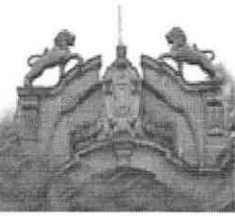


*Addis Ababa  
University*

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# **PROTECTION OF INTERNAL NATIONAL MINORITIES IN TIGRAY REGIONAL STATE: THE CASE OF RAYA OROMO**

**A Thesis Submitted in Partial Fulfillment of the Requirements of LL.M Degree in  
Human Rights Law**

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**December, 2010**

**Approval sheet by Board of Examiners**

***Protection of Internal National Minorities in Tigray Regional State: The Case of Raya Oromo***

I do hereby declare that the ‘**Protection of Internal National Minorities in Tigray Regional State: The Case of Raya Oromo**’ is my original work and that it has not been submitted for any degree or examination in any other university. Whenever other sources are used or quoted, they have been duly acknowledged.


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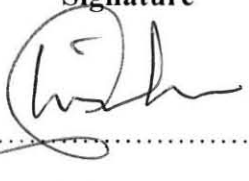
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## ***ACRYONOMS***

<b>Charter</b>	Transitional Period Charter of Ethiopia
<b>EPRDF</b>	Ethiopia Peoples Revolutionary Democratic Front
<b>FDRE</b>	Federal Democratic Republic of Ethiopia
<b>Genocide Convention</b>	Convention on the Prevention and Punishment of the Crime of Genocide
<b>HPR</b>	House of Peoples Representative
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social, and Cultural Rights
<b>PCIJ</b>	Permanent Court of International Justice
<b>SNNP</b>	Southern Nation, Nationality and Peoples
<b>Tigray Constitution</b>	Constitution of Tigray National Regional State
<b>UDHR</b>	Universal declaration of Human Rights
<b>UN</b>	United Nations
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization

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## **Abstract**

*The introduction of Ethnic-based Federalism in Ethiopia, a country of multi-ethnic and polyglot society, has enabled some ethnic groups to establish their own regions. Yet because of various reasons, all regions are ethnically heterogeneous. Hence, the federal arrangement appeared as a cause for the creation of internal national minorities; an ethnic groups who forms majority in one region but minorities in another region in which their protection, as seen practically, strongly depend upon the regional majorities. The case of Raya Oromo in Tigray regional State is a typical example of internal national minorities shorn of recognition and protection as a result of which is enforced to assimilate. To claim protection, the group should first exist as nation, nationality and peoples by fulfilling common requirements of article 39 of both FDRE and Tigray Constitutions. Therefore, this research, basically, examines the issue of recognition and protection of Raya Oromo in Tigray region in reference with the above National and sub-national Constitutions.*

*The research was conducted in two Woredas of Tigray Regional State; Alamata and Raya Azebo where members of the group in question are residing. This research deployed standard questionnaires to examine the issue of recognition. An extensive interview and personal observations have also been conducted which endeavored to solicit information pertaining to their perception, interests and problems in relation to manifestation of cultural and linguistic identity.*

*Based on the quantified result of the questionnaire, the research has revealed that the group in question (i.e. Raya Oromo) has fulfilled the requirements for 'nation, nationality and people and they have also manifested desires and interests for recognition and protection. It follows that their Constitutional rights; right to territorial autonomy, representation and political participation, cultural and linguistic rights have been violated. The findings of the research has clearly shown that, the regional government has violated the cultural rights of the group not only by inaction but also by intervention which extends to prohibition of some cultural practices individually as well as in community with others. Hence, the measure of the government is at odd with the constitutional principles (both the FDRE &Tigray) and relevant international instruments to which Ethiopia is a member State. As a result, this paper argues that their constitutional rights should be protected and the involvement of the Federal government in ensuring the rights of internal national minorities is indispensable.*

*Key words: internal national minorities, Constitution, nation, nationality &peoples, protection.*

# CHAPTER ONE

## INTRODUCTION

### ***1.1. Background of the Study***

The protection of minorities under international and municipal regimes has acquired considerable attention recently. Minorities have been deprived of their basic rights such as cultural, linguistic, and autonomy which resulted in conflicts and instabilities in many countries. One of the main sources of tension between majority and minority groups is the exclusion (both *de jure* and *de facto*) of minorities from the centers of power and the public decision-making process that directly determines their fates.<sup>1</sup> Thus, it has been urged that a fair balance must be attained in order to protect the less advantaged group's interests and identity and, ultimately, avoid inter-group hostility.<sup>2</sup> Having the multi-ethnic features of many States and the growth of tension between majorities and minorities, the international law has attempted to incorporate the preservation and protection of cultural, linguistic and religious identities of minorities into rights embodied therein. Accordingly, the introduction of Article 27 of International Covenant on Civil and Political Rights (Hereinafter, ICCPR) was a paramount achievement for minority groups.

