

destiny.⁵⁶ This right of minorities is guaranteed by the Genocide Convention which protects minorities as a group. And the right to identity is protected by Article 27 of the ICCPR. This will be discussed later in this chapter.

While the issue of minorities remained on the UN agenda, the ECOSOC established a Sub-Commission on the Prevention of Discrimination and Protection of Minorities to undertake its mandate of studying problems of minorities.⁵⁷ Two special rapporteurs, Francesco Capotorti and Martinez Cobo undertook influential studies on the definition of minorities and on aborigines respectively.

The Sub-Commission's mandate was to make recommendations to the Commission on Human Rights concerning the prevention of any kind of discrimination relating human rights fundamental freedoms and the protection of racial, national, religious and linguistic minorities.⁵⁸

Accordingly, the Sub-Commission undertook studies from making distinction between prevention of discrimination and protection of minorities to proposing the inclusion of minority provision in to the UN Covenant on Civil and Political Rights.⁵⁹ Article 27, an important provision for minority protection, is the most frequently cited provision from among international instruments concerning minorities.

2.3.3. Rights of Minorities under International Instruments

Protection of minorities under international human rights instruments takes the form of direct and indirect⁶⁰ protection by making groups and individuals beneficiaries. The focus of international (human rights) law since 1945 was primarily upon the protection of individual as can be seen from the UDHR (and also ICCPR).⁶¹ This does not mean that there are no instances where minorities are protected as groups.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ UN/Doc. A/CONF. 32/6, paras. 114, 115.

⁵⁹ See Thornberry, *supra* note 39, p. 126-129.

⁶⁰ Ermacora, *supra* note 15. p. 345.

⁶¹ Malcolm N. Shaw (2008), *International Law*, 6th edition, Cambridge University Press, Cambridge, p. 281.

i. Protection of minorities as Group: The Genocide Convention is from among early instruments of UN that really protects groups.⁶² This Convention consist the will of the international community to uphold the existence of cultural, religious, national and racial entities which are in a given situation non-dominant groups.⁶³ The protection, by the convention, of minority groups is an important means to recognize their right to existence as a group. The right of existence of a group is the necessary prerequisite for other rights⁶⁴ which is analogous with the right to life of individuals as a prerequisite for other rights.

The other instance where minorities enjoy rights as a group is through some form of self-determination where collected identity is secured and preserved.⁶⁵ The right to self determination as envisaged under the UN Charter includes a form of society in which members of minorities may not only maintain their distinctive identities and cultures but also establish separate institutions and structures to govern their own affairs on an indeterminate range of issues.⁶⁶

The principle of self-determination championed by the US President Woodrow Wilson in the aftermath of the WWI was designed to accommodate democracy, in the sense of a regime based on the consent of the governed, within a nationalist framework.⁶⁷ Even if it is historically attached to communist states⁶⁸, Article 1 paragraph 2 and Article 55 of the UN Charter provides 'equal right and self determination of people'. Self-determination began to be recognized as a legal right in the context of process of decolonization.⁶⁹ It was then recognized as a free-standing human rights in the ICCPR (under Article 1) imposing a duty on the states parties to promote and respect this right, formulated as the right of all 'peoples' to freely determine their political status and freely pursue their economic, cultural and social development.⁷⁰ Such recognition of self-determination as a right granted to peoples as a group shows a progressive shift of international law from individuals to groups as having rights to enjoy their own free choice. The current

⁶² Ermacora, *supra* note 15, p. 313.

⁶³ *Ibid*, p. 314.

⁶⁴ Thornberry, *supra* note 39, p. 57.

⁶⁵ Ermacora, *supra* note 15 p.311.

⁶⁶ Tom Hadden, *Integration and Autonomy: Minority Rights and Political Accommodation*, in (ed.) Ian O'Flynn and David Russell (2005), *Power Sharing: New Challenges for Divided Societies*, Pluto Press, England, p. 32.

⁶⁷ Pentassuglia, *supra* note 3, p.160.

⁶⁸ *Ibid*.

⁶⁹ *Id.* p.161.

⁷⁰ The 1975 Helsinki Final Act and the 1981 African Charter on Human and Peoples' Right are among other international instruments recognizing the same.

notion of self-determination can be captured by its strong linkage with human rights and broad processes of democratic change.⁷¹

As it has been pointed out, self-determination as a human right is granted to 'people' however the term is imprecise and controversial.⁷² The question here is then do minorities constitute 'people' and enjoy their right to self-determination as a group? It would be necessary to have an insight on the meaning of 'people', as provided in the UN Charter and ICCPR. Little has been done to define the expression 'people'. The concept of 'people' has been implicitly described, for legal purposes, by referring to the territorial unit of self-determination.⁷³

It is usually argued that self-determination is described as a right of peoples, not minorities.⁷⁴ Self-determination has thus worked for the benefit of peoples expressing whole units, not for minorities which are component of the whole unit.⁷⁵ Pentassuglia argues that the very distinction has been made in the ICCPR between self-determination and minority rights (Article 1, and 27 respectively).⁷⁶ Pending the conception of self-determination as a government representing "the whole belonging to the territory", others have pointed to internal self-determination of groups.⁷⁷ It should be noted that internal self-determination is granted to minorities as opposed to self-determination of the whole which is recognized under international law with territorial connotation.

Another issue that should be addressed here is the issue of secession. International law neither authorizes nor prohibits the unilateral secession of any group within the state.⁷⁸ The question whether the claim of secession because of gross human rights abuses should be embraced within the ambit of self determination is still pending.

Contemporary concerns for cultural diversity in society, coupled with an increasing awareness of the beneficial impact up on democracy and stability of respect for such diversity through

⁷¹ Pentassuglia, *supra* note 3, p. 162.

⁷² See generally Shaw, *supra* note 3, p. 2-8.

⁷³ Pentassuglia, *supra* note 3, p. 163

⁷⁴ Thornberry, *supra* note 39, p. 13.

⁷⁵ Pentassuglia, *supra* note 3, p. 163.

⁷⁶ *Ibid.*

⁷⁷ *Id.*

⁷⁸ *Id.* p. 166. This was the issue in the case of secession of Quebec from Canada. The emphasis to support this position included territorial integrity and territorial connotation of people.

effective means of participation within the common territory, have resulted in challenging the *de facto* majoritarian actualization of the 'whole people' precept.⁷⁹ The 'whole people' as understood here does not mean hundred percent of the population in heterogeneous society where there are minorities. Minorities belong to the 'whole people' and as such must partake of self-determination:⁸⁰ the greater includes the lesser.⁸¹ They should, accordingly, participate in the political life of the country despite the views of preserving sovereignty and integration. One among these means of participation includes granting autonomy to minorities.⁸²

It is argued that in the current situation, self-determination as a legal right applies only to a recognized non-self-governing territorial situation.⁸³ Territorial concentration is, therefore, a requirement to exercise right to self-determination as a collective right. Groups may be entitled to domestic self determination in the sense of participating fully with in the internal constitutional structure of a particular state, but they will not there by acquire a right under international law to self-determination in the sense of being able to decide freely their own political status up to and including secession from an already independent state.⁸⁴

i. Protection to Persons belonging to ethnic, religious and linguistic groups: Some of the entitlements available to members of minorities include the right to identity, equality and non-discrimination. Article 27 provides that 'persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.' This provision protects persons belonging to minorities and not minorities as groups which seems to follow the patterns in other human rights instruments with individualistic approach. The rights included may be described as benefiting individuals but requiring collective exercise.⁸⁵

⁷⁹ Id. 167.

⁸⁰ Id.

⁸¹ Thornberry, *supra* note 39, 217.

⁸² See Aberra, *supra* note 2 for details on autonomy and self-government.

⁸³ Shaw, *supra* note 4, p. 7.

⁸⁴ Ibid.

⁸⁵ Thornberry, *supra* note 39, p. 173.

2.4. Policy Choices towards Minorities: Integration or Accommodation?

Minorities are usually affected by the policy choices made by the country they inhabit. The extent to which they are protected and the claim answered is necessarily affected by such policies identified as integration.

A polity with diverse ethnic, linguistic, religious and cultural groups faces challenges in introducing and maintaining democracy. Conflict and instability has been observed in many nations due to a denial of “cultural liberty”.⁸⁶ It is, therefore, relevant to explore some major choices to be made in such societies: Assimilation, Integration or Accommodation. Such choices become complex where the societies are divided i.e. not mere existence of diverse ethnic, linguistic, cultural and religious groups, but political claims are refracted through the lens of ethnic identity.⁸⁷

It is important to focus on Integration and Accommodation as alternatives than assimilation because history has shown us that assimilation cannot be a feasible solution in such societies.⁸⁸ Integration generally promotes single public identity while accommodation promotes multiple public identities. These two policies dominate the current choice in a polity with multi-ethnic societies.

2.4.1. Integration

The policy of Integration promotes, as has been said, ‘single public identity’⁸⁹ which means that identity has no place in the political spheres of the nation. Integrationists argue that individuals from varying ethnic groups should be indifferent to such differences in the public sphere. Ethnic groups have no place in public space. They are against public institutional recognition of group identities while they accept collective identity of individuals in private realms.⁹⁰ This policy tries to respect differences only in private domain and eliminates its manifestation in public sphere.

⁸⁶ Sujit Choudhry (*Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies* in (ed.), Sujit Choudhry (2008), *Constitutional Design for Divided Societies: Integration or Accommodation?* Oxford University Press, Oxford, p.3

⁸⁷ Ibid. p.5.

⁸⁸ John McGarry, Brendan O’Leary and Richard Simeon, *Integration or Accommodation? The Enduring Debate in Conflict Regulation*, in (ed.) Sujit Choudhry, *supra* note 86, p. 42.

⁸⁹ Ibid, p.41.

⁹⁰ Id.

Integration aims at public homogenization through common citizenship.⁹¹ It seems to create some sort of homogeneity in the politics of that country and this does not encourage societal differences.

Integration responds to diversity through institutions that transcend, crosscut, and minimize differences⁹² in public sphere. According to proponents of integration, political instability and conflict result from group based partisanship in political institutions.⁹³ This may be achieved through different mechanisms like electoral system, party system, executive system and policy of avoiding any form of group autonomy.⁹⁴ The electoral system should make parties appeal throughout the nation. A winning party should be compelled to crosscut to achieve nation-wide support and as such discourage parties focusing on groups. The party system should prohibit parties to be established along ethnic line: only for non-ethnic agenda. The executive system, especially the institution of the presidency, should be the one who rise above religious, ethnic and linguistic faction. Any form of group based autonomy should be prohibited.

Integration advocates that differences in ethnic linguistic, religious and cultural aspects should be kept away from the public domain by only allowing them to be confined in the individuals' private life. Diversity has no place in the political arena. The commonly cited types of integration include Republicans, Liberals and socialists.⁹⁵

2.4.2. Accommodation

In contrast to Integration, Accommodation promotes dual or multiple public identities.⁹⁶ It would be appropriate to define the term 'accommodation' before dealing its substance. Brian Barry argues that the word 'Accommodation' entered in to English usage in the 16th century. He accepts the usage of the word in the study of Arend Lijphart entitled 'The Politics of Accommodation' referring to the process, the outcome or the spirit of conciliation.⁹⁷ Its dictionary meaning is 'the act or an instance of making a change or provision for someone or

⁹¹ Id. p.412.

⁹² Id.

⁹³ Id. p.45.

⁹⁴ Id.

⁹⁵ Id. p. 46.

⁹⁶ Id. p. 41.

⁹⁷ Ibid.

something.⁹⁸ The verb 'accommodate' is defined as 'to make fit, suitable and congruous; to make room for; to give consideration to.'⁹⁹ When seen in light of this definition, accommodation minimally requires the recognition of more than one ethnic, linguistic, national, or religious community in the state.¹⁰⁰

Accommodation, as one major policy choice, seek to ensure that each group has the public space necessary for it to express its identity, to protect itself against tyranny by the majority, and to make its own decisions in domains of critical importance.¹⁰¹ Groups should have a space in the public domain in order to maintain stable democracy. This will only be achieved through coexistence of different communities within the same state.¹⁰² Accordingly, a country with diverse ethnic, religious and linguistic groups should recognize rights of such group in the public sphere (specifically in the government). Accommodationists argue that political prudence and morality require adaptation, adjustment and considerations of the special interests, needs and fears of groups so that they may regard the state in question as fit for them.¹⁰³

Accommodation has different forms: centripetalism, multiculturalism, consociation and territorial pluralism. They all argue for the recognition of diversity in both public and private domain but differs on the extent and manner such recognition is given.

Centripetalism, principally led by Donald Horowitz¹⁰⁴, claim that the tyrannical properties of majority-rule institutions (extremists as well) may be tempered through vote pooling electoral systems which facilitate (and encourage) the election of moderate ethnic politicians.¹⁰⁵ This idea of centripetalist seems to emanate from a similar idea with the aim of integrationists that ethnic partisanship might make the politics unstable. That seems why Donald Horowitz is considered

⁹⁸ Bryan A. Garner (2009), *Black's Law Dictionary*, 9th ed. West Thomson Reuters Business, USA p. 546

⁹⁹ Merriam Webster's *Collegiate Dictionary*, 11th ed. 2003 p. 8 cited in John McGarry *et al*, *supra* note 87, p.52

¹⁰⁰ John McGarry *et al*, *supra* note 88, p.52

¹⁰¹ See *Id.* p. 53-54.

¹⁰² *Id.* p.52

¹⁰³ *Id.* P. 53

¹⁰⁴ There are, however, scholars who consider Horowitz as integrationist on the ground that the electoral system he proposes is devised to reward candidates for moderation and cross-communal appeals before elections. What makes the position of Horowitz similar with integrationists is the belief that extremists tend create instability in politics. See generally Stefan Wolff, *Electoral-Systems Design and Power-Sharing Regimes*, in (ed.) Ian O .Flynn and David Russell ed. *Power Sharing: New Challenges for Divided Societies*, Pluto Press, England, p. 59-74.

¹⁰⁵ John McGarry *et al*, *supra* note 88, p.53-54.

by many scholars as integrationist.¹⁰⁶ The main focus of centripetalists is moderating ethnic politics. The voting system should assist moderate politicians to come to power. Horowitz cites Nigeria (specifically the 1979 Constitution) with vote pooling that requires a winning presidential candidate is expected to have at least a plurality of the popular vote, and at least a quarter of the vote in at least two-thirds of all the states.¹⁰⁷ Nigeria is the best example for Horowitz to moderate politics: a candidate for presidency from South, for example, should get votes of different ethnic voters from the North.

Multi-culturalism focuses on protection and maintenance of multiple communities both in private and public realms.¹⁰⁸ It puts self-government and proportional representation of all groups in key public institutions like military, civil service and the judiciary as instruments to achieve its goal. This idea of Multiculturalism is similar with that of consociation primarily advocated by Arend Lijphart with some elements in it.

Consociation asserts for the institutionalization of diversity in order to build a stable democracy in plural societies. There are four main characteristics in it (two of them are similar with Multiculturalism): Executive power sharing through grand coalition; segmental autonomy by granting self governing power to such groups; proportionality in the allocation of civil service appointments and government subsidies among different segments; and mutual veto where segments veto on decisions that affect their vital interests like language rights.¹⁰⁹ Consociational arrangement, as a normative model, has been successful in establishing stable democracy in countries like Switzerland, Belgium and Austria with deep divisions along with religions, cultural and linguistic lines.¹¹⁰

Accommodationists argue that there exists no realistic option amid diversity than recognition of groups in the public sphere. Integration in such societies would create an unstable equilibrium that cannot answer the demands of groups. Both policies aim at preserving the state and

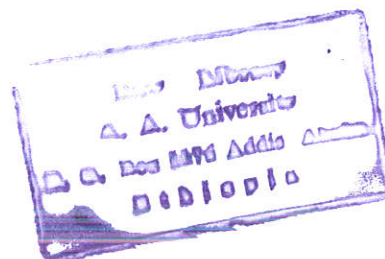
¹⁰⁶ Ibid.

¹⁰⁷ Id. p. 54.

¹⁰⁸ Id. p.56.

¹⁰⁹ These ideas are discussed in detail in Lijphart *supra* note 38, p. 25-47.

¹¹⁰ Arend Lijphart (1985), *Power Sharing in South Africa*, Institute of International Studies University of California, San Diego, P. 118-132.



continuance of its existence without conflict. The author is of the opinion that accommodation, and not integration, best fits for diverse societies to establish a legitimate government.

CHAPTER THREE

Consociational Theory: An Appraisal

3.1. General

It has been observed that democracy, in diverse society, has encountered challenge and led many nations to instability and conflict.¹ Democracy in homogeneous society may not be complex: number will decide on which ideas are to be favored i.e. majority rule might answer it. Diversity along ethnic, linguistic and religious lines within a polity has complicated democracy and nation-building. Social heterogeneity and dissention may endanger the stable democratic order.² Many scholars believe that democracy in such societies is difficult but not impossible to make it stable³ even if there are others who emphasize the benefits of diversity without denying challenges thereto.

What is important here is the decision for public policies within such nations either during constitutional moment or afterwards through different mechanisms. Two sets of policies, i.e. Integration and Accommodation, are available to democratic states willing or obliged to manage national, ethnic or communal diversity.⁴ As it has been discussed in Chapter Two of this paper, Integration seeks to promote single public identity on the ground that political instability and conflict result from group based partisanship in political institutions. Accommodation, on the other hand, recognizes diverse identity in the public sphere by institutionalizing and empowering differences through different ranges of constitutional instruments. This Chapter introduces the

¹ Arend Lijphart (1977), *Democracy in Plural Societies: a Comparative Exploration*, New Haven, Yale University Press, p. 1.

² Arend Lijphart (1968), *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, Berkeley, University of California Press, p. 3. Lijphart expounds the relationship between social structure and political behavior in a democracy by analyzing the effect of the degree of social heterogeneity and democratic order and the views of philosophers like Aristotle, John Stuart Mill, Alexis De Tocqueville and Rousseau.

³ Lijphart, *supra* note 1.

⁴ See generally John McGarry, Brendan O'Leary and Richard Simeon, *Integration or Accommodation? The Enduring Debate in Conflict Regulation*, in Sujit Choudhry (2008), *Constitutional Design for Divided Societies: Integration or Accommodation?* New York, Oxford University Press.

concept of consociational democracy⁵ and its constitutional arrangements to be followed as a normative model, its difference with federalism and answers how it protects minority groups.

3.2. Meaning and Origin of Consociational Democracy

Political scientists define a consociational state as a state which has major internal divisions along ethnic, religious or linguistic lines, with none of the divisions large enough to form a majority group, yet nonetheless manage to remain stable due to consultation among the elites of each of its major social groups.⁶ Arend Lijphart, a famous comparative political scientist for his work on consociationalism, identifies such a society as 'plural society'. He defines *plural society* as a society divided by segmental cleavages- such segmental cleavages exists where political divisions follow very closely, and especially concern lines of objective social differentiation like religious, ideological, linguistic, cultural, racial, or ethnic nature.⁷ This definition of plural society has been criticized on the ground that it remains unclear how exactly to distinguish plural from non-plural societies.⁸ Plural societies constitute the universe of cases to which the consociational theory is supposed to apply.⁹ But, it should be recognized that societal pluralism is a question of degree, not a question of presence or absence.¹⁰ The degree of plurality may range from completely plural to completely homogenous even if it has become difficult to observe these two extreme societies now a day. The form of plurality that Lijphart observed in countries like Netherlands is 'deep'. This is more than mere social heterogeneity that is reflected in every aspect of politics.

One can sort out elements of consociationalism from these defining characteristics of a consociational state. Such states are characterized by the existence of ethnic, religious or linguistic groups: plural society. And such groups are divided and strong enough to claim for

⁵ Lijphart employed the expression 'power sharing' rather than 'consociational' democracy by making the later a technical political term to refer the same concept. See generally Arend Lijphart, *Constitutional Design for Divided Societies*, Journal of Democracy, Vol.15, No. 2, April 2004, <http://muse.jhu.edu> Accessed 20/2/ 2011.

⁶ See Arend Lijphart (1985), *Power-Sharing in South Africa*, Institute of international Studies, University of California, San Diego, p. 83-86.