Domestically, many states have deployed distinct modes of accommodation for the claims of minorities. Even though Ethiopia is ethnically diversified country with more than 80 ethnic groups, the recognition and protection of minorities in explicit and formal way is the recent event. It came after 1991 by the introduction of Transitional Period Charter and followed by the 1995 Constitution of Federal Democratic Republic of Ethiopia (Hereinafter, FDRE Constitution). The drafters of the FDRE Constitution have attempted to accommodate ethnic diversity of the country through federalism where nine regional States have been established (i.e., the State of Tigray, Afar, Amhara, Oromia, Somalia, the State of Benshangul/Gumuz, the State of Southern Nation, Nationalities and Peoples, the State of

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<sup>1</sup> Yousef T. Jabaren, *Towards participatory equality: protecting minority rights under international law*, 41 *Isr. L. Rev.* 635, 638 (2008).

<sup>2</sup> WILL KYMLICKA, *POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM, AND CITIZENSHIP*, 13 (2001).

Gambella People and the State of Harari People).<sup>3</sup>But this ethnic-based federal set up has encountered some thorny issues in relation to protection of minorities with in such established regional States.

Because of various man made and natural demographic episodes, all regional states are ethnically heterogeneous although in most of them there are dominant ethnic groups after whom the states are often named.<sup>4</sup>But, not all regions have recognized the heterogeneous feature of their regions .Particularly, the claims of internal national minorities, (i.e,those types of ethnic groups that establish their own region but part(members ) of that ethnic groups also constitutes minorities in another region) is critical issue in minority protection at sub-national level.<sup>5</sup>Except in some regions, such groups of peoples are denied recognition and protection in many regional States.

Based on this, the case of Raya Oromo in Tigray regional State is an example of internal minorities who is shorn of recognition and protection as distinct ethnic groups. The sub-national Constitution of Tigray has only extended its recognition for Tigray, Irob and Kunama ethnic groups.<sup>6</sup>The failure of the regional Constitution to recognize Raya Oromo as distinct ethnic group has adverse effect in the preservation and protection their identity.

## ***1.2. Statement of the Problem***

The historical background of the people indicated that the settlement of Raya Oromo in to the plains of Raya goes back to sixteenth century and established their autonomy for long period of time.<sup>7</sup>They used to enjoy and protect their cultural and linguistic identity with out intervention from the government for centuries. Yet, currently, the residence of the members of the ethnic groups and speakers of Afaan Oromo are restricted to some parts of Raya. More over, the traditional practices and cultural manifestations of Raya Oromo are restricted to

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<sup>3</sup> Article 47 of Constitution of Federal Democratic Republic of Ethiopia, (Hereinafter the FDRE Constitution), Federal Negarit Gazeta, 1<sup>st</sup> Year, No 1,21 August, 1995.

<sup>4</sup> Tsegaye Regassa, *Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level*, 3 MIZAN LAW REVIEW 33, 45 (2009).

<sup>5</sup> The Oromo's in Amhara National Regional State and the Amhara's in Gambella and Benishangul-Gumuz National Regional States are some of the typical examples of internal minorities. It should be noted that the term internal minorities may be used to indicate internal national minorities in this paper.

<sup>6</sup> Article 39 of the Revised Constitution of Tigray National Regional State, (Hereinafter, Tigray Constitution), Negarite Gazeta of Tigray, Proclamation No.45, 15 November, 2001.

<sup>7</sup> J. SPENCER TRIMINGHAM, *ISLAM IN ETHIOPIA* , 193-194(1965).

some private spheres for there are some trends of prejudices and marginalization against cultural identities of the group. There exists huge intervention by the government against the enjoyments of cultural and linguistic rights of Raya Oromo. In general, even though it is true that Raya Oromo were dominant ethnic groups in Raya<sup>8</sup> both socially as well as politically, currently the cultural and linguistic identities of the group are at the verge of disappearance.

It is true that the protection of minority starts from recognition with out which the group may not claim different rights. In the Ethiopian context, the fact that the State has failed to recognize a minority groups means, it has incapacitated the group from maintaining and protecting its cultural and linguistic identity, preclude from claiming autonomy and representation rights. As a result, the fate of the group would be assimilation with the majorities. The Constitutional recognition and protection of minorities, paradoxically, brings about a paramount advantage for the group because this protection enables them to maintain and protect their identity. Both the Federal and sub-national Constitutions have provided identical procedure for recognition as ‘nation, nationality and peoples.’<sup>9</sup>

Hence, in this paper, I basically examined the issues of recognition and protection of Raya Oromo as distinct ethnic groups in light with the requirements of nation, nationality and peoples as provided under article 39 of FDRE and Tigray Constitutions. It also canvasses the challenges they encountered in relation to the enjoyments of their cultural and linguistic rights in reference with the Constitutional documents and international instruments.

### ***1.3. Research Questions***

The study attempts to explore the following basic research questions:

1. Whether Raya Oromo fulfils the requirements for Nation, Nationality and Peoples to get Constitutional recognition as distinct ethnic groups?
2. What are the critical problems that have faced the group because of the regional State has denied recognition?

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<sup>8</sup> The term Raya covers an extensive Area which includes some parts of Northern Wollo of Amhara National Regional State and southern Tigray of Tigray National Regional State.

<sup>9</sup> It should be reminding that, the terms ‘nation, nationality and peoples’ are the Ethiopian constitutional languages for different ethnic groups in the country who fulfills the requirements delineated under article 39(5) of FDRE Constitution.

3. What measures should be taken to protect the cultural and linguistic identities of the group in question?
4. What are the basic group specific- rights of the group in question in reference with the Constitutional documents and international instruments?

#### **1.4. Literature Review**

The issues of minorities and their protection have been the subject of much writing among academicians and jurists. Minorities, in many parts of the world, have been subjected to assimilation, segregations and fusion, and in some extreme cases, were subjected to oppression and persecution at the hands of State machinery and/or majority groups.<sup>10</sup> Will Kymilika in his book 'Multicultural Citizenship, a Liberal Theory of Minority Rights,' has indicated that conflicts involving minority and majority groups over recognition and protection of cultural identity ,linguistic rights, regional autonomy, political participation and representations have increased.<sup>11</sup> He further implied that 'since the end of the cold war, ethno-cultural conflicts have become the most common sources of political violence in the world, and they show no sign of abating.'<sup>12</sup>

It follows that the question of minority accommodation at national as well as international level requires a viable solution. One has observed that given the ultimate goals of justice, equality and well-being for all human beings, developing a favorable and constructive legal system for the accommodation of racial, ethnic, religious, cultural and linguistic minorities in national and international systems is indispensable.<sup>13</sup> After the introduction of Article 27 in ICCPR and the promulgation of other instruments, the issue of minority and protection of their identity become a prominent agenda of international law. Kymilika has reflected that how states treat their minorities is now seen as a matter of legitimate international concern, monitoring and intervention.<sup>14</sup> Protecting cultural identity of the minority groups has also attained significant attention in different soft laws such as the Universal Declaration on Cultural Diversity adopted by United Nations Educational, Scientific and Cultural

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<sup>10</sup> GNANAPALA WELHENGAMA, MINORITIES' CLAIMS; FROM AUTONOMY TO SECESSION,3(2000).

<sup>11</sup> WILL KYMIKKA, *MULTICULTURAL CITIZENSHIP; A LIBERAL THEORY OF MINORITY RIGHTS*, 1(1995).

<sup>12</sup> *Id.*

<sup>13</sup> Jabaren, *supra* note 1, at 636.

<sup>14</sup> Will Kymilika, *Multiculturalism and Minority Rights: West and East*, 1, JOURNAL ON ETHNOPOLITIES AND MINORITY ISSUES IN EUROPE ,1,1(2002).

Organization (UNESCO).It has proclaimed that the ‘defense of cultural diversity is an ethical imperative, [implying] a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples’.<sup>15</sup> Having the progress in international regimes concerning minority protection, States particularly multi-cultural States have adopted different accommodation systems.