⁷ See Lijphart, *supra* note 1, p.3-4.

⁸ Jurg Steiner, *The Consociational Theory and Beyond: Reviewed work on Democracy in Plural Societies by Arend Lijphart*, Comparative Politics, Vol. 13, No. 3 (Apr., 1981), pp. 339-354, <http://www.jstor.org/stable/421901> Accessed: 29/01/2010 02:14

⁹ Ibid.

¹⁰ See the reply of Lijphart to the article written by Jurg Steiner cited above. Arend Lijphart, *Consociational Theory: Problems and Prospects. A Reply*, Comparative Politics, Vol. 13, No. 3 (Apr., 1981), p. 355-360.

political power, none of those groups are large enough to form a majority group. Majorities usually prefer majoritarian government to any form of government which is based on compromise and consensus. These divisions manage to remain stable and not to allow room for chaos through consultation. And the consultation is led by elites of each group regarding the manner of establishing a government and power sharing.

It is also defined as a form of government involving guaranteed group representation, and is often suggested for managing conflict in deeply divided societies.¹¹ Groups might strive to dominate others specifically by concentrating power in their hand. It has been suggested that it is consensus based government and not majoritarian which becomes an answer for such conflicts in such societies.

Some political theorists trace consociationalism back to 1917 when it was first employed in the Netherlands. Arend Lijphart, who discussed the term in academic terms, draws heavily on the experience of the Netherlands in developing his argument in favor of the consociational approach to ethnic conflict regulation.¹² The Netherlands, as a consociational state, was between 1857 and 1967 divided in four non-territorial pillars: Calvinist, Catholic, Socialist, and Liberal, although until 1917 there was a plurality (first past the post) electoral system rather than a consociational one.¹³ Lijphart argues that arrangements have been exercised by political leaders even if it came in to academic discourse later in the 1950s. The goals of consociationalism are, therefore, governmental stability, the existence of power sharing arrangements, and avoidance of violence in plural societies.

The case study in the Netherlands shows that it is possible to build a stable democracy in plural societies amid ideological and religious cleavages. Lijphart describes it as 'the Dutch politics is the politics of accommodation'¹⁴ and he puts this as the secret of its success. There are a number of rules: the agreement to disagree- ideological differences should be tolerated, if not respected; proportionality- through allocation of government financial resources and civil service; and secrecy- political elites should be with higher degree of flexibility and some degree of

¹¹ Tinatin Khidasheli, *Federalism and Consociationalism: Prospects for the Georgian State*, p. 197
<http://www.poliski.upenn.edu/ppec> Accessed on 20/2/2011.

¹² See generally Lijphart, *supra* note 2, pp. 8-17.

¹³ Ibid.

¹⁴ See Lijphart, *supra* note 2, pp. 103-121

flexibility.¹⁵ These ideas were developed by his own successive works and other writes like Hans Daalder, Alan Siaroff and Jurg Steiner¹⁶ and critics against this power sharing scheme in relation to its success and failure in its implementation.

Lijphart defined, in his book *Democracy in Plural Societies*, defines 'consociational democracy' in terms of both the segmental cleavages typical of a plural society and the political cooperation of the segmental elites to differentiate prior works in these areas and consociational model.¹⁷ Democracy in a state composed of plural societies should be arranged in a manner that enables them feel that the state fits them. It is in such way, according to him, that stable democracy can be established.

The meaning of terms like 'democracy' and 'stability' is somewhat not clear. That seems why he tried to define the terms even if the concepts are among those that defy definition. He defines democracy as a system of government that embodies democratic ideals, approximating reasonably to full embodiment of all ideals, or simply as a synonym for what Dahl calls 'polyarchy'.¹⁸ Political stability is defined, however ambiguous, as system maintenance, civil order, legitimacy, and effectiveness with a high probability of remaining democratic.¹⁹

It is this idea of Lijphart that has been considered thoroughly along with its merits and critics. Some countries have been observed introducing consociational elements in their politics. Switzerland, Austria, Netherlands and Belgium are some where consensus is seen as an important facet of their politics. But, this does not mean that such nations have exactly the same power sharing scheme, as consociation should be contextualized to local peculiar features like the degree of plurality of the societies.

There are, in fact, terminologies which have similar meaning, but they are not exactly the same: consensus, corporatism, and negotiation. Consociation is used in political science to describe countries whose politics is based on its defining characteristics as one form constitutional

¹⁵ See *ibid* pp.122-132.

¹⁶ See Hans Daalder, *The Consociational Democracy Theme*, World Politics, Vol. 26, No. 4 (Jul., 1974), pp. 604-621; Alan Siaroff, *The Fate of Centrifugal Democracies: Lessons from Consociational Theory and System Performance*, Comparative Politics, Vol. 32, No. 3 (Apr., 2000), pp. 317-332, <http://www.jstor.org/stable/2010104> accessed on 29/01/2010

¹⁷ Lijphart, *supra* note 1, p. 5.

¹⁸ *Ibid* p.4.

¹⁹ *Id.*

instrument to institutionalize and empower differences. The author uses the term to mean this throughout the paper.

3.3. Characteristics of Consociational Democracy

Arend Lijphart defines consociational democracy in terms of four key characteristics: *Grand coalition*- Elites of each 'pillar' come together to rule in the interests of society because they recognize the dangers of non-cooperation; *Segmental autonomy*-cultural distinct groups allowed considerable political autonomy to run its own affairs; *Proportionality*- representation based on population as a principal standard of political representation, civil service appointments, and allocation of public funds; and *Minority veto*-Minorities have veto over policy matters on vital interests.²⁰ The first two characteristics, i.e. grand coalition and group autonomy, are the two primary key elements²¹ for the establishment of democratic government. Grand coalition is one way of broadening participation. Lijphart calls it executive power sharing as it denotes the participation of all significant communal groups in political decision making made at the executive level.²² Group autonomy means that these groups have the authority to run their own internal affairs which a more or less similar concept with self-government.²³ The best constitutional instrument perhaps to grant groups autonomy is federalism as it is one consociational 'device'.

According to Lijphart, these are the main characteristics of consociational democracy, to use the technical political science term, and are not present in majoritarian democracy. It is not a single party which establishes government and dominates executive cabinet. Rather, government in consociation is characterized by its establishment through coalition of parties. This will not be difficult as the leaders are elites who understand the dangers of non-cooperation. It was in 1999, in his book *Patterns of Democracy* that identified two dimensions of consociation: executive party dimensions and federal-unitary dimensions simply to emphasize the importance of power sharing at the executive level and group autonomy. He compares consociation with majoritarian government by elaborating what he calls consociational devices: Executive-legislature balance of

²⁰ Ibid, p.25.

²¹ Lijphart, *supra* note 5, p.97.

²² Ibid.

²³ Id.

power; Multiparty system; Coordinated and corporatist interest group systems aimed at compromise and concertation; Federal and decentralized government; Division of legislative power between two equally strong but differently constituted houses; Rigid constitutions that can be changed only by extra-ordinary majorities; Systems in which laws are subject to a judicial review of their constitutionality by supreme or constitutional courts and Independent central banks.²⁴ Brief discussion about some of these characteristics is important to make the clear.

3.3.1 Grand Coalition

Grand coalition is an important feature of consociation. Parties may form coalition where none of them enjoy majority in an election simply enjoy governmental position. While the majoritarian democracies concentrate executive power in a single party or bare majority cabinets, the consociational principle is to share power in a broad coalition.²⁵ Here, parties are expected to represent segments and as such obtain parliamentary seats in proportion to their vote. Parties with seats in the parliament come together in order to get the number of seats that allow them to form a government.

Lijphart proposes that the style of leadership in the consociational model is coalescent as opposed to the competitive British model or adversarial.²⁶ He describes the British model as bare majority support and a large opposition and hence government-versus-opposition model. The reason why the British model is his concern seems clear. Countries with deep ethnic and other cleavages should adopt parliamentary form of government as it has a relative potential for power sharing in the executive.²⁷ There are a number of reasons for preferring parliamentary system to plural societies. Firstly, the presidential system empowers the president to establish executive cabinet with a purely advisory role while that of the parliamentary system is a collegial decision making body- it offers the optimal setting for broad power sharing executive.²⁸ The collegial nature of parliamentary systems facilitates the formation of power sharing

²⁴ Excerpt from Arend Lijphart (1999), *Patterns of Democracy*, [http:// www.goolge.com/books](http://www.goolge.com/books) accessed on 20/93/2011.

²⁵ Arend Lijphart (1981), *Conflict and Co-existence in Belgium: the Dynamics of a Culturally Divided Society*, San Diego, Institute of International Studies, University of California Press, p. 4.

²⁶ Lijphart, *supra* note 1, p. 25.

²⁷ Lijphart, *supra* note 5, p.100.

²⁸ Id.

executives even if it does not guarantee its institution.²⁹ Secondly, rigidity of the presidential term of office has also been considered as an obstacle to shorten easily the term of the president if he is found to be incompetent, becomes seriously ill etc; parliamentary system with their provisions for votes of confidence, snap elections.³⁰ Thirdly, there is no need to undertake presidential elections which are necessarily majoritarian in nature.³¹ These and other advantages of parliamentary system have made it to be preferable to that of presidential to countries with plural societies. It should be here that it does not mean that presidential system is incompatible with consociational arrangement-it affects the possibilities of forming broad coalitions.

He compares consociational model with that of majoritarian in the degree of broadly participatory environment. Broad agreement among citizens, through coalition, seems more democratic than simple majority rule.³² This is more convincing in countries with diverse ethnic, linguistic, religious and cultural groups the situation itself adjustments. Power-sharing in multi-ethnic societies means that institutional arrangements exist that constrain purely majoritarian democracy, a constraint that the majority of political agents in a given society accept in the hope that it will enable the institutions of government to discharge their duties effectively and efficiently and at the same time be recognized as legitimate.³³ Power sharing is not only about creating democratic government, but also answers the question of legitimacy.

There are different varieties of grand coalition that Lijphart identifies based on the pragmatic experience of notable consociational countries. Switzerland and Austria offer the best examples of grand coalition cabinet in its prototypical consociational democracy.³⁴ The federal executive and the Federal Council in Switzerland³⁵ are composed of members of the four main parties in proportion to their electoral strength. Austria has also institutionalized grand coalition where the

²⁹ Id. p. 103.

³⁰ Id. p. 102.

³¹ Id. p.101.

³² Lijphart, *supra* note 1, p.30.

³³ See Stefan Wolff, *Electoral-Systems Design and Power-Sharing Regimes*, in Ian O .Flynn and David Russell (ed.) (2005), *Power Sharing: New Challenges for Divided Societies*, Pluto Press, England, p. 59.

³⁴ Lijphart, *supra* note 1, p.31.

³⁵ Id.

two strong parties representing the Catholic and Socialist segments got carefully balanced delegations ruled the country for over 20 years.³⁶

The coalitions in Belgium and Netherlands shows that the cabinets had a broad political base but still short of 'grand coalition'³⁷ - it should be beyond the minimal winning size so that the government established be representatives of broad population as much as possible.

The next question should be the manner by which grand coalition of the executive cabinet is provided in the constitution and electoral law. There are two principal methods notably observed in some countries: the Belgian and the South African model.³⁸ The Belgian constitution stipulates that the cabinet must comprise equal numbers of Dutch speakers and French speakers³⁹ and in such way fixes the proportion of both segments. This was an approach followed in the Lebanese leaders through the 'national pact'.⁴⁰ It requires specifying the groups entitled to share power in the constitution and electoral laws. The South African model emerged out of subsequent debate on the issue of representation either of ethnic and ethnic classifications or parties.⁴¹ Accordingly, power sharing was mandated in terms of political parties: any party, ethnic or not, with a minimum of 5 percent on the seats in the parliament was granted the right to participate in the cabinet on a proportional basis.⁴² This approach seems attractive to other countries as it welcomes any party, including that of ethnic, with a minimum seat provided to share executive cabinet.

It would be appropriate to raise the question of cabinet stability composed of grand coalition amid the principal feature on parliamentary system: votes of confidence. The parliament is authorized to dismiss the executive cabinet up on fulfillment of conditions. This may create cabinet instability and as a result regime instability.⁴³ Some countries have adopted different means to minimize such dangers of parliamentary system. The 1949 Constitution of West

³⁶ Id.

³⁷ Id. p.32.

³⁸ Lijphart, *supra* note 5, p. 103.

³⁹ Ibid.

⁴⁰ See generally Sara G. Barclay, *Consociationalism in Lebanon*, Thesis Submitted to the University of Pennsylvania, College of Arts and Sciences, 2007, p. 6 (electronic Journal Available on <http://repository.upenn.edu/curej/68> visited on 20/12/2010).

⁴¹ See Lijphart, *supra* note 5, p.103.

⁴² Ibid.

⁴³ Id.

Germany authorizes the parliament to dismiss the chancellor for votes no confidence if only a new chancellor is elected simultaneously. It may be said that this problem may be exacerbated when the cabinet is established through coalition. The executive-legislative balance of power, as one consociational device, may mitigate it in addition to what the German Constitution provides.

Summing up, executive power sharing through grand coalition offers broad representation of groups in the government. And as such, it creates a sense of belonging together, in the country, of diverse if not deep ethnic, religious, linguistic and cultural lineages. Elites of different groups come together and run the government and this indeed send the messages of living together in one 'umbrella' to the mass population.

3.3.2. Segmental Autonomy and Federalism

Consociationalism is also characterized by the existence of autonomy for each identified groups. This is a great deviation from majority rule in that it entails 'minority rule' which means rule by the minority over itself in the areas of the minority's exclusive concern.⁴⁴ This logically follows from the principle of executive power sharing through grand coalition to enable minorities and groups generally to participate and their voices are heard on issues of common interest. They enjoy proportional degrees of influence on matters of common interest while all the remaining decision and execution should be left to separate segments.⁴⁵ It is in this way that consociational democracy recognizes the plurality of the society explicitly and turns the segments in to constructive elements of stable democracy.⁴⁶ That seems why consociational democracy is frequently associated with the accommodationist policy.

Federalism, as a theory granting of autonomy to constituent units, is the best form of implementing the idea of segmental autonomy.⁴⁷ The reasons are mainly attributed to territorial nature of autonomy and it allows for the over-representation of the smaller subdivisions in the federal chamber.

⁴⁴ Lijphart, *supra* note 1, p. 41.

⁴⁵ *Ibid.*

⁴⁶ *Id.*

⁴⁷ *Id.* p.42.

Federalism promotes self-government and autonomy of local governments. Ethnic and cultural diversity may lead to instability, when such groups start to believe in their exclusiveness, in their being oppressed or threatened by other groups, or when a dominating majority starts to consider them as 'potential traitors' to the nation.⁴⁸ And therefore, recognition and respect of legitimate claims is a precondition for the settlement of ethno-cultural diversities.⁴⁹ Federalism has been understood to accommodate by recognizing and respecting such differences and interests through vertical division of power.

Consociational democracy may either be territorial or non-territorial in granting autonomy to segments. That seems why scholars sometimes use the expression 'non-territorial federalism' instead of consociation to mean autonomy based on 'personality principle'. Lijphart cites Belgium as the best example of non-territorial federalism where the linguistic segments are too interspersed that autonomy has been established on the personality principle.⁵⁰ Austria and Netherlands have granted religious-ideological sub-cultures autonomy of which is non-territorial as the segments of the society cross-cut each other in this respect. It has been, therefore, proved that it is possible to grant segments autonomy of both territorial and non-territorial nature. Non-territorial autonomy is important for minorities anywhere in the country as migration is unavoidable and creates regional minorities even in cases where the segments are territorially concentrated. Such autonomy offers the best option for educational and cultural realms. But it should not be forgotten that it is easier to delegate governmental and administrative responsibilities to territorially concentrated than to non-territorial segments.⁵¹

Consociational theory considers federalism as one of its types when it is applied in plural societies.⁵² It is employed in plural societies as a consociational device that best serves granting of autonomy to territorially concentrated segments. They seem to coincide in such cases. These two concepts are, however, different in many respects which will be discussed later on in this Chapter.

⁴⁸ Khidasheli, *supra* note 2 p.191.

⁴⁹ *Ibid.* p.195.

⁵⁰ *Id.* p. 43.

⁵¹ *Id.*

⁵² *Id.*p.42.

The other issue that attracts attention, in addition to territorial autonomy, is the composition and power of the federal chamber. The federal chamber has been one among the features of federalism: there should be a second chamber that is equally strong but differently constituted from the lower house. This is typically associated with American federalism where the tiny Wyoming and gigantic California⁵³ enjoy the same number of seats in the Senate having similar law making power with the Congress. The Senate is clearly counter-majoritarian in that it may block laws enacted by the Congress that are detrimental to the interests of those whose ideas have not been heard there.

The executive in consociational arrangement is established through grand coalition. And this coalition in fact enjoy majority, not bare majority because of broadness of the coalition, in the lower house. The problem here is that it paralyzes the executive if the federal chamber is the house where there is over-representation like the US. Therefore, the existence of two legislative chambers with equal or substantially equal powers and different compositions is not a workable arrangement as it makes too difficult the forming of cabinets that have the confidence of both chambers.⁵⁴

The emphasis here should be on the control of the executive. The federal chamber should not be given equal power with the popular (first) chamber especially with regard to control of the executive. As parliamentary system is conducive for consociational model in facilitating broad power sharing scheme, it is the parliament which should control the executive. Both houses may have similar tasks with respect to issues other than the control of the executive.

Regarding the composition of the federal chamber with special representation, minorities are over-represented here. This is perhaps one form of power sharing by making it to be counter-majoritarian. But, compromise should be made between over-representation and democratic principle or 'one person one vote'.

⁵³ Lijphart, *supra* note 5, p. 105.

⁵⁴ *Ibid.*

3.3.3 Proportionality

This characteristic of consociation closely relates to the grand coalition principle.⁵⁵ As it has been highlighted above, proportionality relates to the allocation of civil service appointments and scarce financial resources in the form of government subsidies among different segments.⁵⁶ It contrasts sharply with the winner-take-all character of majority rule.⁵⁷ This is another form of power sharing in addition to representation in the cabinets and parliament: through the over-representation of minorities and parity of representations. The civil service, judiciary, military and police institutions should be apportioned to segments of the society in proportion to their size. This can be achieved through, as Lijphart puts, instituting ethnic or religious quotas, which is often unnecessary. It is sufficient to have an explicit constitutional provision in favor of the general objective of broad representation and to rely on the power-sharing cabinet and proportionally constituted parliament for the practical implementation of this goal.⁵⁸

Proportionality, as a neutral and impartial standard of allocation, removes a large number of potentially divisive problems from the decision making process and then lightens the burdens of consociational government.⁵⁹ They influence decisions in proportion to their numerical strength. It is at this point that proportionality relates to grand coalition of cabinets and legislature. This is another defining characteristic of consociation in contrast to the winner-take-mentality principle of the unrestrained majority rule.

Proportional composition of cabinets and other decision-making relates to the electoral system. Three main types of electoral formulas and a large number of sub-types within each of these are usually distinguished: *Majoritarian formulas* (with plurality, two ballot systems, and the alternative vote as the main sub-types), *Proportional Representation* (largest remainders, highest averages, and single transferable vote formulas), and *Semi-proportional systems* (such as the

⁵⁵ Lijphart, *supra* note 1, p. 38.

⁵⁶ Ibid.

⁵⁷ Arend Lijphart, *Consociation and Federation: Conceptual and Empirical Links*, Canadian Journal of Political Science, Vol. 12, No. 3 (Sep., 1979), pp. 499-515 <http://www.jstor.org/stable/3230173> Accessed: 29/01/2010, p.500

⁵⁸ Lijphart, *supra* note 5, p.106.

⁵⁹ Id. p. 39.



cumulative vote and the limited vote).⁶⁰ Selection from among these types and sub-types is usually backed by purposes taking in to account local circumstances. Countries introduce proportional representation (herein after PR) in order to achieve greater proportionality and better minority representation that majoritarian electoral methods do.⁶¹ Minorities tend to establish smaller political parties that they cannot compete with parties having majorities. PR gives them chance to get share of parliamentary seats more equal to the share of the total vote.⁶² This electoral system is preferable in plural societies because majoritarian formula tends to over-represent large parties and under-represent small ones. Parliamentary seats should be divided in proportion to the votes they receive.

Two accommodationists debate on the type electoral system that should be applicable in multiethnic societies: centripetalists predominantly by Donald Horowitz and consociationalists markedly Arend Lijphart. This emanates from the different view they have on the purposes of power sharing institutions. Horowitz argues that the tyranny of the majority can be tempered through vote pooling electoral systems which facilitate (and encourage) the election of moderate ethnic politicians.⁶³ He proposes for electoral mechanisms which aim at political moderation than broad representation. Centripetalism has benefited from the works of other scholars like Benjamin Reilly who rightly put it as:

*Normative theory of institutional design designed to encourage three related but distinct phenomena in divided societies: (i) electoral incentives for campaigning politicians to reach out to and attract votes from a range of ethnic groups other than their own... (ii) Arenas of bargaining, under which political actors from different groups have an incentive to come together to negotiate and bargain in search for cross-partisan and cross-ethnic vote-pooling deals... (iii) Centrist, aggregative political parties or coalitions which seek multi-ethnic support...*⁶⁴

⁶⁰See Arend Lijphart (1994), *Electoral Systems and party Systems: A Study of Twenty-seven Democracies, 1945-1990*, Comparative European Politics, Oxford University Press, p. 10.

⁶¹ Ibid.

⁶² See Peter Hain (1986), *Proportional Misrepresentation: the Case against PR in Britain*, England, Wildwood House Ltd. p.1.

⁶³ See generally Chapter Two above.

⁶⁴ See Benjamin Reilly (2001), *Democracy in Divided Societies: Electoral Engineering for Conflict Management*, Cambridge, Cambridge University Press, p.11 cited in Stefan Wolff, *supra* note 33.

Reilly states that electoral system should encourage moderate party leaders and reward those who transcend ethno-linguistic cleansing. The electoral formula that suits this goal is the alternative vote.⁶⁵ This Horowitz's proposal suffers from critics principally from Lijphart on the ground that electoral mechanisms aiming at moderation cannot bring broad representation that is desirable in multi-ethnic societies⁶⁶ which fails to enable citizens see themselves in the government. He adds the short-lived Fijian constitutional system because of an attempt to combine alternative vote with power-sharing.⁶⁷ Another similar critic comes from Stefan Wolff emphasizing on the inclusion of all relevant groups, whether moderate or extremist, in the government contributing to stability.⁶⁸ It tends to exclude some groups from power which might create suspicion and insecurity.

Consociationalists focus on broad representation of different segments of the society at different organs of the government. PR electoral systems, as it has been highlighted above, are clearly preferable to majority/plurality system in so far as they offer a much greater likelihood of elections delivering results that make the formation of grand coalitions more likely because they virtually guarantee the representation of different ethnic groups.⁶⁹ It allows for broad representation both at the executive, through coalition, and legislative. PR generally produces proportionality and minority representation and in addition, it treats all groups, ethnic, racial, religious or even non-communal groups in a completely equal and evenhanded fashion.⁷⁰

It is suggested that new democracies have to make PR system operate in a simple manner: a high, but not necessarily perfect, degree of proportionality; multi-member districts that are not too large, in order to avoid creating too much distance between voters and their representatives; list PR in which parties present lists of candidates to the voters, instead of the rarely used single transferable vote, in which voters have to rank order individual candidates; and closed and almost closed lists in which voters mainly choose parties instead of individual candidates within the list.⁷¹

⁶⁵ Lijphart, *supra* note 5, p.98.

⁶⁶ *Ibid.*

⁶⁷ *Id.*

⁶⁸ Wolff, *supra* note 33, p. 62.

⁶⁹ *Ibid.*

⁷⁰ Lijphart, *supra* note 5, p. 100.

⁷¹ *Ibid.*, p. 101.

3.3.4. Minority Veto

The last but not the least defining characteristic of consociational democracy, as opposed to majoritarianism, is the rights of minorities to veto on vital interests. This represents, in the words of Lijphart, 'negative minority rule.'

Grand coalition offers wider opportunity for minorities to participate in the executive and this gives them protection. What should not be forgotten is that decisions within the coalition are passed by majority vote. Though the minority's presence in the coalition does give it a chance to present its case as forcefully as possible to its coalition partners, it may nevertheless be outvoted by the majority in the coalition.⁷² There might still be situations where the ideas of minorities might not be heard. As such, their vital interests may be affected by such decisions and this endangers inter-segmental elite cooperation.⁷³ There should be some other protection for minorities whose vital interests relating to their identity are at stake. Lijphart clearly states that minorities should be allowed to veto in such instances and this gives a complete guarantee of political protection.⁷⁴ The question then arises as to what constitutes 'vital interests'. There is consensus that vital interests include educational interests and language policies because these interests are areas where minorities express their identity. The best example cited here is the Netherlands experience where the constitution provided for the enactment of laws that affect cultural and educational interests of the language groups can be passed only if majorities of both the Dutch and French-speaking parliamentary representatives give their approval.⁷⁵

It should not, however, be forgotten that such veto provisions may pose dangers similar to its absence. It may lead to 'minority tyranny' which may strain the cooperation in a grand coalition as much as the out-voting of minorities.⁷⁶ There are three reasons provided by Lijphart why this

⁷² Lijphart, *supra* note 1, p. 36.

⁷³ *Ibid.*

⁷⁴ *Id.* Minority veto is synonymous with John C. Calhoun's 'concurrent majorities' which also had the protection of minority interests as its principal goal: it invests each segment with 'the power of protecting itself, and places the rights and safety of each where only they can be securely placed, under its own guardianship.' That seems why minority veto is considered similar with concurrent majority. Both aim protecting minorities through mutual veto as their frequent use may turn against their own interest.

⁷⁵ *Id.* p.38 The Dutch example is from among those formal veto powers provided in the constitution. Such arrangements may also be done informally.

⁷⁶ *Id.* p.37.

danger is not serious as it appears. Firstly, the veto is a *mutual* veto that all minority segments possess and can use—their frequent use is not very likely because it can be turned against their own interest. Secondly, the very fact that the veto power is available as a potential ‘weapon’ gives a feeling of security which makes the actual use of it improbable. Finally, each segment will recognize the danger of deadlock and immobilism that is likely to result from an unrestrained use of the veto and because of this, they tend to sacrifice to secure common interest.

3.4. Consociational Devices

Federalism: This is a vital ‘device’ to grant autonomy to segments characterized by territorial concentration. Federalism creates two tiers of government in a polity with primarily vertical division of power between the central government and sub-national units. And such division of power is constitutionally entrenched in order to keep it away from alteration through ordinary legislations.⁷⁷

Multi-Party Systems: There should be a multiparty system within a country so that the segmental cleavages have their own parties. Political parties, in a plural society, are likely to be the organized political manifestations of the segments.⁷⁸ That means the parties are the representatives of their segments to bargain and cooperate with others. The two-party system, therefore, does not work in consociational democracy. Therefore, there should be many parties as much as possible. Lijphart puts his suspicion on the maximum number of parties: ‘multi-partism with relatively few parties is optimal for plural societies.’⁷⁹ Moderate multi-partism presents the most conducive condition for consociational democracy.⁸⁰

Executive-Legislative balance of power: Because of the existence of proportional representation, the two organs of the governments that is the executive and legislative organs have balanced power. For one thing, the cabinet is established by coalition of parties and should not be dominated by a single party. For another, the parties have been represented proportionally within the legislative and as a result executive decisions will not be automatically approved and

⁷⁷ See generally Ronald Watts (2008), *Comparing Federal Systems*, London, McGill-Queen’s University Press; Daniel J. Elazar, *Exploring Federations* (2006), Alabama, University of Alabama Press, and works of George Anderson, William Riker, etc.

⁷⁸ Lijphart, *supra* note 1, p. 61.

⁷⁹ *Ibid.*, p. 62.

⁸⁰ *Id.* p. 64.

enacted as binding laws by the legislature. It will not do so as far as policies brought by the executive do not protect their interests. This might compel the executive to consider its policies thoroughly before bringing it for approval. The legislature will not be dominated by the executive and the relationship will remain genuine give-and-take.

Judicial Review: The Laws, decisions and practices need to be consistent with the constitution. They should be subjected to a judicial review to make sure they are consistent with the constitution. And there should be an independent court/council which has to be able to protect the constitution through interpretation and separation of powers among the executive and the legislature.

These all characteristics of consociational democracy are not exclusive to one another. They are much inter-related in that there exists structural cause-and effect- chains. Proportional electoral systems tend to produce multi-party systems which in turn tend to produce multi-party coalition cabinets and an executive legislative balance of power.⁸¹ This might be contrasted with majoritarian government where is plurality electoral systems (first past the post) that tend to yield two-party systems, one party majority cabinets and executive dominance.

Elites who learned from disasters caused by violent cleavage struggle play important role in consociation. It is this type of democracy which has been recommended by Arend Lijphart to countries with diverse ethnic, linguistic and religious groups. In fact, the political culture of countries does matter in introducing consociation and hence it needs to be contextualized to local cultures.

3.5. Favorable Conditions to Consociation

Political elites play central role in consociational democracy as they should cooperate with leaders of other segments. Leaders should have commitment to the maintenance of the unity of the country as well as a commitment to democratic practices.⁸² While the leaders should show the utmost willingness to cooperate, they must also retain support and loyalty of the segment they lead. This may seem somewhat a cumbersome task to elites, but they do so to the

⁸¹ Arend Lijphart (2002), *Negotiation Democracy versus Consensus Democracy: Parallel Conclusions and Recommendations*, European Journal of Political Science Vol. 41, p. 108

⁸² Lijphart, supra note 1, p. 53.

maintenance a stable democracy in that country. Machiavelli stated long years ago that devotion to the fatherland is driven by the desire for glory, with its highest form to be a *new prince* in the fullest sense of the term, emanating from a selfish interest in the preservation of society.⁸³ Prudent leadership of political elites, therefore, plays the central role in preserving and maintaining the society.

There are, however, conditions that may facilitate such commitment of political elites to cooperate and maintain unity of the country. Lijphart lists nine conditions conducive to the establishment and successful operation of consociational democracy. And he emphasize that these should be regarded merely as favorable factors, not as necessary and sufficient preconditions.⁸⁴ In making counter-arguments to the critics in this respect, he puts favorable conditions as merely probabilistic instead of decisive: even if most or all of the favorable factors are lacking, it is possible to have a successful consociation.⁸⁵ The existence of favorable background conditions may facilitate but does not guarantee consociational success.

- 1) No majority segment- Any of the segments of the plural society comprises a majority of the population. The non-existence of majority segment in the country has the tendency to create a multiple balance of power among the segments. If one segment has a clear majority, its leaders might attempt to dominate rather than cooperate with the rival minority.⁸⁶ Majorities usually prefer to be under majoritarian government as their number definitely benefits them in their political status. The existence of many segments, which all are minorities, encourages leaders of segments to enter in to cooperation so as to avoid pitfalls of control of the government by one minority segment. This may have the tendency to complicate the cooperation among elites.
- 2) Segments of equal size- The second favorable condition is the existence of segments of about the same size which facilitates negotiations among segmental leaders.⁸⁷ This may follow along with the existence of no majority segment: their number should not be of extreme case. This is in fact a matter of degree and not of absence or presence. Most of

⁸³ Paul Tilleti (1965), *The Political Vocation*, Basic Books Inc. Publishers, New York, p. 276-280.

⁸⁴ Lijphart, *supra* note 6, p.114.

⁸⁵ *Ibid.*

⁸⁶ Lijphart, *supra* note 1, p. 55.

⁸⁷ Lijphart, *supra* note 6, P. 123.

the consociational democracies that Lijphart describes score for a higher degree of equality among segments.

- 3) Small number of segments- The existence of too many segments might increase the number of participants and hence bargaining becomes more complicated and difficult.
- 4) Small population size- The smaller populations size the greater probability of less complex decision making. Small size has both direct and indirect effects of the probability that consociational democracy will be established and will be successful: it directly enhances a spirit of cooperativeness and accommodation, and it indirectly increases the chances of consociational democracy by reducing the burdens of decision-making and rendering the country easier to govern (thereby facilitating coalescent style of decision-making).⁸⁸ In small countries, political leaders are more likely to know each other than personally in larger countries, the decision making process is less complex, and such countries generally do not conduct a very active foreign policy.⁸⁹ Smallness however is a favorable factor only to a certain limit because it requires prudent leadership.
- 5) External threats- External danger common to all have a tendency of strengthening internal unity against such common danger.⁹⁰ This means in short segments will have common interest on such points. One condition must be attached to the condition of external threat: such threat must pose common danger to all segments in order to have a unifying effect. When the internal divisions between the segments correspond with the international lines of conflict, this results in the internal replication of international conflicts, especially in the cases of religious and ethnic conflicts.⁹¹ The linguistic and cultural affinity of Flanders, in Belgium during the two world wars, to Germany and of Wallonia to France exacerbated the country's linguistic-regional conflict; in Switzerland, the French-German linguistic cleavage was also affected in the First World War.

⁸⁸ Lijphart, *supra* note 1, p. 65.

⁸⁹ See *Ibid*, p. 119-128.

⁹⁰ *Id.*

⁹¹ Gerhard Lehbruch, *Consociational Democracy in the International System*, *European Journal of Political Research*, Vol.3 No. 4, 1975, p.382 cited in Lijphart, *supra* note 1, p.67.

- 6) Overarching loyalties- Consociation would be easier if segments have a shared national feeling: sense of belonging together. This is probable in most cases because countries enter in to such policy choices due to their desire to be together. Such sentiments however may be lower in countries with a history of civil war.
- 7) Socio-economic equality- Greater socio-economic inequality may make the poor feel discriminated and the prosperous ones may feel insecure which may create tension.⁹² This may not be favorable to consociation.
- 8) Geographical concentration of segments- if the segments are territorially concentrated then it will prevent latent hostilities and make segmental autonomy to have firm basis by means of federalism and decentralization.⁹³ This may not be regarded as a highly favorable condition as societies move from one place to another and get inter-mixed.
- 9) Traditions of accommodation- It is helpful to a consociation if it is supported by long-standing traditions of settling disagreements by consensus and compromise.⁹⁴

The favorable factors and are not guarantees for successful consociation and at the same time they are not necessary and sufficient factors. There are countries which are operating as successful consociation while some of these favorable factors are lacking.⁹⁵

3.6. Criticisms

Political scientists have forwarded series of critics towards Arend Lijphart's 'consociation' which in fact has made it get improved through time along with the experience some countries. Lijphart actually has made a dialogue with these critics in his book 'Power-sharing in South Africa'. The author tries to spot some of the critics.

There are scholars arguing that consociation tends to entrench identity.⁹⁶ But, they rarely put alternatives to consociation in order achieve stability and legitimacy in a society divided with

⁹² Lijphart, *supra* note 6, p. 125.

⁹³ *Ibid* p. 126.

⁹⁴ *Id.*

⁹⁵ See *ibid* p. 118-128.

⁹⁶ Donald Horowitz is notable in this regard. The main reason why he proposes for political moderation through vote pooling is to reduce extremism. See the preceding Chapter for the details on this issue.

ethnic, linguistic, cultural and religious lines.⁹⁷ It is clear that it is challenging to achieve and maintain democratic government in a plural society.⁹⁸ This problem has been observed in countries where majoritarian democracy prevail as excluding groups from the realm of participation in political decisions and institutions. Consociation as normative model offers a rather relevant option for such societies and as such changes the proposition that 'democracy in plural societies may be difficult but not impossible'.⁹⁹ Inclusion that is sought in consociation will enable groups see themselves in the government. It is exclusion and not representation that may entrench extremism.

Van Schendelen has argued, in his article of collected criticisms against consociational democracy, that Lijphart uses expressions with conceptual clarity: pluralism, democracy, stability, and accommodation.¹⁰⁰ He adds that Lijphart uses evidences selectively and lacks qualities of scientific research.¹⁰¹ Lijphart defines these concepts in his books in order to avoid such complexities. Schendelen in fact recognizes that consociational democracy is no longer regarded a unique phenomenon of the Low Countries (small European countries): rather it is considered to be a more general phenomenon (empirical generalism) and a more universal solution for plural societies (normative generalism).¹⁰² Others also contend that it is doubtful whether consociation would yield civil peace and maintain democracy by citing countries where consociation is claimed to be not successful like Cyprus and Lebanon.¹⁰³ Lijphart answers this as consociation was broken-down in these countries because of external interference: Turkish invasion of Cyprus in 1974 and intervention of the Palestine, Syrians and Israelis in the internal affairs of Lebanon¹⁰⁴ in addition to the rigid arrangement.

Some other political scientists argue that consociation is not sufficiently democratic or not democratic at all. Huntington states that consociational democracy should properly be called

⁹⁷ See Lijphart, *supra* note 6, pp. 83-117.

⁹⁸ Lijphart, *supra* note 1, p.1.

⁹⁹ Ibid.

¹⁰⁰ Van Schendelen, *Consociational Democracy: The Views of Arend Lijphart and Collected Criticisms*, The Political Science Reviewer, 1984, p. 155-160 http://www.mmisi.org/pr/15_01/schendelen.pdf accessed March 21, 2011

¹⁰¹ See Ibid, p. 161.

¹⁰² Ibid p. 152.

¹⁰³ Lijphart, *supra* note 6, p.89.

¹⁰⁴ Id.

“consociational oligarchy”: it entails an “elite conspiracy,” which may be desirable in many societies, “but that does not make it democratic.”¹⁰⁵ These all argue that consociational democracy is not a genuine democracy. Lijphart’s counterargument says that the degree of secrecy in consociational democracy should not be exaggerated to call it conspiracy and the rule of secrecy of is not unique to consociation.¹⁰⁶ He says that secrecy is perhaps present in any political arrangement, parties usually ‘conspire’ if that is to be called so.

Regarding the critic which says that consociational democracy is not sufficiently democratic as it creates weak opposition, Lijphart compares it with the British government-versus-opposition pattern. It is clear that grand coalition government necessarily creates either a relatively small or weak opposition: but the ideal of vigorous political opposition, which can be realized to large extent in homogenous societies, cannot be used as a standard for evaluating the political performance plural societies.¹⁰⁷ Strong government-opposition competition may make homogenous societies better-off as voters decide to vote based on the ideas and policies of political parties. Minorities in such cases have the tendency to be majorities at some time because of the shifting of votes. This is not the case in plural societies as there are permanent minorities and majorities which indeed create less movement of votes. What matters in such societies is representation in the governmental power.

Perhaps another important critic, which can be taken as a disadvantage, is consociational democracy more concerned with the equal or proportional treatment of groups than individuals and as such it neglects equality and liberty of individuals.¹⁰⁸

Those critics forwarded against consociational democracy generally emanate from its theoretical implications or the experience of some consociational countries frequently cited by Lijphart in his writings: Switzerland, Belgium, Lebanon, Cyprus, Malaysia, Austria and Netherlands. These are in fact democracies that Lijphart bases for his case studies.

¹⁰⁵ Id. p. 109.

¹⁰⁶ See Id. p. 100-111.

¹⁰⁷ Lijphart, *supra* note 1, p. 47-48.

¹⁰⁸ *Ibid* p. 49.

proportional electoral system, executive-legislative balance of power, independent court as an arbiter of constitutional issues, and bicameral legislature.

Federalism and consociationalism are within the same line of accommodation usually stated as a policy choice for multi-ethnic societies as opposed to integration. The objective of both of these models is to provide political arrangements in which the tensions between the segments of a plural society can be accommodated within a single sovereign state¹¹¹ by recognizing and empowering diversity. Both represent modern attempts to accommodate democratic complexity and pluralism even if federalism refers to the form of polity while consociationalism relates to the character of a regime.¹¹²

Elazar argues that both federalism and consociationalism are forms of 'compound majoritarianism' to mean that majority rule is not rejected, but majorities are compounded either from distinct territories (territorial democracy) or concurrent groups (consociationalism), not counted through simple addition.¹¹³ He puts their difference as merely existing in the way the majorities are compounded: federal systems are dependent upon dispersed majorities, generally territorially based whereas consociational systems are dependent upon concurrent majorities, generally aterritorial in character. He emphasizes that in both cases it is not the majority that does not rule but the character of the majority coalition and the effort needed to build it are more substantial and designed to generate broader consensus within the polity as a whole than would be the case with simple majority.