Yet, in this process, the fate of minorities with in minorities/internal minorities is an intricate issue. Can minorities, who establish their own institutions and autonomy, restrict the rights of other minorities with in minorities? According to Kymlicka, the aim of multicultural citizenship and minority rights is to provide groups with external protections and not to protect minorities in imposing internal restrictions on their members.<sup>16</sup> For equality purpose, Alan Patten has asserted that internal minorities shall enjoy protection as there is to think that majority should do.<sup>17</sup> Veit Bader has, on his part maintained that, internal minorities/minorities with in minorities shall be guaranteed with basic needs and rights and tries to strength the enjoyment of their cultural identity by means which do not override associational autonomy of the minorities.<sup>18</sup>

### ***1.5. Objective of the Study***

The research has the following objectives;

- 1.To explore the protection of minorities in Tigray National Regional State
2. To determine the scope and contents of the rights of minorities as enshrined under FDRE and Tigray Constitutions
- 3.To ascertain the possible means of recognition of Raya Oromo as internal national minorities in Tigray regional State

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<sup>15</sup> Article 4, Universal Declaration on Cultural Diversity, adopted unanimously by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), 2 November 2001.

<sup>16</sup> KYMILKA, *supra* note 11, 35-37.

<sup>17</sup> Alan Patten, *The Rights of Internal Linguistic Minorities* in MINORITY WITH IN MINORITY, EQUALITY RIGHTS AND DIVERSITY, 135,154(Avigail Eisenberg & Jeff Spinner, eds.2005).

<sup>18</sup> Veit Bader, *Associative Democracy and Minorities with in Minorities*, in MINORITY WITH IN MINORITY, EQUALITY RIGHTS AND DIVERSITY, *supra* note 17, 319 at 333-339.

4. To analyze the rights of Raya Oromo as distinct ethnic group with reference to international instruments and principles, the FDRE Constitution and Constitution of Tigray national regional State.
5. To suggest and recommend better accommodation mechanisms of minorities in both Tigray and FDRE minority systems.

### ***1.6. Significance of the Study***

This research may contribute in identifying the legal and practical problems of minority accommodation in both the federal and sub-national/regional level. Thus, it will propose effective and adequate minority protection system at federal and regional level. It may also have contribution in raising the awareness of the people of Raya Oromo about their rights.

There are no adequate researches conducted about the people of Raya Oromo and their rights. Therefore, this research will motivate academicians to conduct further researches on this group of people. It will also serve as an important input for policy makers and legislators in relation to minorities.

### ***1.7. Scope of the Study***

The research focuses on the issue of recognition and protection of Raya Oromo as internal national minorities in Tigray regional State. Thus the analysis, basically, be conducted in light with Tigray and FDRE Constitutions. However, international instruments which have importance for the case are Part of the analysis.

Geographically, the research will be limited to areas where the study is made. Therefore; the case study is conducted in the present Tigray National Regional State, southern zone, Alamata and Raya Azebo woredas.

### ***1.8. Research Methods***

This research, along with documentary analysis, deploys semi-structured interviews, questionnaires, and field observation to achieve two basic goals. The interviews were conducted with a view to know and analyze the practice of minority protection system in Tigray regional state. It, also, helps to get as much information as possible from members of

Raya Oromo about their perceptions, attitudes and state practice with regards their rights as distinct ethnic groups.

But, in order to ascertain whether Raya Oromo fulfils the requirements for recognition as nation, nationality or peoples, the researcher has applied questionnaires for it is easy to quantify the findings and approve the validity of the research. The questionnaires were submitted to members of Raya Oromo residing in Alamata and Raya Azebo Woredas of Tigray National Regional State. The specific research areas are in Alamata Woreda particularly in Dayu, Ta'o, Garjjale and in Raya Azebo Woreda, and in Bale, Daggaga, and Kube Jabelle, Basso, Gabatte, and Warabbaye Villages.

Considerable efforts have been exerted to make the sample size representative of the population for it is impracticable to collect data from the entire population. Simple random sampling is implemented in this research. Standard procedure, with similar question in a similar manner, has been applied. Concerning the types of questions, it is a closed type of questions with an intention to provide equal preference for interviewees. Attempts have been made to make the language of the questions simple and accessible to every one. As far as possible, the researcher has tried to avoid slang, ambiguous, vague and embarrassing terms. Further more, it shall be noted that the content of questions are limited to specific issues that helps to achieve the intended objective.