Lijphart, regarding the similarity and difference between these two theories, argues that the opposite of federalism is unitary government while the opposite of consociationalism is majoritarian democracy.¹¹⁴ Federal theory contains a number of important consociational, or at least proto-consociational, principles, that federalism can be a consociational device, and that under certain conditions, a federation can be a consociation and vice versa.¹¹⁵

¹¹¹ Lijphart, *supra* note 57, p. 499.

¹¹² See Daniel J. Elazar, *Federalism and Consociational Regimes*, *Publius*, Vol. 15, No. 2, Federalism and Consociationalism: A Symposium (Spring, 1985), pp. 17-34

¹¹³ *Ibid* p. 19.

¹¹⁴ Lijphart, *supra* note 57, p. 499.

¹¹⁵ *Id.*

Consociationalism, as it has been so far, is defined in terms of four characteristics: grand coalition or executive power-sharing, segmental autonomy, proportionality, and minority veto. It grants segments of the society some sort of representation and political power, and creates counter-majoritarian consociational devices. Adopting majoritarian form government in multi-ethnic countries, especially whose ethnic, religious or linguistic groups are deeply divided, is not a workable arrangement. Consociational theory, with the experience of plural societies as a case study, some form political arrangement is required in order to build democratic order and stability in multi-ethnic societies.

Federalism has been defined by many scholars but none got universal acceptance owing to differing arrangement in different federations. Elazar describes it as a notion involving the combination of *regional self-rule* for some purposes and *shared rule* for others within a single political system so that neither is subordinate to the other.¹¹⁶ One among the federal principles is the central-regional, or simply vertical, division of power. The other five secondary principles include a written constitution, bicameralism, equal or disproportionately strong representation of the smaller component units in the federal chamber, decentralized government, and the right of the component units to be involved in the process of amending the federal constitution but to change their own constitutions unilaterally.¹¹⁷

These two theories have been found similar in some respects. Consociational democracy has unique features which are not present in federal arrangement. Firstly, federalism in its theory and practice does not entail a rejection of a majoritarian mode of decision-making.¹¹⁸ Some federal states recognize the tyranny by numerical majority and introduce some forms of check and balance. The infallible protection against a tyrannical majority-the positive requirement of unanimity or the negative right of minority veto which are prevalent in consociationalism-is, however, not part of any federal charter.¹¹⁹ Federalism is indeed considered as a rejection of majority-rule across the whole area of the federation on all matters, but lacks such infallible

¹¹⁶See generally Elazar, *supra* note 118, where he employed the expression of federalism as 'regional self-rule plus shared rule'.

¹¹⁷Lijphart, *supra* note 57, p. 502.

¹¹⁸See for instance Ivo D. Duchacek, *Consociational Cradle of Federalism, Publius*, Vol. 15, No. 2, Federalism and Consociationalism: A Symposium (Spring, 1985), pp. 35-48

¹¹⁹Ibid, p. 41.

protection of minority.¹²⁰ It can, therefore, be said that consociationalism is more concerned to minorities by granting protection against tyranny of the majority.

Secondly, the autonomy granted to segments may take the form of either territorial or non-territorial. An example of non-territorial autonomy would be the power given to a semipublic association representing a particular cultural community to run its own schools throughout the entire area of the state.¹²¹ Territorial autonomy usually takes the form of federal arrangement. What should be noted, here, is that territorial autonomy in consociation will be a federal arrangement under three conditions: where the segments are territorially concentrated, the boundaries of sub-national units of the federation follow segmental boundaries, and where the federal principles are applied.¹²²

There are consociational elements within federal theory:¹²³ the component units enjoy a high degree of secure, perhaps constitutionally guaranteed autonomy in organizing their internal affairs and they all participate in decision-making at the central level of government. These two characteristics of federations are similar with the fundamental principles of autonomy and power-sharing of consociational democracy. The difference lies on the broader nature of power-sharing scheme in consociation through grand coalition and proportional representation.

¹²⁰ See Lijphart, *supra* note 57, p.507.

¹²¹ *Ibid*, p. 505.

¹²² *Id.*

¹²³ *Id.* p. 506.

CHAPTER FOUR

Guarantees for Minorities under the FDRE Constitution: Issues of Constitutional Design and Practice

4.1. Introduction

Before Ethiopia got its first written constitution, the inhabitants were considered as one 'nation' having one language, culture, and religion. This had left no room for those who have different language and religion that enabled them to exercise and develop. The first written constitution, which had been claimed to be a 'manifestation of civilization,' had not recognized such rights than legitimizing absolute monarchy. The 1955 Revised Constitution included nothing different but consolidation of monarchical power and it was necessitated by the Eritrean Federation. It was insensitive to problems of class and ethnicity as being a product of its age (that is an age during which group rights were hardly known).¹ And the 1987 PDRE Constitution introduces socialist ideology and emphasize on social and economic rights. It in fact asserted that all languages are equal and respectable. But it did not answer questions of minorities as well.

The FDRE Constitution belongs to the 'Nations, Nationalities and Peoples of Ethiopia'² as opposed to the traditional trend of ascribing of sovereignty to the 'people' in general.³ Art. 8 makes explicit that the sovereign power resides in the NNPs of Ethiopia. Such sovereignty shall be expressed through either direct or indirect democratic participation. And this very Constitution is the expression of their sovereignty.⁴

NNPs are defined under Art. 39 (5) as a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory. No distinction is made between these three terms: Nations, Nationalities and Peoples. They all enjoy the same rights under the Constitution regardless of

¹ Tsegaye Regassa (2001), *Ethnic Federalism and the Right to Self-determination as a Constitutional Legal Solution to the Problem of Multi-ethnic Societies*, LLM Thesis, Submitted to the University of Amsterdam, Law Faculty, unpublished, p.7.

² See the Preamble of the FDRE Constitution cumulative with Art. 8 (2).

³ Tsegaye, *supra* note 1, p. 1

⁴ Art. 1 (2) of the FDRE Constitution.

their numerical size. This can be evidenced by looking at the specific provisions that grants rights to them in that NNPs are stated together. And as such, it seems that the Constitution gives them the same status and hence it can be said that there is no majority-minority relation. This, however, does not mean that NNPs exercise the same right with respect to participation in the common government. That is why the Constitution under Art. 55 (3) reserving 20 seats for minority nationalities even if they are not defined by the Constitution. If this is the case then it is inevitable to have minorities within a polity. The Constitution in fact recognizes that 'minority nationalities' has to get special representation in the parliament. Therefore, minorities in this context are those groups who may be outvoted by others.

Unlike the fearful and disingenuous gestures of the past, this was a radical reform intended to cut through the century-old tangled knot of iniquitous oppressive centre-periphery relations, and to restructure the state on a federal pattern based on the principle of equality, autonomous, (predominantly) ethnic constituent units.⁵ The Constitution establishes a federal structure, which is composed of nine regional states mainly based on ethno-linguistic criteria as a reaction to past repression and atrocities. While the choice of federalism was not difficult, the choice of ethnicity as a basis of state formation was not an easy one, primarily because of the differences in opinion among political actors about the root cause of conflict in Ethiopia; some stress ethnicity, others class, still others power.⁶ The ethno-nationalists who overthrown the unitary Derg Regime were with a view that there were ethnic suppression in the country and as such they played, predominantly the EPRDF, pivotal role in shaping the text of the Constitution in its making process.

They have the right to self-determination which is an organizing principle of the federation.⁷ Self-determination, as stipulated under Art. 39 is a bundle of rights which includes the right to language, culture and history, the right to a full measure of self-government including the right to establish institutions of government in the territory that it inhabits and to equitable representation in the state and federal governments, and the right to self determination up to secession. This is also another unique arrangement that attracted scholars: there is a view that federalism and

⁵ John Markakis, *Federalism and Constitutionalism in the Horn of Africa*, Conference on Constitutionalism and Human Security in the Horn of Africa, organized by Inter Africa Group, Addis Ababa, October 1, 2007, p. 58.

⁶ Tsegaye, *supra* note 1, . p. 3.

⁷ Paragraph 1 of the Preamble of the FDRE Constitution.

secession do not go together because 'federalism is a covenant to form a more perfect union.'⁸ The inclusion of secession and the establishment of a federal state with constituents delimited predominantly have become an area where different views were held.

It adopts a parliamentary form of government where the popular house (the lower house) controls the executive (Art. 45). The executive branch led by the Prime Minister is also established (Art. 72-77). There is an independent judiciary with the power to interpret law (Art. 78). The power to interpret the Constitution is vested with the House of Federation, which is composed of Nations, Nationalities and Peoples, another strange arrangement to federalism, and supported by a technical body: Council of Constitutional Inquiry (Art. 62). The House of Federation represents the Nations, Nationalities and Peoples of Ethiopia.⁹ Each NNP shall be represented by at least one member, and one additional representation for each one million of its population.¹⁰ The Constitution goes beyond this and ensures representation of minority Nationalities and Peoples in the federal legislative organ. They shall have at least 20 seats within the House of Peoples' Representatives. The Constitution also establishes a President with no political power, merely ceremonial, as a Head of State. Lastly, the Constitution provides for power division among the federal and state governments by making the residual power to reside in the states.

These are more or less the basic features of the FDRE Constitution that are frequently raised in the current political and constitutional discourse. It seems that the Constitution is concerned to the multi-ethnic nature of the country. There are elements either in the Constitution or in practice that resemble a consociational arrangement.¹¹ This Chapter is devoted to analyzing the rights of Nations, Nationalities and Peoples and their practice to some extent.

4.2. Self-Determination

As it has been discussed in the second chapter of this study, self-determination is historically attached to decolonization primarily under the UN Charter under the international arena. It was

⁸ See generally Daniel Elazar (2006), *Exploring Federalism*, Tuscaloosa, University of Alabama Press, Alabama.

⁹ Art. 61 (1) of the FDRE Constitution.

¹⁰ Art. 61 (2) of the FDRE Constitution.

¹¹ This will be the issue that will be dealt in an in-depth manner in the next chapter as it is the main theme of the thesis.

later that this right was granted to peoples. Minorities are not peoples and hence they have no right to self-determination under international law.¹² The FDRE Constitution however grants this bundle of rights to NNPs regardless of their numerical size as defined under Art. 39(5).

Self-determination was recognized under the Transitional Charter of Ethiopia as a right to 'NNPs' under Art. 2 (b) where it provided that 'every Nation, Nationality and People has the right to administer its own affairs within its own defined territory and effectively participate in the central government on the basis of freedom, and fair and proper representation.' Sub-Art. (c) of the same Art. stipulates that every NNP may exercise its rights of self-determination of *independence* when the concerned NNP are convinced that the (above) rights are denied, abridged or abrogated.¹³ These provisions have served as the basis for the inclusion of self-determination in the Constitution.

This right to self-determination is recognized in the Preamble as the organizing principle 'to build a political community founded on the rule of law and capable of lasting peace...' Art. 39 stipulate the details of the essence of the right and procedures for its exercise. In its first paragraph, it states that every NNP have unconditional right to self-determination including the right to secession.

The beneficiaries of the right are NNPs, and not regional states. But Sub-Art. (4)a of the same Art., while stating the procedures through which self-determination is exercised, seems to put a requirement that in order for the state to claim for secession, NNPs should have their own state. The first step in requesting self-determination (especially secession) is that the demand for secession shall be approved by a two-third majority of the members of the *Legislative Council* of the NNP concerned. It does not say the 'State Council' which is present at the state level. It rather requires the decision of legislative council and this council shall mean a state council in states where there is one dominant group such as Tigray, Afar, Amhara, Oromia, Somali, and Harari. In the remaining states, there is a legislative council at the zonal and special woreda level. The Constitution of the SNNPs National Regional State, for instance, provides that zonal and special woreda have legislative council. Therefore, the right to self-determination is

¹² See the discussion in the preceding Chapter.

¹³ See the Transitional Charter of Ethiopia, Democratic and Peaceful Transitional Conference of Ethiopia, *Negarit Gazette*, 22nd Day of July 1991, Addis Ababa (emphasis added)



exercised by the NNPs of Ethiopia. There is no requirement of approval by the federal legislative body. What should be noted here is that this right is unconditional with no prerequisite for its exercise. It is also a non-derogable right even during state of emergency.¹⁴ The right to self-determination is stipulated under the chapter dealing with 'Human Rights'. And this chapter of the Constitution can only be amended through extra-ordinary procedures.¹⁵

The issues of self-determination including and up to secession were issues that the Constituent Assembly undertook a thorough deliberation during the constitution making process.¹⁶ The Assembly discussed on the report presented to it by a Committee on the Rights of NNPs. Issues like the definition of NNPs; whether secession should be included as an option in the Constitution; whether recognition as NNP is necessary for claiming secession; who requests on behalf of the group, who decides so; language and cultural rights etc.

The question of the fate of minorities living in areas dominated by one language group was raised by members of the Assembly. The Committee on the Rights of NNPs was of the opinion that decisions by simple majority on such issues may be detrimental to the interests of minorities but leaved unanswered on the ground that the constitution includes only general principles: this is an issue that should be determined by law. The option of introducing a non-territorial autonomy for linguistic and cultural groups was not considered by the Committee. It did not make any change up on the draft. Finally, the Assembly adopted that secession should be decided through a referendum by a majority vote of the people concerned. This is what is included under Sub-Art. (4) c of Art. 39. Decision by a simple majority vote to secede, through referendum, will necessarily be detrimental to the interests of other groups living in a community claiming for secession. The rights to use the language, develop and promote culture, and preserve history of minority groups will be at stake.

The very inclusion of the right to secession in the draft constitution was also one immense divisive issue during the making process. It faced much opposition from some members of the Assembly basically because of the danger of disintegration and its uniqueness to Ethiopia. While the idea was claimed to be that of Marxist-Leninist that caused chaos in the former USSR,

¹⁴ Art. 93 (4) c of the FDRE Constitution.

¹⁵ Art. 105 (1) of the FDRE Constitution.

¹⁶ See generally the Minute of the Constituent Assembly, Vol. 3, 1987, p. 10.

Yugoslavia, and Czechoslovakia, it was suggested that the inclusion of language and cultural rights is suffice.¹⁷ The nation/nationalities are the founders of the constitution in general and the federation, in particular, and hence have the right to go away from the federation when they feel aggrieved by the fact that the terms of the compact are abridged by the federal government.¹⁸ The Committee argued that 'the constitution is the agreed-upon contract of peoples to live together- anyone who wants to walk away should be allowed by procedures that does not deprive democratic rights.'¹⁹ The issue of incompatibility of secession and federalism was not raised any of the participants. There were also ideas that support the inclusion of secession in the constitution without any distortion from the draft. It was with only one opposing vote that the Committee approved and presented to the Assembly which adopted with no substantial change.²⁰

Secession is only the most extreme self-determination remedy, lying at the top of a pyramid.²¹ There are others like self-government in its broader sense meaning like a confederal state reserving only defense and foreign policy to the center, self-government with autonomy on revenue, land and natural resources; linguistic, cultural and religious autonomy etc. Protection of ethnic groups can be guaranteed through these other means than secession. It is possible to create sense of belongingness on behalf of the historic peripheries by granting autonomy, whether territorial or non-territorial, and giving enough space in the central government. Secession as an option serves no purpose than posing the danger of disintegration: '*a recipe for disaster*'.²² Brietzke argue that the net effect of the new Constitution *proviso* of secession on paper is *less that of a constitution as conventionally understood*, and more like an international treaty such as the Treaty of Rome.²³ As Will Kymlicka rightly put the explicitness of the idea and logic of democratic secession should have been replaced by implicitly evolving out of piecemeal

¹⁷ This was the idea presented by Ato Zelelie Tsegasillasse, representatives of *Kilil 12* in the Constituent Assembly.

¹⁸ Assefa Fiseha (2006), *Federalism and the Accommodation of Diversity in Ethiopia: a Comparative Study*, Wolf Legal Publishers, Netherlands, p. 234.

¹⁹ See the Minute of the Constituent Assembly, Vol. 3, 1987.

²⁰ Ibid.

²¹ Paul H. Brietzke, *Ethiopia's "Leap in the Dark": Federalism and Self-Determination in the New Constitution*, *Journal of African Law*, Vol. 39, No. 1 (1995), pp. 19-38, Cambridge University Press, <http://www.jstor.org/stable/745605> Accessed: 29/10/2009, p.35.

²² Ibid p.33.

²³ Id.(emphasis added)

democratic negotiations like Canada (in relation to Quebec), Britain (in relation to Scotland) and the United States (in relation to Puerto Rico) where *de facto* recognition has been made.²⁴

Self-determination, as provided under Art. 39 includes the right to speak, to write and develop its own language; develop culture and preserve history; self-government, which includes the right to establish institutions of government in the territory that it inhabits; and equitable representation in the State and Federal governments. These are some of the elements of self-determination that are worthy of discussion.

4.2.1 Cultural and Linguistic Rights

Linguistic rights include the right to use one's own language as a working language in the government running, and in education. The FDRE Constitution grants all Ethiopian languages shall enjoy equal state recognition by making Amharic as the working language of the Federal government.²⁵ The members of the Federation should determine their respective working languages. The reason why Amharic is made the working language of the Federal government seems a factor owing to historical events that spread all over the country. Amharic is not the official language of the Federal government but just working language. It is adopted in this way in an attempt not to reflect the hegemony of the speakers of that language but because of the special position that the language has attained as effective means of national communication as the country has no the benefit a culturally neutral language.²⁶

Determining the working language in a multi-ethnic polity is not an easy task. There are factors that should be considered in order to determine which language should be the working language of the federal government in multi-ethnic societies. Capotorti identifies these factors as: a) the numerical importance of the respective linguistic communities; b) the political and economic position of the communities; and c) the stage of development of the minority language as an

²⁴ Will Kymlicka, *Emerging Western Models of Multination Federalism: Are They Relevant in Africa?* In David Turton (ed.) (2006), *Ethnic Federalism: the Ethiopian Experience in Comparative Perspective*, Eastern African Studies, James Carrey Ltd. Oxford, p.55.

²⁵ Art. 5 (1) and (2) of the FDRE Constitution.

²⁶ Yonatan Tesfaye Fessha, *A Tale of Two Federations: Comparing Language Rights Regimes in South Africa and Ethiopia*, in Tsegaye Regassa (2009), *Issues of Federalism in Ethiopia: Towards an Inventory of Legal Issues*, Ethiopian Constitutional Law Series, Vol. 2, Addis Ababa University Press, p. 154.

effective means of wide communications in all fields.²⁷ There are scholars that argue against the selection of the Amharic language as a working language of the Federal government on the ground that it is not ethnically neutral while there are rival languages like Oromiffa which is spoken by around 30% of the total population of the country.²⁸ The Federal government, according to Aberra Dagafa, should be bi-lingual by making Oromiffa another working language.

Belgium and Switzerland, notable consociational examples, are frequently cited countries for adopting bi- and tri-lingual government at different levels. Brussels as a capital city introduced both French and Dutch as having equal official status with which public services are offered.²⁹ The Dutch are minorities in Brussels and most of them speak French.³⁰ This has made Brussels a *de facto* unilingual city offering at odds with public life while the bilingual policy is too costly. The South African experience can also be cited here. The South African Constitution recognizes all languages spoken by different ethnic groups as official languages of the country, but the practice has proved this policy as 'impractical egalitarianism' as mono-lingualism is the emerging trend.³¹

Such granting of equal official status to languages may bring about legitimacy (specifically 'social' legitimacy) and it creates language facility to members of the language groups. It would have created the same in the Ethiopian case if two or more languages are given the status of working language: probably Amharic and Oromiffa. But, there will exist the same problem of *de facto* unilingualism while costly administration is incurred given the underdevelopment of the country. Amharic became a widely spread language because it was imposed by the previous regimes. The historical dominance of the Amharic language may not be rectified by allowing others to be used as a federal working language. As two wrongs do not make one right, such a historical wrong cannot be rectified by denying Amharic a readily available resource and tool of

²⁷ Aberra Dagafa (2009), *The Scope of rights of Nations, Minorities under the Constitution of the Federal Democratic Republic of Ethiopia*, Series on Ethiopian Constitutional Law, Addis Ababa university Press, Vol. 1, p. 129 (quoting Capotorti's idea.)