Face to face interview is a type of questionnaire administration that has been employed in this research though it was expensive,time consuming and exhausted. This was for practical reason that it was impossible to implement self-administered questioner administration mechanism. Because, most of the respondents neither reads nor writes .It is of important to mention that since it was difficult to reach all interviewees personally because of time and other constraints, some persons have trained who provides the researcher support in conducting face to face interview. Due care has been taken to be neutral and to avoid any kind of unethical behaviour that might influence the respondents while interviewers approaches them.

### ***1.9. Limitation of the Study***

The research encounters with some limitation and challenges. Some of these are

- The first challenge was related with financial constraints.
- It was also hard to find adequate written documents concerning the people.
- The other challenge was lack of cooperation from the officials of the government of the region including woreda, zonal and regional offices.

### ***1.10. Out Line of the Chapters***

This research paper has five chapters. This introduction part forms chapter one. The second chapter explores the concepts of minorities and their rights under international law. Believing that it would give better understanding about the basic issue of the paper, it provides comprehensive analysis in relation to the concept of minority and specific rights of minorities as recognized under international law. The third Chapter analyzes the system of minority protection at National and sub-national level. The first part of Chapter three focus on protection of minorities under FDRE Constitution. And protection of minorities under Tigray Constitution along with the practice of the State is addressed in the second part of Chapter three.

The fourth chapter is devoted to the discussion on recognition and protection of Raya Oromo as nation, nationality and peoples in Tigray regional State. The first section of this chapter analyzes the historical and geographical background of Raya Oromo along with cultural identity of the people. The second part of this chapter addresses the issue of recognition and protection of Raya Oromo in Tigray regional State. The first section of this second part examines the elements for recognition as ‘nation, nationality and peoples’ with reference to responses of the questionnaires. The second section of the second part discusses the rights of Raya Oromo in light with the Constitutions of FDRE& Tigray, and international instruments and principles. The final chapter provides conclusion and suggests possible recommendations.

## CHAPTER TWO

# MINORITIES AND THEIR RIGHTS UNDER INTERNATIONAL LAW

### ***2.1. Conceptual and Theoretical Frameworks of Minorities***

The issue of minority is an old phenomenon in the international discourse. Over the last several decades, the question for accommodation of minority groups in national systems has become a focal point in the international law.<sup>1</sup>In view of the historical covert and overt assimilation practices against minority groups, it shouldn't be astounding to observe strong mobility for protection of such groups. Some minorities were physically eliminated either by mass expulsion (what we now call 'ethnic cleansing') or by genocide while others have been subjected to coercive assimilation which forced them to adopt the language, custom/culture and religion of the majority.<sup>2</sup> In another strategy, 'minorities were treated as resident aliens subjected to physical segregation and economic discrimination and denied political rights.'<sup>3</sup>This unfair treatment against minority groups has been a root cause for serious conflicts and violence especially in multi-ethnic, multi-religious and polyglot countries.

In fact, of the more than 192 officially defined and recognized United Nations member States around the globe, over 175 are multi-ethnic in which the minority and majority co-exist and interact among each other in several issues.<sup>4</sup>Based on this, one may assert that it is necessary to establish effective minority regime which enable to ensure *de facto* as well as *de jure* protection for such segregated group of people. This is not only for the quest of peace and stability but also universal moral and human value dictates this.<sup>5</sup>Apart from that, if we need to prevail justice in the world order, equality between minority and majority is indispensable .As a matter of fact ,minorities have been denied an access to political participation and economic

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<sup>1</sup> Yousef T.Jabaren, *Towards participatory equality: protecting minority rights under international law*, 41 *Isr. L. Rev.* 635, 636(2008).

<sup>2</sup> WILL KYMILKA, *MULTICULTURAL CITIZENSHIP; A LIBERAL THEORY OF MINORITY RIGHTS*, 2(1995).

<sup>3</sup> *Id.*

<sup>4</sup> Jabaren, *supra* note 1.

<sup>5</sup> *Id.*

development .As one has reflected ,minorities were excluded from the power and any decision-making centres of a state, that affects their own futures as well as society's future as whole.<sup>6</sup>Yet safe guarding political interests of minorities by participating them directly or indirectly in political affairs which affect their interests is a demonstration of democracy in any plural society (i.e. multi-ethnic, multi-religious and multi-lingual societies).