²⁸ Ibid.

²⁹ Kris Deschouwer, *the Unintended Consequences of Consociational Federalism: the Case of Belgium*, in Ian O'Flynn and David Russell (2005), *Power Sharing: New Challenges for Divided Societies*, Pluto Press, England, p.102.

³⁰ Ibid.

³¹ See Yonatan *supra* note 26, p.152-153.

the nation-building project at the federal level.³² Bilingualism, therefore, is not a workable recommendation that create undesirable burden in the current Ethiopia.

Language rights of NNPs at the regional level shall also be respected. Perhaps regional states may serve as a custodian of the rights of NNPs in general and the right to speak, to write and develop one's own language and promote culture in particular because of their greater number to do so at the Federal level. The 'mono-ethnic' regional states like Tigray, Amhara, Oromia, Afar, and Somali have introduced their respective working language. There are considerable 'regional minorities', especially what Vasuki Nesiah calls 'minorities within minorities,'³³ in each state. The minorities in such states shall be allowed to use and develop their language and culture in a non-territorial manner. They are not expected to occupy a defined territory for the exercise of these rights where their number justifies, for instance, the opening of a school in their own language. The remaining two regional states-- Southern Nations, Nationalities and Peoples (SNNPs) and Benishangul-Gumuz-- use Amharic as a working language because of its neutrality at least internally.

³² See Yared Legesse, *Linguistic Regimes in Multinational Federations: the Ethiopian Experience in a Comparative Perspective*, in Tsegaye Regassa (2009), *Issues of Federalism in Ethiopia: Towards an Inventory of Legal Issues*, Ethiopian Constitutional Law Series, Vol. 2, Addis Ababa University Press, p.214.

³³ See Vasuki Nesiah, *Federalism and Diversity in India*, in (eds.) Yash Ghai (2000), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States*, Cambridge University Press, United Kingdom, p.56.

Table I

Ethnic group	'Regional Minorities' in each National Regional States							
	Tigray	Afar	Amhara	Oromia	Somali	Benishangul -Gumuz	Gambella	Harari
Afar	12,314							
Amhara	70,561	72,523		1,943,578	29,525	170,132	25,862	41,768
Argoba		21,612	70,012	31,329				
Awi			595,878					
Berta			5,213			199,303		
Burji				11,811				
Dawuro				44,601				
Irob	30,549							
Gamo				13,339				
Gedeo				242,529				
Guragie			3,068	248,100	5,237			7,952
Hadiya		2,491		52,673				
Kembata		2,408		41,618				
Oromo	7,180	8,471	451,362		20,263	106,275	14,833	103,468
Sidama				52,553				7,102
Somali	2,110		5,724	89,533				
Tigre		15,940	37,397	61,263		5,562		
Wolayta		8,256		63,021				

Source: Central Statistics Authority, the 2007 Population and Housing Census of Ethiopia.³⁴

Note: the table is provided here to show some minorities and it is not comprehensive.

These are some of the regional minority groups that are found in different regional state. Oromia hosts a larger number of minorities probably due to its location and availability of economic opportunities. The Southern Nations, Nationalities and Peoples is the 'home of minorities' where more than two or ethnic groups are found in one administrative entity like zones and special Woredas where the council decides which language should be a working language. These regional minorities shall be granted autonomy of a non-territorial nature especially in areas of

³⁴ The SNNP is intentionally omitted because of the larger number of groups to include together with others.

language and culture. They shall have such opportunities to promote their culture and use their language in education, media, economic and social life.

4.2.2 Self-Government

Self-government is one among the major rights of NNPs enshrined under Art. 39 of the FDRE Constitution. Such rights, among other things, include the right to establish institutions of government in the territory that it inhabits and equitable representation in the State and Federal governments. This is an important move from a formerly unitary state to granting autonomy to ethnic groups. Self-government is exercised mainly through the federal arrangement.

As it has been highlighted in the introductory part of this chapter, the FDRE Constitution introduces a multination federal system. It comprises of states and the federal government. Powers are devolved among these levels of government by the Constitution. The powers of the Federal government are enumerated under Art. 51 and it reserves those powers which are not given expressly to the Federal government to the States. And as such, the Constitution follows the patterns of the US model where the residual power is left to the states. This power devolution under the FDRE Constitution has been criticized on the ground that Art. 51 enumerate important powers which are all-embracing that may swallow up those rights given to the states.³⁵ Aberra adds the division of financial and economic powers of the regional states as merely trivial powers mainly because the major financial powers are allotted to the federal government.³⁶ Granting autonomy of any kind short of financial powers is pointless as it may make the states dependent on the federal government. It has also been criticized on the ground that the Constitution focuses more on self-rule than on the shared-rule mainly due to lack of power sharing scheme.³⁷ While it grants autonomy to regional states, it fails to provide for different forms of shared-rule where members of the federation are represented at the center.

There is parliamentary system in Ethiopia where the political parties play an important role. It is the party which has a majority seat in the parliament that establishes the government: elect the

³⁵ Aberra, *supra* note 27, p. 120. He cites Art. 51 (2) which grants power to the federal government to implement the country's policies, strategies and plans in respect of overall economic, social and development matters the scope of which is indeterminable

³⁶ *Ibid.*

³⁷ Assefa, *supra* note 18, p.446. This lack of power sharing scheme will be discussed in a detailed manner in the next chapter as it is the main concern of the thesis.

Prime Minister and Council of Ministers. There are commentators who argue that the prevailing practice in Ethiopia in this regard has centralized power under the hegemony of the ruling party.³⁸ This indeed narrows the political space that should have been left to minorities in order to enable them participate in the policy making and other important rights.

It is important, at this juncture, to consider the criteria for which the boundaries of the regional states are delimited. Art. 46 provide that states shall be delimited on the basis of the settlement patterns, language, identity and consent of the people concerned. Looking at the present arrangement, one can observe that the criterion is mainly identity based. Five Regional States, i.e. Afar, Amhara, Oromia, Somali and Tigray, are delimited based on identity where such groups constitute a majority within their respective state. Gambella and Benishangul-Gumuz are each composed of 5 ethnic groups even if there are minorities named as 'local minorities'³⁹ that the ethnic group they affiliate is a majority in another region. The two most striking delimitation is made when the SNNP Regional States and the Harari city-state are demarcated. These are the two most extreme cases, in the federation, where the inconsistency in applying the criteria for statehood is observed.

According to the 2007 Population Census, the total population of the Harari Regional State is 183,415. The establishment of Harari as a State cannot be justified by any of the criteria stipulated under Art. 46 (2) because of its almost non-existent territory and resource.⁴⁰ Aberra rightly argues that this is one of the anomalous arrangements that cannot be justified by the numerical size and other characteristics, like viability, for the statehood of the Harari ethnic group whereas there others which are in a better position to constitute a state.⁴¹ There are different ethnic groups in the City-state which even dominate the Region with respect to number and economic status.⁴² It follows from all these that Harari should not have been established as a State.

There is the State of the SNNPs on the other extreme where more than 56 ethnic groups are merged together. The explanation given for the merger of the ethnic groups in the South is that it

³⁸ See Aberra, *supra* note 27, p. 140-141.

³⁹ *Ibid* p.109.

⁴⁰ Aberra, *supra* note 27, p.110

⁴¹ *Ibid*.

⁴² The Oromo comprise 103, 468, Amhara 41, 768, Guragie 7, 952, and Somali 7, 102 to mention the major ones.

was by the decision of the people.⁴³ One can examine the reliability of this explanation looking at the level of participation before and during the time when the Constitution is made and it is necessary to ask which part of the society was requested to put ideas and consent to the demarcation.

The merging together of many NNPs in to one sub-national unit surely reduces the 'political space' that each ethnic group should occupy. Such narrowing may either be at the state or local level. Groups may not get proper representation at the State level as there are many others to take their 'share of the cake' in their common state institutions. It also narrows down the possibility of answering the claims of autonomy by ethnic groups and creates dissatisfaction. Another critical pitfall of such merging together can be seen in the representation of those who may be dominated by others due to their small numerical size-minorities. They would be outvoted in a majoritarian decision-making where the winner-take-all the mentality in the words of Lijphart.⁴⁴ Regional states should have been arranged in a manner to accommodate minorities more than that of the federal government by giving them enough space at the state level to share with others and at the same time to exercise autonomy at the local level.

The cases of Gambella and Benishangul-Gumuz prove the same. The numerical size and economic strength of these two Regional States is questionable as to justify the granting of statehood when compared with other ethnic groups with more than one million populations. These all issues revolving on the criteria for the re-establishment of statehood in the federal Ethiopia lacks consistency. Such unclear and unjustified disparity on the decisions of granting and denying of statehood may cause conflict among groups. It has a direct effect on the degree of representation and granting of autonomy for ethnic groups who may be dominated by other groups due to numerical size. There should, therefore, be consistent application of those criteria mentioned under Art. 46 in order to best serve the interests of ethnic groups and build a stable democracy in Ethiopia.

⁴³ Aberra, *supra* note 27, p. 111.

⁴⁴ See generally Arend Lijphart, *Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories*, *Publius*, Vol. 15, No. 2, Federalism and Consociationalism: A Symposium (Spring, 1985), pp. 3-15 <http://www.jstor.org/stable/3329961> Accessed: 29/01/2010.

There seems no problem of design in determining the criteria for statehood. Those criteria enable the government to introduce some sort of flexibility so that it would allow considering say administrative convenience in addition to all other factors. However, it should not be a mask for such inconsistencies observed in practice.

The Constitution guarantees the rights of NNPs to form their own state at any time.⁴⁵ Theoretically speaking, this is an important way out for ethnic groups to enjoy a considerable autonomy by forming a state. Autonomy in this may take the form of political, economic, cultural and linguistic aspects which has been regarded as an important move to make democracy stable in plural societies. The reason why federalism is recommended for multi-ethnic countries, as best autonomy-granting system by many scholars, like Lijphart, is because it offers a considerable form of autonomy to groups. Autonomy, in principle, should be granted to groups either on a territorial or non-territorial basis. Federalism is the main instrument to grant autonomy for those groups that are territorially concentrated. In such case, the boundaries of sub-national units of the federation follow segmental boundaries. Sub-national units shall have as much smaller number of groups as possible in order to create broader space for them.

Such an explicit recognition that the state is a multi-national and granting national minorities the right to federal or quasi-federal autonomy and the right to use their language at the regional level in the FDRE Constitution can be seen as consistent with the most progressive developments within Western democracies.⁴⁶ The most important mode of granting autonomy is to allow ethnic groups to establish their own States. The FDRE Constitution stands at best in this regard. But what is missing under Art. 47 (2) is the requirement of political and economic factors of the NNP demanding to form a state.⁴⁷ It fails to mention the political and economic viability, the existence of which shall be determined by an independent body, as a requirement. According to this provision, Ethiopia will have as much number of states as ethnic groups. This seems incompatible with the under-development of the country and hence impracticable. The current prevailing practice in this regard is evident of the problem especially those claiming for

⁴⁵ Art. 47 (2) of the FDRE Constitution.

⁴⁶ Kymlicka, *supra* note 24, p. 54.

⁴⁷ Assefa, *supra* note 24, p. 446.

statehood.⁴⁸ The situation in the SNNP, Regional State, where some groups are tending to form their own states is opposed by the ruling party as undesirable.⁴⁹ The paper argues that those ethnic groups with more than one million populations shall be allowed to form their own state within the federation up on request in order to bring about consistency in implementing the criteria for statehood as stipulated under Art. 47 (2) of the Constitution save consideration of other factors like political and economic viability.

4.2.3 Representation

The Transitional Charter was clear with regard to representation of NNPs in the central government. Art. 9 (b) provides that:

'[T]he Head of State, the Prime Minister and the Vice-Chairperson and secretary of the Council of Representatives of the Transitional Government shall be from different Nations/Nationalities.'

The Council of Ministers to be nominated by the Prime Minister shall be drawn up on consideration of ascertaining a broad national representation, technical competence and unswerving adherence to the Charter.⁵⁰ These were clear recognition of power sharing at both legislative and executive organs among different ethnic groups during the transition. The pattern should have been included in an elaborate manner in the coming constitution which rather employed a more general expression.

Art. 39 (3) of the FDRE Constitution provides the right to get equitable representation in both State and Federal governments. The Amharic version employs the equivalent expression with 'proportional' than 'equitable'. Even if they may have similar meaning, the expression 'proportional' more relates to number than a more of subjective expression 'equitable'. This is once again an important move towards accommodating diversity of Country along with granting autonomy to ethnic groups. Representation at both levels of governments is a crucial tool to

⁴⁸ The cases Wolayta and Sidama have been cited because of their claim for statehood presented to the Council of Nationalities. The case was not brought to the House of Federations.

⁴⁹ See for instance Andreas Eshete (2003), *Ethnic Federalism: New Frontiers in Ethiopian Politics*, Paper presented at the First National Conference on Federalism, Conflict and Peace Building, Addis Ababa, Ministry Federal Affairs and German Technical Cooperation, United Printers Plc. pp.142-174.

⁵⁰ Art. 9 (c) of the Transitional Government Charter.

bring about legitimacy of governments in multi-ethnic countries. And it is perhaps another 'consociational' element under the FDRE Constitution.

Representation at both state and Federal level should be manifested in organs of the government: executive and legislative. Lijphart emphasizes, in addition to these organs of the government, that the plural nature of the society shall also be reflected in the judiciary, military and police.⁵¹ Proportional representation is, therefore, not limited to the three organs of the government. The mechanisms of broad representation of different groups have been discussed in the preceding chapter: an executive established through grand coalition, proportional representation at the legislative, judiciary and civil service. This part of the thesis will explore the extent to which the FDRE Constitution includes these mechanisms. It should also be noted that the representation at the state level and the practice thereof is difficult to cover in this paper.

4.2.3.1 Representation in the House of Federation

The House of Federation (HoF) is composed, as stipulated under Art. 61 (1) of the FDRE Constitution, of representatives of NNPs. Each NNP is assumed to be represented by at least one member while they shall be represented by one additional member for each one million of their population (Art. 61 (2)). The composition of the HoF has been criticized on the ground that it is not the home of minorities as in the cases in other federations where the second chamber is composed in a manner to enable minorities defy majoritarian decisions.⁵²

The second chamber in many federations is composed of representatives of sub-national units. It is one among the institutions that the members of the federation protect their interests as it has the same power with the first chamber.⁵³ The Ethiopian case is a unique design in both aspects: it is the representatives of NNPs and not of regional states, and it has no legislative power.

Representation in the HoF is vital because the House is interpreter of the Constitution. The interpreter of a constitution is the one who have a final say in constitutional disputes. And as

⁵¹ Arend Lijphart, *Constitutional Design for Divided Societies*, *Journal of Democracy*, Vol.15, No. 2, April 2004, <http://muse.jhu.edu> accessed on February 20, 2011, p. 105

⁵² See for instance Tsegaye Regassa, *Issues of Federalism in Ethiopia: Towards an inventory of Legal Issues*, in Tsegaye Regassa (2009), *Issues of Federalism in Ethiopia: Towards an Inventory of Legal Issues*, Ethiopian Constitutional Law Series, Vol. 2, Addis Ababa University Press, pp. 46-48.

⁵³ The USA model is the typical example in this regard.

such, the FDRE Constitution grants this important power to the NNPs despite issues of technical competency. It is necessary, therefore, to have a look at the practicability of representation in the HoF amid design pitfalls on the composition and power of the House. The table below shows representation by ethno-linguistic group and regional state of the 2010-2014 terms of office.

Table II

Region	Ethnic Group	No. of Representatives	Percent of Seats
Tigray	Tigray	5	5.19
	Kunama	1	
	Irob	1	
Afar	Afar	2	1.48
Amhara	Amhara	20	17.04
	Argoba	1	
	Agew-Awi	1	
	Agew-Haymra	1	
Oromia	Oromia	25	19.26
Somali	Somali	5	3.70
Benishangul-Gumuz	Berta	1	3.70
	Gumuz	1	
	Komo	1	
	Mao	1	
	Shinasha	1	
SNNP	Gamo	2	45.93
	Gedeo	2	
	Guragie	2	
	Hadiya	2	
	Wolayita	2	
	Sidama	3	
	49 others	1 each	
Gambella	Anywak	1	2.96
	Nuer	1	
	Mejenger	1	
	Upo	1	
Harari	Harari	1	0.74
Total		135	

Source: www.hofethiopia.gov.et accessed on 01/05/2011

As it is observed in Table II above, the total number of seats of the HoF for the terms of office of 2010-2014 is 135 with 75 ethnic groups represented in the House. The number of seats of the House has increased from 121 in the previous terms of office to 135. This increase in the number of seats of the HoF is mainly due to the increase in the population of previously represented ethnic groups in the 2007 census and the increase in the number of ethnic groups that were not represented previously. The SNNP Regional State comprises 62 seats, which is around 45% of the total seats of the House. From those NNPs that are found in SNNP, 55 of them are represented in the HoF. Oromia and Amhara constitute 26 and 23 seats of the House respectively.

The representation in the existing HoF is not proportional. The smaller nationalities surely occupy a seat which their number cannot justify. There is some level of over-representation but it does not make the House a counter-majoritarian. This sort of representation is difficult to classify as either proportional or over representation.

Another issue relating to the HoF is the method that the members are represented. Art. 61 (3) stipulates that the members of the House of Federation shall be elected by the State Councils of each regional state. The State Councils may themselves elect representatives to the House of Federation or they may hold elections to have the representatives elected by the people themselves.⁵⁴ The prevailing practice in this regard is that the State Councils elect those representatives of the NNPs in the HoF. No resort in any of the states was made to the option direction election of the members of the HoF in the twenty years of constitutional practice.

It is important at this juncture to pinpoint the powers of the HoF in addition to interpreting the Constitution. The HoF is an organ that decides on issues relating to the rights of NNPs to self-determination including the right to secession. It is not an organ that on the issue of granting or denying rights but issues surrounding it. As the power of deciding on the claims relating to the exercise of self-determination is not provided to any other organ, it may be said that this power remains with regional states by virtue of Art. 52 (1) of the FDRE Constitution which reserves the residual power to the regional states. In addition, the minute of the Constituent Assembly is in

⁵⁴ Paragraph 2 of Art. 61 (3) of the FDRE Constitution

favor of leaving the right to determine claims of such type to the legislative council of the concerned NNP.⁵⁵

The HoF shall strive to promote equality and consolidate unity based on mutual consent.⁵⁶ It shall determine the division of revenues derived from joint Federal and State tax sources and subsidies that the Federal government may provide to the States.⁵⁷ It shall order federal intervention if any State endangers the constitutional order.⁵⁸ The Ministry of Federal Affairs, however, seems to encroach up on the powers given to the HoF specifically with regard to handling conflicts in the regions.⁵⁹

Summarizing, the HoF shall be given legislative power in order to protect minorities so that they can block the majority decision in the popular chamber where they may be outvoted due to their insignificant numerical size. The composition shall also be re-established in order to increase the over-representation of minorities taking in to consideration the democratic principle of one person one vote.⁶⁰

4.2.3.2 Representation in the House of Peoples' Representatives

The House of Peoples Representatives (HPR) is the highest authority of the Federal government which is mandated with enacting legislation on matters that fall under the federal jurisdiction pursuant to Art. 51 of the Constitution. The members of the HPR are elected through plurality of vote (first-past-the-post)⁶¹ which is primarily of a Westminster model. As it has been discussed in the preceding chapter, this type of electoral system is applied where there is a two party system. It is incompatible with multi-party system and the same in multi-ethnic countries.

⁵⁵ The Minute of Constitutional Assembly, Vol. 3, 1995.

⁵⁶ Art. 62 (4) of the FDRE Constitution.

⁵⁷ Art. 62 (7) of the FDRE Constitution.

⁵⁸ Art. 62 (9) of the FDRE Constitution.

⁵⁹ Aberra, *supra* note 27, p. 138

⁶⁰ Lijphart, *supra* note 51, p.105. The paper recommends that the HoF should not, however, have the power to check the executive. This is because it may weaken the executive established through grand coalition as such coalition has to get the votes of both chambers. Lijphart emphasizes that it is not a workable arrangement if the second chamber has to check the executive.

⁶¹ Art. 54 (2) of the FDRE Constitution and Art. 13 (2) of Proclamation No. 111/1995, Proclamation to Ensure the Conformity of the Electoral Law of Ethiopia Proclamation with the Constitution of the Federal Democratic Republic of Ethiopia with Amendments Made By Proclamation No. 438/2005. It provides that a candidate with more votes received than that by other competitors within the constituency shall be declared the winner.

The plurality (first-past-the-post) and other majoritarian methods have the tendency to over-represent majorities and large parties and to discriminate against smaller minority parties, as well as the corollary tendency to create artificial parliamentary majorities for parties that fall considerably short of winning popular vote majorities.⁶² It does not allow for broad representation of ethnic groups which is the primary basis to bring about legitimacy of the government and stable democracy in such societies. The system is not designed in a manner that allows for recognizing the rights of Nations, Nationalities and Peoples to be represented in the federal legislature. Proportional representation has been observed operating well in many countries in guaranteeing broad representation not only in the legislature, but also in the executive and other government institutions.

The Constitution seems inconsistent in this regard in its very design. It provides that NNPs have the right to be represented both in the State and federal governments in a proportional manner. And it provides that the members of the HPR are elected through the plurality of votes. This kind of electoral system does not ensure proportional representation.⁶³

The arrangement in the FDRE Constitution is not actually a unique one. India and Lebanon have introduced plurality combined with guaranteed representation.⁶⁴ Identification of groups who deserve such special representation is a difficult task⁶⁵ and even it does not allow for broad representation that is sought to bring as per the provision.

It may be evident to observe the extent to which the principle of proportionality applies to the current (2010-2014) parliamentary seats *vis-à-vis* regional states.

⁶² Arend Lijphart (2008), *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice*, Routledge, New York, p.48

⁶³ See for instance the works of Arend Lijphart cited in the preceding chapter.

⁶⁴ Lijphart, *supra* note 51, p. 101.

⁶⁵ *Ibid.*

Table III

Regional States	Total population	Total no. of seats	Percentage of seats	Percentage of population
Tigray	4, 316, 988	38	6.94	5.85
Afar	1, 390, 273	8	1.46	1.89
Amhara	17, 221, 976	138	25.22	23.35
Oromia	26, 993, 933	178	32.54	36.60
Somali	4, 445, 219	23	4.20	6.03
Benishangul-Gumuz	784, 345	9	1.64	1.02
SNNP	14, 929, 548	123	22.48	20.24
Gambella	307, 096	3	0.54	0.42
Harari	183, 415	2	0.36	0.25
Addis Ababa	2, 738, 551	23	4.20	3.71
Dire Dawa	341, 834	2	0.36	0.46

Source: the official website of the House of Peoples' Representatives www.ethioparl.gov.et accessed on 01/05/2011

Note: the total population size of the Country according to CSA is 73, 750, 932 and the total number of seats of the House of Peoples' Representatives is 547.

It can be observed from the above table, there are some regional states that have a relatively proportional number of seats in the HPR with their percentage of total population. Dire Dawa, Harari and Gambella can be cited here. Tigray, Amhara, SNNP and Addis Ababa are from among those which enjoy greater number of seats than their total percentage of population. The comparison made by Aberra Dagafa with regard to proportionality of the HPR for the terms of office 2000-2004 holds the same except the case of Amhara Regional State.⁶⁶

The change in the share of seats may be justified by the difference observed in population growth as the number of seats devoted to each region remains the same. It is also evident that Oromia, with greater rate, Afar and Somali are regional states that are under-represented in the HPR in proportion to their population size. Afar and Somali are regional state that raised this issue of 'equitable representation in the HPR that they were not represented in a proportional manner for the 2000-2004 term of office.'⁶⁷ This claim was brought to the HoF which in turn referred the

⁶⁶ Aberra, *supra* note 27, p. 140.

⁶⁷ See the five year report of the House of Federation (2000-2004), June 2004, p. 8-9.

matter to the Electoral Board of Ethiopia. The Board suggested to the House that in order to answer the claim of under-representation, constituencies shall be re-established in order to bring equitable representation and this is not justified as the new census was approaching. This decision was approved by the House by 'promising' a re-establishment to be done based on the results of the census. Changes, however, were not made on the constituencies for the 2010-2014 terms of office: two five years have already lapsed after the claim was made. One possible reason for the delay of re-establishing constituencies may be the final result of the census was officially announced two years later after it was conducted and because of this the time might have not allowed the Electoral Board to complete the complicated tasks of re-establishing constituencies.

It can be concluded from this that the representation of Nations, Nationalities and Peoples in the HPR does not ensure proportional representation stipulated under the Constitution. The changes in the population pattern observed should have also been taken into consideration in the parliament which was constituted three years after the population census has been held.

'Minority Nationalities and Peoples' are entitled to a special representation in the HPR with at least 20 seats despite their smaller population size.⁶⁸ The Constitution does not define these groups. It may, however, be inferred that these groups are those whose number is smaller than they cannot establish a constituency. The Electoral Proclamation No. 111/1995 (as amended by Proc. No. 438/2005), under Art. 15 (3) provides that the House of People's Representatives may cause minority nationalities that are entitled to special representation to send their representatives and prepare criteria for determining such nationalities. This is an exception to the principle provided under Sub-Art. (1) and (2) of the same proclamation which states that the country shall be divided into permanent constituencies by taking the Woreda as a basis, and which may be readjusted on the basis of population census and each constituency shall incorporate the nearest average of the Ethiopian population divided by the number of seats of the parliament. The following table shows the special representation in the HPR for the 2010-2014 terms of office.

⁶⁸ Art. 54 (3) of the FDRE Constitution.

Table IV

Region	Minority groups	Total no. pop. size	No. of seats in the HPR
Tigray	Irob	30,549	1
	Kunama	4,860	1
Amhara	Argoba	70,012	1
Benishangul-Gumuz	Fedashie	2,656	-
	Mao	15,384	1
	Shinasha	60,587	-
	Komo	9,096	-
SNNP	Burji	71,758	1
	Hamer	46,534	1
	Dizi	34,680	1
	Surma	27,886	1
	Gewada	68,598	1
	Sheko	37,576	1
	Derashe	30,123	1
	Male	97,925	1
	Oyda	45,120	1
Gambella	Mjanger	21,959	1
	Anywak	85,909	1

Source: www.ethioparl.gov.et and CSA statistical Report of the 2007 Population Census, accessed on 01/05/2011

Note: these special representations are the one which are marked as “Liyu” in the lists of members of the HPR and not complete as the purpose is to illustrate that their number is below the requirement of establishing a constituency.

Special representation to these groups in the HPR gives minorities the opportunity to participate in the decision-making at the federal level. None of these ethnic groups fulfill the numerical requirement to establish a constituency. It is one form of enabling groups see themselves in the government especially where the electoral system favors the majority. This does not mean that their interests will be served by such representation as they may easily be outvoted so long as there are other means like over-representation in the upper house with a law-making power. Such representation may, however, help them to create conducive environment to protect their interests by collaborating with others.

4.2.3.3 Representation in the Executive Cabinet

Representation in the federal government provided under the FDRE Constitution should also be observed in the executive. The Constitution, as it has been described above, employs a more general expression in this regard when compared with the Transitional Charter of 1991. The Transitional Charter clearly provided for broader representation of Nations, Nationalities and Peoples in the central government in general and emphasized on the Head of State, the Prime Minister and the Vice-Chairperson and secretary of the Council of Representatives to be from different Nations/Nationalities. While this was an encouraging arrangement with respect to power sharing, the Constitution failed to maintain and provide further for such kin approach let alone provide for a broader participation of ethnic groups.

The prime minister nominates candidates for ministerial posts and submits for approval to the HPR by virtue of Art. 74 (2). The proportionality requirement remains under Art. 39 without imposing the duty on the part of the prime minister to take in to consideration broader representation of Nations, Nationalities and Peoples in the executive. It leaves to the discretion of the prime minister to nominate anyone he thinks competent from among members of either House or from among persons who are not members of either House and possess the required qualification.⁶⁹ This is evident in practice where ministerial posts rotate among different ethnic groups in a non-consistent manner. There is no requirement of differing ethnic composition for ministerial posts under Art. 74 (2) even if Art. 39 provides for a general principle. The practice seems to try to bring about 'legitimacy' by leaving a breathing space to different ethnic groups but with no pattern. The Ministry of Foreign Affairs, for instance, was led for longer time since its establishment by a Tigrayan until it was passed to the former SNNP Regional State President. It may not be difficult to identify lack of a uniform pattern in the *de facto* ethnic representation in the executive cabinet. This opens the door for dominance by one ethnic group of the cabinet or even remains to be the propensity of the party in power.

The South African experience during the 1994 Interim Constitution may be cited as a notable example in granting ample opportunity to a broader representation in the cabinet. Any party, whether ethnic or not, with a minimum of 5 percent of the seats in parliament was granted the

⁶⁹ Art. 74 (2) of the FDRE Constitution.

right to participate in the cabinet in a proportional basis.⁷⁰ The relative importance of such ministerial posts may however be different. Switzerland is notable by the system of government based on the participation in the executive of all major political parties, and the accompanying preference for decision-making by broadly based compromises.⁷¹ Parties are entitled to participate in the cabinet in proportion to their electoral strength. Bosnia and Herzegovina provide in the constitution for a more complex set of power-sharing scheme in the executive inclusive of the three ethnic groups: Serbs, Croats and Bosniaks.⁷²

It should have been provided in the FDRE Constitution so that the practice should follow some pattern by narrowing the individual influences and broadening participation at the executive level taking in to account the experience on some countries with same ethnic profile.

Representation in institutions like military, police and federal civil service is also important. The composition of the national armed force shall reflect the equitable representation of the Nations, Nationalities and Peoples of Ethiopia.⁷³ The military shall reflect the existing diversity. It must be broadly representative of the society which should mean that it must be truly national in character and of sufficient diversity to allow the peoples of Ethiopia to feel ownership.⁷⁴ General Tsadkan Gebretensae, who was the Chief of Staff of the Armed Forces of the Transitional Government of Ethiopia, describes the challenges of demobilizing many Tigrayan members of the armed forces, of the EPRDF, in order to build a national army after the Derg Regime was overthrown.⁷⁵ Proclamation No. 27/1996, a Proclamation on the Defense Forces of the Federal Democratic Republic of Ethiopia, also provides that the military should ensure fair representation of NNPs. There is at least a legal framework in this regard.

The Federal Police Commission Proclamation No. 313/2003, under Art.15 (2), provides that the recruitment of police officers of the federal police shall be based on equitable representation of

⁷⁰ Lijphart, *supra* note 51, p.103.

⁷¹ Gerhard Lehmbuch, *Consociational Democracy and Corporatism in Switzerland*, Publius, Vol. 23, No. 2, Communal and Individual Liberty in Swiss Federalism (Spring, 1993), pp. 43-60, <http://www.jstor.org/stable/3330858> Accessed: 29/01/2010 01:20, p.44

⁷² See generally Jens Woelk, *Federalism and Consociationalism as Tools of State Reconstruction? The Case of Bosnia and Herzegovina*, in G. Alan Tarr, Robert F. Williams and Josef Marko (2004), *Federalism, Sub-national Constitutions and Minority Rights*, Praeger Publishers, USA

⁷³ Art. 87 (1) of the FDRE Constitution

⁷⁴ Tsadkan Gebretensae, *A Vision of a New Army for Ethiopia*, a Paper Presented at the Symposium on the Making of the New Ethiopian Constitution, organized by Inter Africa Group, 17-21 May 1993

⁷⁵ *Ibid* p. 382

NNPs of Ethiopia. The same principle is included in Regulation No. 86/2003, Council of Ministers regulation to provide for the administration of the Federal Police Commission, that if equal results are achieved by candidates from different nations or nationalities, a recruit from a nation or nationality with relatively less representation. The Commission is also under obligation, pursuant to Art. 4 (3) of the Regulation, to make special endeavor to enable members of a nation or nationality with less representation to become members of the Commission.

The Federal Civil Service Proclamation No. 262/2002 has also such provision ensuring equitable representation of NNPs in the federal government. According to Art. 13 (3) of this proclamation, preferences shall be given to members of nationalities comparatively less represented in the governments having equal or close scores to that of other candidates. This seems an attempt to have representation of NNPs without disregarding competence of candidates. But, the question of which Nationalities are less represented is subject to the decision of the government offices concerned. Generally speaking, there is, at least, legal framework for the representation of NNPs in the Federal government even if some of them like the civil service and police proclamations lack specificity to the nature of the representation.

CHAPTER FIVE

Consociation as a Guarantee for the Protection of Minority Rights in Ethiopia

5.1. Introduction

It has been discussed in detail in the preceding Chapter that the FDRE Constitution gives rights to NNPs of Ethiopia with some unanswered issues of design and its incompleteness in practice especially in the executive and legislature at the federal level. According to the Constitution, NNPs are the holder of sovereign power. The right to self-determination including secession is recognized. They have the right to develop and promote their language and culture and preserve history. Self-government is granted to NNPs through which they can exercise autonomy by establishing government institutions and administering their own affairs. NNPs have constitutional right to equitable representation both in the state and Federal governments. They can also form their own state. These all rights have been seen less protective both at the constitutional design and 'constitutional commitment' in the words of Kymllicka.¹ And these calls for other options in order to protect minorities and at the same time build a stable democracy and legitimacy in the country.

Constitutional rights granted to NNPs seems to be set aside by problems of design like electoral system for legislative house, powers and composition of the upper house, and unspecified representation in the federal government, problems observed in practice like *de facto* one-party system and centralized federal practice.

This Chapter deals with the issue of the relevance of power sharing to the prevailing problems in the current constitutional arrangement concerning minorities. The policy choice adopted in the FDRE Constitution as regards multi-ethnic identity existing in the country, the extent to which consociation serves as a guarantee for minorities in Ethiopia and a new direction thereof are some issues to be dealt with in detail in this part of the thesis.

¹ Will Kymllicka, *Emerging Western Models of Multination Federalism: Are They Relevant in Africa?* In David Turton (ed.) (2006), *Ethnic Federalism: the Ethiopian Experience in Comparative Perspective*, Eastern African Studies, James Carrey Ltd. Oxford, P.54.

5.2. Policy Choices under the FDRE Constitution: Integration or Accommodation?

Ethnic, religious and cultural diversity of groups in a polity entail both challenges and opportunities. The issue of how to respond to the opportunities and challenges of such diversity in order to promote democracy, social justice, peace and stability has been observed to be reflected both in the constitutional design and in practice. Constitutions serve as a vital instrument in such societies by both enabling and disabling political decisions: constitutions enable decision making by creating the institutions government, by allocating powers to them, by setting out rules of procedure to enable these institutions to make decisions, and by defining how these institutions interact.² Constitutions may also disable decision making, by enacting procedural roadblocks to decision making (such as super-majority rules) and by setting substantive limits on political decision making such as (bill of rights).³ Constitutions, therefore, should play these regulatory roles in such societies.

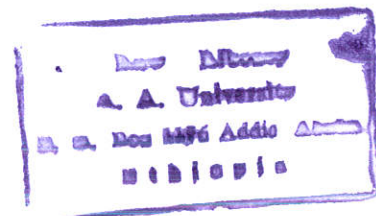
Scholars identify policy choices as assimilation, integration and accommodation with their different approaches to handle diversity.⁴ Brief descriptions of these policies have been made in the second chapter of the paper specially focusing mainly on integration and accommodation. Integrationists promote a single public identity aiming at public homogenization through common citizenship while accommodationists are in favor of multiple public identities through institutionalization and recognition of diversity by empowering differences. These two main policy choices differ in the electoral system, party system, executive system and policy of group autonomy that they adopt. This sub-section is devoted to identifying to which policy belongs to the one made in the FDRE Constitution by looking in to some specific provisions relating the issue at hand.

Firstly, the NNPs of Ethiopia are the owners of the Constitution. The Preamble states that the Constitution was enacted by their *full and free* exercise of their right to self-determination (italics

² Sujit Choudhry, *Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies*, in (ed.) Sujit Choudhry (2008), *Constitutional Design for Divided Societies: Integration or Accommodation?* Oxford University Press, Oxford, p.6-7

³ Ibid .

⁴ John McGarry, Brendan O'Leary and Richard Simeon, *Integration or Accommodation? The Enduring Debate in Conflict Regulation*, in Sujit Choudhry, *supra* note 1, p.41.



added). The sovereign political power resides in the NNPs and this very Constitution is the expression of their sovereignty.⁵ Secondly, the right to self-determination including and up to secession is granted to NNPs by virtue of Article 39. They have the right to promote and develop their language and culture and preserve history. The right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits is also granted to ethnic groups. Another important right under Article 39 is the right to have equitable representation in both state and Federal governments.

Thirdly, land is a common property of NNPs of Ethiopia.⁶ And as such, land shall not be subject to sale or any other means of exchange. Fourthly, they have the right to establish their own state any time to be exercised up on fulfillment of procedural requirements. And finally, it is the House of Federation, which is the representative of NNPs that interprets the Constitution.

These all rights are conferred up on NNPs of Ethiopia. Even if some of these criteria are vague and imprecise, the definition puts all these groups-nation, nationality and people- having the same right without differences in numerical size, economic and political strength.

It will not be, therefore, difficult to identify the Ethiopian Constitution tries to accommodate the diverse ethno-linguistic groups. It recognizes and empowers ethnically diverse groups to be active political entities. Groups are given a public space through which they can express their identity and claim rights. That seems why some scholars argue that the Ethiopian Constitution gives too much emphasis to ethnicity than others do which is manifested through a predominantly ethnic federalism and the inclusion of the right to self-determination up to secession.⁷

The question here is to which type of accommodation does the Ethiopian arrangement fall- centripetalism, consociation, multiculturalism or territorial pluralism?⁸ The first two of these accommodationists dominate the debate. While both recognize diversity, they differ on the issue of whether moderation or inclusion is given priority as the primary concern. This is usually

⁵ Article 8 of the FDRE Constitution.

⁶ Article 40 (3) of the FDRE Constitution.

⁷ See for instance Kymlicka, *supra* note 1; Tsegaye Regassa, *Ethnic Federalism and the Right to Self-determination as a Constitutional Legal Solution to the Problem of Multi-ethnic Societies*, LLM Thesis, Submitted to the University of Amsterdam, Law Faculty, 2001, unpublished.

⁸ See Chapter Two for the detailed discussion on the difference between these concepts.

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manifested through the type of the electoral system and form of government they propose. Centripetalists, principally Donald Horowitz, argue that vote pooling system should encourage moderate elites competing for the presidency by requiring them to get support from other ethnic and linguistic groups in order to abandon ethnic extremists and majority rule institutions.⁹ Consociationalists, on the other hand, argue that the electoral system should enable the legislature to be broadly representative of ethnic and linguistic groups and therefore parliamentary form of government offers a better opportunity in this regard.

In view of this, it may be difficult to categorize the approach adopted in the FDRE Constitution as either centripetal or consociational. The Constitution introduces a parliamentary system where the parliament is the highest authority of the federal government.¹⁰ But, the electoral system is plurality of votes which is usually employed in countries that favor integration. The Constitution, on the other hand, tries to enable different ethnic groups to have broader representation in the federal government through the principle of equitable representation as enshrined under Article 39 (3) and special representation to 'minority nationalities' pursuant to Article 54 (3). It also grants autonomy of a considerable amount to ethnic groups mainly through federalism. These two features of the Constitution may lead us to conclude that it leans towards a consociational type of accommodation and may be said semi-consociational. There are, however, principles in the Constitution that are not proposed by consociationalists. This will be discussed in the discussions to come.