The notorious assimilation policy of states, which was based on the idea of superiority of the dominant culture and religion endeavouring to produce a homogenous society (which is other wise called building of 'nation state') by imposing minority groups to discard their culture, language and religion in favour of the dominant groups,<sup>7</sup> has been a cause for many bitter conflicts in human history. Even though it is not debatable that minorities have been at disadvantaged position and were marginalised, there were little interest , particularly after WWII, for the entitlement of Group-differentiated rights for minority groups.

It is the view of many liberal thinkers that ' rather than protecting vulnerable groups directly through special rights for members of designate groups, cultural minorities would be protected indirectly by guarantying civil and political rights such as freedom of speech ,association and conscience to all individuals regardless of group membership.'<sup>8</sup> The underline assumption was that individual human rights have been put forward as a substitute for a concept of minority rights, with the strong implication that minorities whose members enjoy individual equality of treatment can not legitimately demand facilities for the maintenance of their ethnic particularism.<sup>9</sup>Since ethnic identity is something which people should be free to express in their private life, it was indicated that, protection of members of ethnic and national groups against discrimination and prejudice, and providing freedom to maintain part of their ethnic heritage or identity is adequate.<sup>10</sup>On the other hand, Nathan's argument seems in the middle that the state neither supports nor intervenes. He remarked that,

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<sup>6</sup> *Id* at 642

<sup>7</sup> PATRICK THORNBERRY , INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES,4(1991)

<sup>8</sup> KYMILIKA ,*supra* note 2, at 2

<sup>9</sup> CLAUD.I.L, NATIONAL MINORITIES: AN INTERNATIONAL PROBLEM,211(1955)

<sup>10</sup> KYMILIKA, *supra* note 2, at 4.

‘the state doesn’t oppose the freedom of people to express their particular culture, yet nor does it nurture such expression; some called it ‘benign neglect’.<sup>11</sup>

However, many scholars believe that mere entitlements of universal human rights for members of minority are inefficient and inadequate to accommodate cultural differences in heterogeneous society. Accordingly, they argue that ethnic or national minorities should be given distinct constitutional recognition along with group-specific rights. There exist some reasons.

The first important reason why we need group-specific rights for minorities is equality principle. In any multi-ethnic society, a state may successfully declare its divorce with religion, but ‘strict separation of state and ethnicity’ is difficult. Kymilika has aptly remarks that government’s decision on language, education, internal boundaries, public holy days and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups which in contrast affect the other ethnic group.<sup>12</sup> If a state decides one language to be governmental language –i.e. the language of public schooling, courts, legislatures, etc, it brings many advantages for the speakers of the language<sup>13</sup>; in the sense that it will facilitate culture transfer for the next generation, promoting the culture of ethnic group and providing a number of economic advantages for members of the group. Hence it follows that we have to protect minority culture through group-differentiated rights such as territorial autonomy and language rights if we need to realise genuine equality between minority and majority culture. Because, as on indicates ‘the accommodation of differences is the essence of true equality’.<sup>14</sup>

The second argument is related with the first. Once we accept Kymilika’s assertion that the public place has cultural biases, usually in favour of majority culture; it will be over for the state to be cultural neutral. As result cultures that are dominant in public spheres will serve as the cultural identity of the State.<sup>15</sup> And it follows that, since minority culture is not yet

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<sup>11</sup> GLAZER NATHAN, AFFIRMATIVE DISCRIMINATION; ETHNIC INEQUALITY AND PUBLIC POLICY ,25(1975)

<sup>12</sup> KYMILIKA, *supra* note 2, at 108.

<sup>13</sup> STEVEN WHEATLY, DEMOCRACY, MINORITIES AND INTERNATIONAL LAW, 4 (2005).

<sup>14</sup> KYMILIKA, *supra* note 2, at 108-109.