5.3 Why Consociation for Ethiopia?

The prevailing constitutional arrangement, as it has been discussed in the preceding chapter, does not sufficiently protect the rights of minorities both under the Constitution and in practice. The Constitution does not sufficiently guarantee the rights of minorities. And there is little constitutional commitment to implement those rights granted to NNPs.¹¹ These problems of design and practice require putting it right in order to bring stability and legitimacy.

⁹ See the detailed discussion in Chapter Two.

¹⁰ Art. 45 and 50 (3) of the FDRE Constitution.

¹¹ See the preceding Chapter for the practicability of the rights. See also Kymlicka *supra* note 1, p. 54.

One major difference between federalism and consociationalism is the mode of decision making especially on policy issues. Federalism does not necessarily reject majoritarian mode of decision even if it is a rejection of majority rule across the whole country by devolving power among the center and states.¹² The mode of decision in the parliament is majority rule.¹³ It has been repeatedly argued that majority rule completely excludes those groups whose number does not help decide otherwise than what is decided by the majority vote. The voices of minority nationals cannot be heard in the parliament. They cannot block majoritarian decisions by the voice they have in the second chamber because the House of Federation has no legislative power. Any law detrimental to their vital interests cannot be made inapplicable so long as it is supported by the majority in the parliament.

The mode of decision in consociational democracy, however, is primarily consensual. This is because parties, represented by elites, which form grand coalition, decide by compromise and mutual understanding. The minorities may block the decisions of the majorities on their vital interests through their veto right. This protection enables to minorities makes consociation preferable to other types of democracy.

Proportional representation of minorities in the popular (lower) house and over-representation in the upper house is also another characteristic of consociation that makes fit to multi-ethnic nations like Ethiopia. There is a principle of grand coalition whereby multiple parties, and not a single party, establish a government. The executive, therefore, is composed of cabinet from different parties forming coalition of a broader sphere. This executive power-sharing among multiple parties creates an opportunity to minorities to be represented in the executive and as such share political power. It creates space for them to take part in the decision making specially policy matters because of the absence of power concentration like the majoritarian system of democracy.

Segmental autonomy, which is also present in Ethiopia, enables minorities to administer themselves. Political autonomy in consociation should be considerably greater in order to enable groups administer their own affairs. Proportional representation (PR) in consociational democracy enables them to take part in the military, police and civil service proportional to their

¹² See Chapter Three above.

¹³ Article 59 (1) of the FDRE Constitution.

population size. And Consociation encourages the existence of many political parties and as such Proportional Representation (PR) electoral system best fits to it as it enables parties to get seats in the parliament in proportion to their vote. As a result, the executive-legislative power will be balanced because the executive is composed of grand coalition. Any party with a different idea may stand against it in the legislature. Federal and decentralized system of government gives autonomy to ethnic, cultural and linguistic groups. What is more important is bicameralism: dividing legislative power between two equally strong but differently constituted houses. The very reason why the upper house is composed differently from the lower house is to protect the interests of minorities through law making process.

The constitution should be rigid enough to prevent any amendment through ordinary legislation, provided that the constitutional arrangement incorporates basic principles of power sharing. And there should be strong judicial review to check the constitutionality of laws and decisions of the government serving as a clear arbiter on the constitutionality of what the legislature and executive do. The existence of an organ mandated with interpreting the constitution is important to settle claims of the legislature and the executive as they have balanced power.

To sum up, successful consociation can guarantee minority protection because of the above highlighted features than the present arrangement in the FDRE Constitution. These features all together provide guarantee for minorities.

It is, therefore, appropriate to assess what favorable conditions¹⁴ to consociation are present in Ethiopia. The presence or absence of these favorable factors, however, should not be regarded as necessary and sufficient for a successful consociation. What should be noted here is that there is a considerable degree of division among the society in Ethiopia: political claims can be refracted through ethnic identity, and in some areas marriage among different groups is difficult.

1. No majority segment- None of the ethnic groups enjoy numerical majority at the federal level. If there had been majorities, they would prefer majoritarian government. But, there exists no ethnic or linguistic groups which constitute more than half of the population size. According to 2007 population census, the three largest groups i.e. Oromo, Amhara and Tigre, constitute 34.4%, 26.95%, and 6.08% respectively followed by Somali with

¹⁴ See generally Chapter three above.

6%. This does not mean that all groups are minorities at the federal level.¹⁵ It should not mask, however, the political dominance of some groups in the federal government. The minority-majority discourse will not be there had there not been dominant groups.¹⁶ The very absence of numerical majority, however, is a favorable condition in Ethiopia for consociational arrangement.

2. Segments of the same size: Equality among ethnic groups have tendency to facilitate negotiations among elites of each groups.¹⁷ From among around 85 NNPs of Ethiopia, ten of them are more than one million with two more stronger than others i.e. Amhara and Oromo.¹⁸ The main reason why this factor is considered as favorable is its contribution to a successful negotiation as numerical balance gives them some sort of bargaining power.¹⁹ This factor is less favorable in Ethiopia as the remaining 75 ethnic groups are smaller in size.
3. Small number of Segments: The smaller the number of negotiators, the lesser the complexity of the negotiation process. The existence of many ethnic groups in Ethiopia may complicate the process. This may, however, be mitigated by the contribution of prudent political leadership.
4. External threat: Ethiopia is under continuing threat in the Horn of Africa from troubled Somalia and undemocratic government of Eritrea and recently from Egypt due to the hydro-politics over Nile. Lijphart emphasizes that such threat should be common to all ethnic groups in order for the threat to have a unifying effect. Anyone from those groups shows loyalty to the invader then it will cease to be a common threat. Common external

¹⁵ Assefa argues that all ethnic groups are minorities at the federal level. See Assefa Fiseha (2006), *Federalism and the Accommodation of Diversity in Ethiopia: a Comparative Study*, Wolf Legal Publishers, Netherlands. He adds that the absence of majority may lead to a constant rivalry to control the by any one of the groups to the exclusion of others.

¹⁶ The title of the thesis is also evident that there will not be minorities if there are no majorities. Numerical size and political dominance do not coincide in the prevailing practice at the federal level. It is difficult to imagine that a country with more than 85 ethnic groups led by a single person from one ethnic group for almost 20 years of premiership.

¹⁷ See Chapter Three above.

¹⁸ See the report of the 2007 Population Census.

¹⁹ See generally Pierre du Toit, *Consociational Democracy and Bargaining Power*, Comparative Politics, Vol. 19, No. 4 (Jul., 1987), pp. 419-430, <http://www.jstor.org/stable/421815> Accessed: 29/01/2010.

threat has the tendency to justify living together bonded with common interest and is supposed to increase internal unity regardless of differences.

5. Overarching loyalties: Most of minority nationals in Ethiopia claim for share of political and economic positions at the center²⁰ than secession. No formal quest for secession was made. This is also an indication that they have a national sentiment to maintain union than to claim for their constitutional right to secession.
6. Socio-economic equality: There seem to be seen some economic disparities among Regions and hence among ethnic groups. The Amhara, Oromia, SNNP and Tigray are considered better than others.²¹ But still the disparity is of lesser degree that it may not create 'discrimination' and 'threat' which might make consociation difficult.
7. Geographical concentration of segments: This is more or less present despite some blending among ethnic groups especially around the center. The Constitution also defines Nations, Nationalities and Peoples in terms of territorial concentration by employing the expression 'contiguous territory. Territorial concentration may make easier to grant autonomy by a federal arrangement.
8. Tradition of accommodation: This factor relates to culture. There is little tradition of accommodation as history evidences the dominance of one ethnic group throughout the country.

Accordingly, the non-existence of majority group at least numerically speaking, external threat, overarching loyalties and geographic concentration are highly favorable factors for a successful consociation. The absence of a majority segment and greater economic disparity shall be given greater importance than other factors.²² The number and size of groups and tradition of accommodation are short of favorable conditions. Regarding the tradition of accommodation, elites of differing ethnic background have been negotiating through parties especially in the

²⁰ See for instance Will Kymlicka, *supra* note 1.

²¹ Assefa, *supra* note 15, p. 265. Regional states like Afar, Somali, Benishangul-Gumuz and Gambella have little infrastructure when compared with others. That seems why they have been under the supervision and assistance of the federal government effectively which can be called asymmetry.

²² See Arend Lijphart(1985), *Power-Sharing in South Africa*, Institute of International Studies, University of California, San Diego, p. 127

ruling party. It follows from all these that Ethiopia fulfill favorable factors at a reasonable degree and it very likely that there will be a successful consociation in Ethiopia. The country's experience of twenty years of predominantly ethnic federalism has shown that it is very difficult to undo the political system²³ back to unitary with a view to strengthen the idea of integration which deny recognition to identity in a public sphere.

5.4. Consociational Elements under the FDRE Constitution

Scholars who have dealt with the federal arrangement in Ethiopia rarely raise the question of the existence of consociational elements under the FDRE Constitution. Assefa indeed raises the importance of power sharing in the current arrangement.²⁴ He clearly states that there are some arrangements in the FDRE Constitution which resemble consociational ethnic accommodation: legal framework for proportional representation and composition of the ruling party. The granting of autonomy to NNPs is also another important move toward a consociational type. These consociational elements will be discussed in the sub-topics to follow.

5.4.1. Executive Power Sharing

It has been tried to highlight the legal framework and practice of coalition government in the last section of the preceding Chapter. While article 39 provides for proportional representation in state and federal government, the Constitution keeps silent in authorizing the prime minister to nominate candidates for ministerial posts without imposing a duty to consider ethnic composition of candidates. The practice, however, seems to go beyond this. The ruling party has tried to include ministers with different ethnic background with a view to guarantee broader representation in the executive. This practice of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) is similar with that of the Congress Party of India.

The EPRDF is a front while the Congress Party is a single party: this might show the extent of centralization in a party than in a front at least theoretically. The Congress Party is a party which dominates the center by including many other minor parties. It is the party itself which nominates ministers from different ethnic and religious groups. The combination of the Congress Party's

²³ See Kymlicka, *supra* note 1. He argues that minorities in Africa in general have become right assertive groups.

²⁴ See Assefa, *supra* note 15, p. 448.

inclusive nature and political dominance has generated (broad) coalition cabinets with ministers belonging to all the main religious, linguistic, and regional groups.²⁵ Lijphart argues that this characteristic of the Party is like typical consociational grand coalition observed in other leading consociational countries.

The Indian Congress Party is at discretion either to represent such groups in the cabinet or maneuver appointments. It has no constitutionally imposed duty to look after whether ethnic and linguistic groups are duly represented in the executive cabinet. Such practices are difficult to predict who will get representation in the executive and as such it opens the door for domination by a single party of the whole appointments and vital policy decisions. Coalition of such kind has the tendency to take over autonomy from segments. There should have been some formula for representation in the executive in order to make it predictable and put it beyond domination by one ethnic group.

The same argument holds true in the prevailing practice in Ethiopia. Informal arrangements in the executive among parties are necessary after it is entrenched in the constitution. Constitutional guarantee of the right to participate in the executive cabinet has the tendency to create bargaining power to ethnic groups. Otherwise, the dominant party would consider it as its own good deed, not as a right. This will create mistrust within the party.

Even if the attempts observed in practice are encouraging, participation of ethnic groups in the executive cabinet should be entrenched in the Constitution so that they can claim participation as of right. Such constitutional provision enables for the creation of a broader representation rather than simply winning coalition. What matters in diverse societies like Ethiopia is representation and not winner-loser policy.²⁶ All significant communal groups should have the opportunity to participate in political decisions.²⁷ Due concern shall be given to representation in order to enable concerned parties participate in the decision making like in the cabinet which decides policy issues. Representation also enables members of groups to see themselves reflected in political institutions in a form that they have themselves approved and endorsed.²⁸ Leaving

²⁵ See Lijphart, *supra* note 22, p.45-46.

²⁶ Assefa, *supra* note 15, p. 448.

²⁷ Arend Lijphart, *Constitutional Design for Divided Societies*, Journal of Democracy, Vol.15, No. 2, April 2004, <http://muse.jhu.edu> Accessed 20/2/ 2011 p. 97.

²⁸ Kymlicka, *supra* note 1, p. 57.

3.7. Minorities under Consociation

The government-versus-opposition norm prescribed by normative democratic theory appears to be a principle of exclusion: a large minority is kept out of the government.¹⁰⁹ Majority rule has been by far less exclusive because of the shift of minorities to majorities at some point either by the voters' change of mind in their support to parties or shift of coalescent parties with their support. What make them minorities in this regard are ideas of parties to which they affiliate. This is not the case in plural societies where there are permanent minorities and majorities. There is a little tendency of shift of votes and supporters. This is because segmental cleavages are likely to be politically salient and coincide with party system cleavages.¹¹⁰

Minorities participate in the consociational arrangement through different means. Firstly, the principle of grand coalition enables them to participate in the executive of the national government by cooperating with others through their prudent political elites. Secondly, the electoral system enables minorities, through their party representing them, to get seats in the lower (popular house) in proportion to their vote. There may also be seats for special representation of minorities. Thirdly, the upper house, with legislative power, but little power to check the executive, is the 'house' where minorities are over-represented regardless of their 'numerical inferiority'. Fourthly, minorities may veto against the decision of either the executive or legislature on vital interests in cases where they are outvoted. Finally, minorities participate in the government through the principle of proportionality. This principle applies to the appointment of; say ministerial posts, and civil service, military, police and allocation of public funds.

3.8. Consociationalism and Federalism

As it has been discussed above, federalism is one, and perhaps the best instrument, to grant autonomy to segments of the society. Segmental autonomy is best achieved, through federal arrangement, in divided societies with geographically concentrated communal groups. And as such, federalism is one among consociational devices along with executive power-sharing,

¹⁰⁹ Id. p. 29.

¹¹⁰ Id. p.30.

representation unspecified in the constitution is therefore not justified. It is detrimental to the interests of those non-dominant groups who seek to be represented in the federal executive cabinet.

Considering the ruling party as a grand coalition remain only in the larger number of populations it governs. The four ethnic parties constituting the Front are the Tigrayan People Liberation Front (TPLF), the Oromo People's Democratic Organization (OPDO), South Ethiopian Peoples' Democratic Front (SEPDF), and the Amhara National Democratic Movement (APDM). The total population inhabiting the four regional states constitutes around 86.05% of the total population of the country.²⁹ The remaining parties governing the rest of the population are also affiliated and directed to the ruling parties. The dominance of TPLF has been there since the establishment of the front on the eve of the down fall of the Derg regime.³⁰ It is, therefore, difficult to expect genuine negotiation among elites of these parties and hence should not be called grand coalition. The existing *de facto* system of one party rule may ensure a degree of political stability today, but future dangers are evident: usurpation of the powers of governance at all levels by party leaders, coupled with increasing political repression and corruption.³¹ This concentration of power may have undesirable consequence in Ethiopia.

5.4.2. Autonomy

It has been discussed in the third chapter that autonomy shall be granted to communal groups so that they can administer themselves and develop their language and culture what Lijphart calls 'minority rule'. Federalism offers the best way of implementing autonomy in a society where segments are territorially concentrated.

The FDRE Constitution introduces a kind of federalism which is predominantly demarcated based on ethnic identity. Self determination including secession is also recognized as the right of NNPs. This right, as discussed earlier, includes the right to use and develop language, promote

²⁹ See the Report of the 2007 Population Census.

³⁰ See generally James C.N. Paul, *Ethnicity and the New Constitutional Orders of Ethiopia and Eritrea*, in Yash Ghai (2000), *Autonomy and Ethnicity Negotiating Competing Claims in Multi-Ethnic States*, Cambridge University Press p. 188; Ugo Mattei (1995), *The New Ethiopian Constitution: First Thoughts on Ethnic Federalism and the Reception of Western Institutions*, Cardozo electronic Law Bulletin, accessed on 15 January, 2011 <http://www.jus.unitn.it/cardozo/review/constitutional/mattei2/.html> p. 7.

³¹ Paul, *supra* note 30, p. 193.

and develop culture and preserve history; the right to self government which includes the right to establish government institutions in a territory that it inhabits; and the right to have equitable representation in the state and federal government. The NNPs have the right to establish at anytime their own state within the federation.

Theoretically speaking, these constitutional guarantees enable ethnic groups to enjoy greater autonomy in many respects. This is exactly what a consociational arrangement proposes to be done together with grand coalition in order to build a stable democracy. It can be said that this element of consociationalism is present in the Constitution more than it fulfils other elements.

The Constitution, under Article 50 (1), declares that the Federal democratic Republic of Ethiopia comprises the Federal Government and the State members. Both levels of government shall have legislative, executive and judicial powers. The Constitution also devolves power between the federal government and regional states. It also enumerates the powers of the federal government exhaustively and reserves the residual power to the sub-national units.³² Such arrangement grants states considerable autonomy so that they can administer themselves in a meaningful manner. Some form of asymmetry is also important to narrow the gap between regional states owing their being historic periphery.

But there are controversial issues both at the design level and in practice regarding the Ethiopian federalism. Firstly, Assefa argues that the Ethiopian federal arrangement gives less attention to the center in that it focuses on self-rule than shared-rule.³³ This is mainly because of lack of genuine representation of sub-national units in the federal government. Regional states are not represented in the House of Federation which is considered as a federal chamber. Secondly, there is unicameral law-making body as the House of Federation has no law-law-making power.³⁴ Thirdly, the Constitution disregards the fact that federalism and secession are incompatible by declaring that every NNP has unconditional right to secession. This is because shared rule and self rule shall be balanced in the presence of secession.³⁵ It also disregards economic and political viability of sub-national units: while it amalgamates many Nations, Nationalities and Peoples in the SNNP Regional State, it allows Harari to enjoy statehood. Assefa argues that the

³² Article 51 and 52 of the FDRE Constitution.

³³ Assefa, *supra* note 15, p. 242.

³⁴ *Ibid*, p. 227.

³⁵ See Chapter Four above.

Constitution fails to take in to account historic mobility and inter-group relations because of the principle enshrined in the Constitution that requires regional state boundaries to coincide with at least some of the major nationalities.³⁶

What should be given emphasis here is that only genuine federalism grants enough space to each segment to exercise autonomy. And the degree to which a federal political system is effective depends very much up on the extent to which the acceptance of the need to respect constitutional norms and structures, and an emphasis upon the spirit tolerance and compromise.³⁷ The fact that segments are territorially concentrated and the boundaries between constituents follow segmental boundaries cannot enable them to exercise autonomy. Lijphart argues that segmental autonomy as a consociational principle entails more than merely a small area in which the segments are free to run their own affairs; the scope of their autonomy should be very extensive. Hence only decentralized federations can be consociations.³⁸

5.5. Missing Elements of Consociationalism

Despite the presence of federalism, there are constitutional arrangements that should not be experimented in a multi-ethnic society like Ethiopia. Some of them are absence of proportional electoral system and minority vetoes are of paramount importance.

5.5.1. Proportional Representation

The type of electoral system that the members of the parliament are elected is the plurality of votes (first-past-the-post) system.³⁹ This does not conform to the existing multi-party party system at least in theory even if there is a *de facto* one party rule and ensuring a broadly representative legislature that is desirable in divided societies. The policy of winner-take-all mentality inherent in such type of electoral system is not workable in divided societies. What is important in such societies is the *political expression of diversity at an aggregate level*.⁴⁰ It

³⁶ Assefa, *supra* note 15, p. 253.

³⁷ Ronald L. Watts (2008), *Comparing Federal Systems*, 3rd ed. Queen's University Press, Kingston, p.191.

³⁸ See Arend Lijphart, *Consociation and Federation: Conceptual and Empirical Links*, Canadian Journal of Political Science, Vol. 12, No. 3 (Sep., 1979), pp. 499-515 <http://www.jstor.org/stable/3230173> Accessed: 29/01/2010, p.509-510.

³⁹ See Chapter Three above for its detail.

⁴⁰ Assefa *supra* note 15, p.447 (emphasis original).

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³⁹ See Chapter Three above for its detail.

⁴⁰ Assefa *supra* note 15, p.447 (emphasis original).

should go beyond mere cultural and linguistic rights and provide enough space at the center. Representation at the center is one area that helps the country to strengthen unity.