<sup>15</sup> Will Kymilika, *Western Political Theory and Ethnic Relations in Eastern Europe*, in CAN LIBERAL PLURALISM EXPORTED ? WESTERN POLITICAL THEORY AND ETHNIC RELATION IN EASTERN EUROPE, 13 ,49 (Will Kymilika & Magda Opalski, eds. 2001)

recognized & protected, under the guise of 'national identity'; the cultural values, beliefs and practices of the dominant/majority ethno-cultural group will be imposed on minority cultures.<sup>16</sup> Yet, the point is that, it would hardly be legitimate and morally right if a government decide one culture to be a manifestation of national identity and impose up on minority culture. Because, cultures are incommensurable; that in the absence of standards to measure, it is inappropriate for one culture to evaluate the rules and norms of another culture.<sup>17</sup> Thus, based on this incommensurability argument, group differentiated rights such as territorial autonomy for minority groups is justified because only the group itself is competent to make rules in accordance with its own norms.<sup>18</sup>

Another argument to justify group-differentiated rights for minorities is related with the need for identity respect as a group .People have an interest in having their identity respected and, needs to move from recognition of this interest to justify jurisdictional control or authority over the collective conditions of their existence.<sup>19</sup> It has been argued that individuals have strong (and legitimate) interest in expressing their culture *collectively* through participating in the social, cultural, and political life of their community.<sup>20</sup> It is true that the recognition of culture of a group (one's collective identity) in public sphere has its own values for the members of the group as well as the culture it self. Therefore, granting group specific-rights for minorities may be considered as recognizing the collective identity of an individual thereby, we are extending the values and advantages coined with recognition of the identity of the group in public places.

Finally, it is worth of mentioning that the idea of minority right is a distinct realm which only focuses on the group. This regime attempted to answer some issues which the individual human rights system has failed to addressee. Language right under international human rights remained silent concerning language choice and policy of the government. The right to vote does not tell us how political boundaries should be drawn or how powers should be

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<sup>16</sup> Charles Taylor, *The Politics of Recognition*, in, MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION, 25.43 (Amy Gutman, ed. 1994)

<sup>17</sup> Margaret Moore, *Internal Minorities and Indigenous Self-Determination*, in MINORITY WITH IN MINORITY, EQUALITY RIGHTS AND DIVERSITY, 271, 175 (Avigail Eisenberg & Jeff Spinner, eds. 2005).

<sup>18</sup> *Id.*

<sup>19</sup> Moore, *supra* note 17, at 279.

<sup>20</sup> TAMIR YAEL, LIBERAL NATIONALISM, 42-48 (1993).

distributed between levels of governments.<sup>21</sup>The right to education is mute as to mother tongue education in public fund.<sup>22</sup>

## **2.2. Definition of Minority**

Definition of minority is one of the delicate questions in the international minority discourse that is not yet precisely answered in the manner that brings to universal Consensus for lawyers and minority experts. No international instruments including article 27 of ICCPR, define the concept of minority .The inability to provide authoritative and universally agreed definition of minority is attributed to different reasons .It has been implied that, the controversy and disagreement on the definition of minority radiated from an avalanche number of minorities living in the world, the diversity of their type, the differences between types, the overlap between minority groups.<sup>23</sup>It follows that individual person can be a member of different minority group at the same time, which as has been stated, make the accurate and agreeable definition of the concept of minority so unattainable. It has also been submitted that the dilemma of defining a minority is attributed to the character of the concept of minority which is labelled as complex, vague and imprecise to realise an internationally acceptable definition.<sup>24</sup> What is more is that, the ambiguities in the interchangeable use of terms, such as ‘ethnic minorities’, ‘national minorities’, ‘racial minorities’, and ‘religious minorities’, is a barrier to the concrete definition of the term and the efficient protection of minorities .<sup>25</sup>

On the other hand, the need for universally agreed definition of minority is the subject of debate among different scholars. Scholars such as Capotorti, Thornberry and Hannum, contend that lack of definition does not necessarily prevent the adoption of meaningful and effective measures for the protection and promotion of minority rights.<sup>26</sup>On the other side, it is the view of some scholars like Ermacora, Sohn and Packer, that ‘with out finding a meaningful and commonly agreed definition, the claims of minority may not properly be

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<sup>21</sup> KYMILKA, *supra* note 2, at 4.

<sup>22</sup> *Id.*

<sup>23</sup>Andras B.Baka, *The European Convention on Human Rights and the Protection of Minorities Under International Law*, 8 CONN .J. INT’ L., 227,232 (1992-1993).

<sup>24</sup>John Packer ,*On the Definition of Minorities*, in THE PROTECTION OF ETHNIC AND LINGUISTIC MINORITIES IN EUROPE,23,24 (Paker &Myntti ,eds. 1993).