Proportional Representation (PR) allows for the representation of NNPs according to their population size and such representation, according to Lijphart, tend to produce multi-party system. There should not be winners and losers as every ethnic group has to be represented. PR produces proportionality in the parliament. Every party will be entitled to a parliamentary seat according to the number of the votes it obtains. Political parties are the principal institutional means for translating segments in to the political realm⁴¹ and, therefore, they represent the segments.

The list PR with closed lists offers better for plural societies as it encourage the formation and maintenance of strong and cohesive political parties.⁴² It is a type of PR in which parties present lists of candidates to the voters. The voters give their vote to candidates from the lists. The electoral system in Ethiopia should, therefore, be proportional in order to allow segments get parliamentary seats in proportion to their numerical size. This indeed encourages political parties to form a broader coalition in order to establish a government and hence avoids one party rule. The executive will not be dominated by one party.

There are around 76 registered active political parties in Ethiopia.⁴³ The majority of these parties are regional ethnic parties. But, the House of Peoples' Representatives is dominated by EPRDF which enjoy around 99% of the total seats of the House for the terms of office 2010-2014.⁴⁴

The principle of proportionality is not limited to the legislature. It also extends to the judiciary, military, police, civil service and other public institutions at the federal level.⁴⁵

⁴¹ See Arend Lijphart (1977), *Democracy in Plural Societies: a Comparative Exploration*, Yale University Press, New Haven, p. 83

⁴² Lijphart, *supra* note 27, p. 101

⁴³ www.electionethiopia.org accessed on 3 March, 2011.

⁴⁴ See the lists of members of the HPR and the party they represent in the official website of the HPR. www.ethioparl.gov.et

⁴⁵ See the preceding Chapter for the detail.

primary principles of consociation.⁴⁸ If this is the case then can the Ethiopian arrangement be called consociational by concluding that the presence of federalism and the inclusion of other parties in the EPRDF as coalition satisfy the primary principles of consociation?

It should be noted at this juncture that the presence of these primary elements does not make the system consociational so long as the elements of proportionality and minority veto are present. The purpose for which the arrangement is consociational will be defeated if these two elements are sufficient to call a system consociational. Majority tyranny will not be counteracted if there is no proportional representation and minority veto. It is therefore extraordinary to consider the Ethiopian experience as consociational.

The preceding discussions have shown that the Ethiopian federalism fails to give enough space to minorities both to enjoy autonomy and be represented at the center. While some ethnic groups should have been given the status of statehood, others are granted without considering their viability.⁴⁹ The second chamber cannot protect the interests of minorities and regional states.

Even if there is legal framework as to the proportional representation of ethnic groups at the federal level, the practice proves to the contrary: in the parliament some are over-represented while others are under-represented. This lack of constitutional commitment extends to the centralized nature of the ruling party that it fails to be committed to the principles it has included in the constitution.

These all call for a full consociationalism by rectifying the elements which are present in the Constitution and by introducing the remaining through different means. Plural societies cannot afford perception of politics as a 'zero sum game' in which 'all-or-nothing' is applied. The principle of winner-take-all inherent in a majoritarian system is not a workable arrangement in plural societies. It is representation and participation in political process which help to bring about stability and legitimacy in Ethiopia. And these are best served by consociational arrangement.

⁴⁸ See Lijphart *supra* note 27, p. 97. The discussions that follow in that article show that it does not mean that the remaining elements are not necessary.

⁴⁹ See Assefa, *supra* note 15, p. and Aberra Dagafa (2009), *The Scope of rights of Nations, Minorities under the Constitution of the Federal Democratic Republic of Ethiopia*, Series on Ethiopian Constitutional Law, Addis Ababa University Press, Vol. 1, p.

What should be noted here is the arrangement that should be designed shall take in to account peculiar features of the country as there is no single formula of power sharing. The power sharing scheme especially broad representation in the executive in typical consociational examples is not the same: a provision in the constitution of Belgium for a cabinet to be composed of equal numbers of the two major ethno-linguistic groups; granting all parties with a minimum of 5% of the parliamentary seats the right to be represented in the cabinet (South African Interim Constitution); or permanently earmarking the presidency for one group and the premiership for another (Lebanon from 1943-1975).⁵⁰ The experience of these countries indicates that the constitutional design shall be sensitive to local peculiarities while choosing rules and institutions. The choice has to be made taking in to account core principles of power sharing democracy: broad representation at the executive through grand coalition in the center; devolve power to different level of government giving enough space to autonomy; proportional representation in the legislature and other political institutions; and minority veto on vital interests.

⁵⁰ Lijphart, *supra* note 27, p. 99.

CHAPTER SIX

Conclusions and Recommendations

6.1. Conclusions

The thesis has explored the extent to which the FDRE Constitution protects minorities with respect to granting autonomy and providing participation in the federal government. It has been observed that the Constitution suffers from problems of design and practice with regard to protection of minorities. Thus, the central question is then to what extent consociationalism is relevant to Ethiopia in giving guarantees to minorities and at the same time help to bring about legitimacy?

The issue of minorities has ceased to be a domestic affair because of the active role of the international community in shaping policies with regard to minorities and its legal regimes that give some protection to minorities. The ICCPR, under Article 27, provides for rights to members of minority groups belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.’ Attempts have been made to define what constitutes ‘minorities’ with any universal definition. There are in fact objective and subjective elements that are considered by many scholars as defining characteristics. The objective criteria include distinctiveness, numerical factor, non-dominance, and existence within a territory. The desire to continue to exist as a group, sense of solidarity or collective wish to survive as a group and preserve their distinct identity should be determined in a case-by-case approach.

The approach followed in international law has been more of individualistic by protecting persons belonging to minority groups than protecting them as a group until a progressive shift has been observed toward group protection.¹ Minorities in different parts of the world have been claiming for political representation, language rights, self-government, control over resources,

¹ See Tom Hadden, *Integration and Autonomy: Minority Rights and Political Accommodation*, in (ed.) Ian O’Flynn and David Russell (2005), *Power Sharing: New Challenges for Divided Societies*, Pluto Press, England, p.30-33.

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and internal migration.² The quests for such rights have caused ethno-linguistic conflicts and civil wars. It was at this juncture that accommodation and integration, as alternative policy choices for constitutional designers, were sought as resolving ethnic, religious, and linguistic tensions.

Consociationalism and power sharing, as mainly developed by influential works of Lijphart, strives to empower and institutionalize differences in order to build a stable and legitimate government in such plural societies. He bases the theory on case studies made in the political arrangement of the Netherlands, Belgium, Switzerland and Austria: countries with deep division along ethnic, religious, and linguistic lines but stable democracy. Consociational democracy is defined in terms of four characteristics which includes grand coalition for executive power sharing, segmental autonomy, proportionality and minority veto. He describes these features of consociational democracy as deviating from majoritarian form of government. Consociation tries to bring about consensual mode of decision as opposed to majority rule. Politics in consociation is not a zero-sum-game where there is winner and loser.³ Leadership in consociational model is coalescent as opposed to the competitive British model or adversarial.⁴ All significant political actors in divided societies should be represented in the center and granted a breathing space whereby they administer themselves. The great contribution of the works of Lijphart is that the Westminster democracy cannot effectively operate in multiethnic societies and the options he put are based on the case studies. The experiences of countries the case studies are undertaken may be different from Ethiopia, but the elements thereof are still relevant. Consociation should be contextualized to local peculiarities in order to bring about the representation sought in such societies.

Broad coalition allows segments, represented through parties, to participate in the cabinet and hence in decision making. Parliamentary form of government offers the optimal setting for broad executive power sharing as the political powers in the presidential system in concentrated

² Will Kymlicka, *Justice and Security in the Accommodation of Minority Nationalism*, in (ed.) Stephen May, Turiq Modood, Judith Squires, *Ethnicity, Nationalism and Minority Nationalism*, Cambridge University press, Cambridge, 2004,

³ Many of the works of Lijphart include this principle of consociation as inclusive of all major political actors and he considers majoritarian democracy as rule exclusion in plural societies where there are permanent majorities and minorities.

⁴ See Arend Lijphart (1977), *Democracy in Plural Societies: a Comparative Exploration*, Yale University Press, New Haven, p. 25.

in the presidency. The South African and Belgian models are some examples to show the manner it is stipulated in the constitution: a party with more than 5% and composition with equal number of Dutch and French speakers respectively.

While segments participate in the grand coalition to decide on common interests, they should be left to administer themselves. Federalism as one form of granting autonomy provides segments enough space to exercise their autonomy. It has been understood to accommodate by recognizing and respecting such differences and interests through vertical division power. The existence of federal chamber with law making power as the house where minorities are over-represented enables them to block the decisions of the lower house if they have been outvoted for a law to be enacted.

The manner the members of the legislative organ are to be elected shall also be considered. Segments shall be represented in the lower house in proportion to their population size. Majoritarian electoral system over-represents majorities and excludes minorities.⁵ The type of the electoral system should enable to properly represent different ethnic, religious and linguistic groups in the parliament. This can best be achieved through proportional electoral system which allows for broader representation in the legislature as opposed to majoritarian system.⁶ The principle of proportionality should also be applied in the federal civil service, national army, police and judiciary.

Minorities in consociation have the right to negatively rule the decisions of the lower house in areas of their vital interests like language and culture. This enables them to 'feel secured'⁷ to preserve their identity in a polity. These basic features of consociational arrangement, sometimes called consociational devices, enables to build a stable democracy possible in a divided society in general and best serve the interests of minorities in particular.

The FDRE Constitution introduced a different approach from its forerunners by adopting predominantly ethnic federal set-up. The sovereign political power resides in the Nations, Nationalities and Peoples of Ethiopia. They have the right to self-determination including

⁵ See Arend Lijphart (2008), *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice*, Routledge Pub. New York, pp. 111-124.

⁶ See Lijphart *supra* note 4, p. 38.

⁷ *Ibid* p.37.

secession. The right to self-determination as enshrined under Article 39 includes the right to speak, to write and to develop one's own language; the right to express, to develop and to promote culture; the right to preserve history; the right to full measure of self-government which includes the right to establish institutions of government in the territory they inhabit; and the right to equitable/proportional representation in state and Federal government. The Constitution also allows them to establish at any time their own state.

The granting of such rights by the Constitution has faced both promises and challenges at the design and practice level. Many writers on the Ethiopian constitutional law consider the inclusion of secession as one of the strange arrangement with federalism while secession is incompatible with federalism. The policy reason behind the inclusion of secession in the Constitution, as provided in the Constituent Assembly by Committee on the Rights of the Nations, Nationalities and Peoples, is that the constitution is the agreed-upon contract of peoples to live together- anyone who wants to walk away should be allowed by procedures that does not deprive democratic rights.⁸ Peaceful separation if living together in a polity is impossible should have been recognized in *de facto* rather than through explicit constitutional principle.⁹

All languages in Ethiopia enjoy equal state recognition under the FDRE Constitution.¹⁰ Accordingly, Amharic has been made the working language of the Federal government while the working language of the sub-national units is left to them to determine. The experience of South Africa with multi-lingual policy and Belgium with bi-lingual Brussels tells us that the language policy adopted in the FDRE Constitution is wiser. Local minorities shall be allowed to use their language and develop their culture. They shall be given autonomy of a non-territorial nature in order to rectify 'failures of the Constitution to take in to account historic mobility and inter-group relations'.¹¹

Regarding the right to self-government, the current federal arrangement seems to follow unclear criteria to delimit the boundaries between regional states while Art. 46 provides for the criteria as

⁸ See the Minute of the Constituent Assembly, Vol. 3, 1987.

⁹ Will Kymlicka, *Emerging Western Models of Multination Federalism: Are They Relevant in Africa?* in David Turton ed. (2006), *Ethnic Federalism: the Ethiopian Experience in Comparative Perspective*, Eastern African Studies, James Carrey Ltd. Oxford. p. 55

¹⁰ Article 5 (1) of the FDRE Constitution.

¹¹ See Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: a Comparative Study*, Wolf Legal Publishers, Netherlands, pp. 253-257.

settlement patterns, language, identity and consent of the people concerned. This is observed in the cases of the Harari and Southern Nations, Nationalities and Peoples Regional States. Merging together many ethno-linguistic groups narrows breathing space for them to participate in decision making.

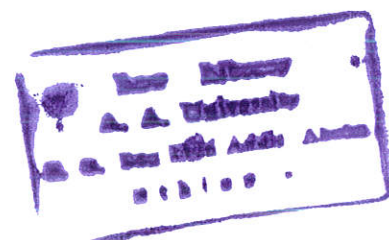
Representation in the federal government of NNPs as provided under Art. 39 (3), is an important move to make the center reflect the diverse nature of the society. The HoF, as a representative of NNPs of Ethiopia, is composed of one member from each NNP and one additional member for each one million populations. This composition of the House has been criticized as not 'a home of minorities' unlike other federal chambers.¹² The House should have legislative powers in order to make it counter-majoritarian.

When one observes the practice, as discussed in Chapter Four, representation is found to be not proportional in the HPR. Oromia, Afar and Somali are under-represented while Tigray, Amhara, SNNP and Addis Ababa enjoy greater number of seats than their total percentage of population. The special representation reserved to 'minority nationals' in the parliament provides a chance to minorities participate in the parliament. The electoral system that member of the parliament are elected is plurality of votes. This does not, however, allow for broader representation that is desirable in diverse societies in the parliament.

Representation in the executive is insignificant as there is no specific provision to the effect that the executive shall be composed of members from different ethnic groups except the general provision as provided under Article 39 (3). That seems why the prevailing practice in considering ethnic composition for nominating for ministerial posts lacks pattern and predictability.

These all problems of design and practice call for other options in order to create a stable and legitimate government in Ethiopia: the type of the electoral law adopted for members of the parliament, the powers and composition of the HoF, generality of the phrase 'equitable representation' in the state and federal government, and lack of proportionality in the HPR and executive. This study proposes consociational democracy as an option to such problems.

¹² See Chapter Four above.



The FDRE Constitution does not sufficiently guarantee the rights of minorities. Decisions in the HPR are made by majority vote which is similar with Westminster model. This mode of decision excludes those ethno-linguistic groups who are lesser in number. Any law detrimental to their vital interests cannot be made inapplicable so long as it is supported by the majority in the parliament. Consociational arrangement allows them participate in decision making which is consensual and grants them a right to veto if they are outvoted with respect to their vital interests. Proportional representation of minorities in the popular (lower) house and over-representation in the upper house is also another characteristic of consociation that makes fit to multi-ethnic nations like Ethiopia. Grand coalition, along with PR, opens the way for the minorities to participate in the executive and as such make the executive a broadly representative of ethno-linguistic groups. Generally, the consociational devices discussed above grants minorities enough space to exercise autonomy and represent them in the federal government.

Ethiopia has positive favorable factors for a consociation to be introduced as discussed in Chapter Five: no majority segment, external threat, overarching loyalties, and geographical concentration of ethno-linguistic groups. The number of groups in Ethiopia, however, may be a challenge here.

What is present under the current arrangement is the existence of autonomy to ethno-linguistic groups at least theoretically. The NNPs are given the right to administer their own affairs. Linguistic and cultural rights are also granted to them. The existence of federalism as enshrined in the Constitution makes autonomy, one among consociational elements, present in Ethiopia. But, there are some stipulations that may narrow the horizon of autonomy to groups which need to be rectified in order to have a successful consociation as will be recommended in the next subsection. There should be considerable autonomy which the segments are free to run their own affairs.

With regard to executive power sharing, it has been discussed in the preceding Chapter that it is difficult to call the ruling party a 'coalition'. Power sharing in consociation should be broad enough to include all significant political groups. The prevailing practice through which candidates for ministerial posts are nominated by considering ethnic composition informally cannot convince the existence of power sharing in Ethiopia.

6.2. Recommendations

In the current federal Ethiopia, there are designs and practical flaws that made the rights of minorities remain at stake. Given the existence of positive favorable conditions that are present in Ethiopia, consociationalism can best accommodate the diverse nature the society in a polity. The paper recommends the following, with no order of priority, for better protection of minorities and prevalence of stability and legitimacy.

Firstly, there should be a clear stipulation in the Constitution to the effect that nomination of candidates for ministerial posts shall ensure proportional representation of Nations, Nationalities and Peoples of Ethiopia. The South African experience, under the 1994 Interim Constitution, gives an attractive model in this regard. Any party, whether ethnic or not, shall have the right to participate in the executive cabinet if they enjoy more than five percent of the seats in the parliament. If this principle became applicable in Ethiopia, then it may not allow for broader representation as the number of parties enjoying around 27 seats in the parliament would be less.

Institutionalizing executive power sharing in a country with more than 85 ethno-linguistic groups is challenging as it would exclude others while including some. Power sharing should necessarily embrace all significant political actors in a polity. It should be left to informal negotiation among elites who should play leading role.

The current parliament is almost occupied by the ruling party. The current 'Front' style should be avoided if broader representation is sought to be achieved at the federal level.¹³ This measure along with PR electoral system, as recommended below, will enable parties to form broader coalition through negotiation which will allow elites from different ethnic groups to participate in the executive cabinet.

The minister and deputy-minister of ministerial offices shall be from different ethnic groups. This may be facilitated by introducing PR electoral system whereby it allows for broader coalition to form the executive as no single party will dominate the parliament. The trend

¹³ As recommended by Aberra Dagafa (2005), *The Scope of Rights of National Minorities Under the Constitution of FDRE*, Series on Ethiopian Constitutional Law, Addis Ababa University Press, Addis Ababa.

observed in practice has no pattern and open to domination by one ethnic group. The parties within the 'Front' undertake similar changes at the same time in regional states they administer. This high degree of centralization has undesirable consequence of taking back autonomies granted to Nations, Nationalities and Peoples by the Constitution and the federal nature of the arrangement.

Secondly, as federalism offers better way of implementing autonomy to groups, its defects shall be rectified. The prevailing boundary between regional states, which largely coincide with identity, should be restructured in manner that best serves the interests of Nationalities and Peoples. The requirement of economic and political viability shall be added to the right granted to the NNPs to establish their own states by virtue of Article 47 (2).

Accordingly, statehood should not be given to city-states like Harari while it should have been given to those ethnic groups like Sidama and Wolayta with more than one million populations. Secession should not have been included in the Constitution owing to its incompatibility with federalism. The HoF should be truly the home of minorities. Minorities should be over-represented in a manner that enables them to counteract the decisions of majorities in the lower house.

The HoF, as a federal chamber, should have legislative power like second chamber in other federations save the power to check the executive to the lower house. The absence of bicameral legislature tends to concentrate power in the hands of the majorities as minorities will not get the chance to block such decisions of the majority which are against their interests. Bicameral legislature gives minorities a chance to counteract such decisions.

The power of interpreting the constitution shall be given to an independent organ like constitutional court. There should be an independent organ which shall arbitrate on the constitutionality of what the legislature and executive do.

Thirdly, there should be PR electoral system whereby parties have to enjoy parliamentary seats in proportion to their vote strength rather than the prevailing win-or-lose style of first-past-the-post. Representation is desirable in plural societies like Ethiopia. While first-past-the-post is considered as adversarial rather than coalescent which produces stronger opposition, it failed to



do so throughout its practice. There is no representation with any strong opposition owing the type of the electoral system espoused. This principle also enables for broader coalition in the executive as parties should form coalition to establish a government.

The principle of proportional representation as enshrined under Article 39 (3) should be implemented properly. Nations, Nationalities and Peoples should be represented in political institutions at the center and others like military, police, civil service, and judiciary.

Fourthly, minorities should be allowed to rule otherwise on issues of vital interests like language and culture. Its mere existence serves minorities feel secured. The frequent practice of veto is less likely because it may be turned against their own interests.¹⁴

The political elites should understand the danger of non-cooperation in order to build a stable democracy. Building democracy, as it has been discussed in Chapter Three, in heterogeneous societies is challenging. The role of political elites is of paramount importance while conducting negotiations which should be based on compromise and tolerance.

¹⁴ See Arend Lijphart (1977), *Democracy in Plural Societies: a Comparative Exploration*, Yale University Press, New Haven, p. 37.

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