<sup>25</sup> C .Ward, *Majoring in Minorities: Minority Right in Europe*, in MINORITY RIGHTS IN THE NEW EUROPE, 530,530(P.Cumper &S. Wheatly, eds.1999).

<sup>26</sup> GNANAPALA WELHENGAMA, MINORITIES’ CLAIMS; FROM AUTONOMY TO SECESSION,48(2000)

arbitrated or identified with in meaning of public international law.’<sup>27</sup>In this debate, it is of my opinion that it would have paramount advantage for effective protection of minority if the regime adopts a precise and universally accepted definition of minority for it would enable to easily identify the group of people who deserve the protection. Yet, this doesn’t absolutely preclude from establishing a minority protection system as to some extent the issue of minority is more of a matter of fact than law. It is not also uncommon to observe that various human right regimes are established with out developing single and agreeable definition on the issue.

However, the definition forwarded by special rapporteur Francesco Capotorti in his study on the right of persons belonging to Ethnic, Religious and Linguistic Minorities, submitted to the commission in 1977 is one of the most commonly used definition in different literatures. The definition was based on case law of the permanent court of international justice (PCIJ), proposals forwarded by governments, and discussions held with in both the sub commission and the commission on human rights.<sup>28</sup> He defined as;

*A group which is numerically inferior to the rest of the population of a state and in a non-dominant position, whose members - being nationals of the State – possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their cultures, tradition, religion or language.*<sup>29</sup>

Patrick Thornberry has concluded that it is unlikely to contend that any acceptable international instruments will depart greatly from this line of approach.<sup>30</sup>The definition has incorporated the following elements: (1) the relevant group shall be numerical inferior to the rest of the population ;( 2) members of the group should be in non –dominant position. (3), Members of the group need to be nationals citizens of the state (4) The group has to be distinct from the rest of the population in its ethnic, religious or linguistic characteristics.(5)

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<sup>27</sup> *Id.*

<sup>28</sup> Jelena Pejic, *Minority Rights in International Law*, 19 HUM. RTS. Q. 666,670 (1997)

<sup>29</sup> Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, U.N. Doc. E/CN. 4/Sub. 2/384/Rev. 1, U.N. Sales No. E.78. XIV I (1979).

<sup>30</sup> THORNBERRY ,*supra* note 7 ,at 7

members of the group should reveal a sense of solidarity among themselves to preserve their culture, tradition, religion or language.

Concerning numerical size of the group, the group must be numerically smaller to the rest of the population of the state, which is less than 50% of the population. Yet the minimum threshold is not specified. Some believe that, the numerical strength must at least account for sufficient number of persons to preserve their traditional characteristics; thereby a single individual couldn't constitute a minority group.<sup>31</sup> For the purpose of this definition, where no group constitutes a numerical majority of the population, all ethnic, religious, or linguistic groups within the state, including the largest groups are minorities since each are numerically smaller to the rest of the population of the state provided that the largest group is inferior to the rest of the population.<sup>32</sup> Yet one may question that, is it plausible to include those largest groups, who exercise decisive political control, whose culture branded as cultural identity of the state under this definition merely because they are numerically smaller to the rest of the population? Wheatley has observed that, for the purpose of Article 27 of ICCPR, there is no reason to exclude dominant ethnic group from cultural security as a minority (i.e. to enjoy their own culture, to profess and practice their own religion, or to use their own language, ) provided that it does not constitute majority.<sup>33</sup>

The second element of the definition is that the group must be in non-dominance position. What is important is that when do we say a concerned group is in non-dominant position? According to Wheatley, 'Dominance is taken to refer to economic, cultural and social domination.'<sup>34</sup> In relation to this, it has been indicated that 'when a minority is not in a state of dependence and subordination, it can not be considered to be in a minority situation. The minority issue appears to be inevitably bound up with a status of inferiority in relation to the majority.'<sup>35</sup> The other argument in relation to non-dominant position is that this requirement should be only understood for the purpose of positive measures from the government. As a result, 'persons belonging to a minority group that defines the dominant social culture have no

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<sup>31</sup> JAVID REHMAN, THE WEAKNESS IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS, 15 (2000)

<sup>32</sup> Many African states including, Ethiopia, Kenya, Angola, Gabon are example for this case. See, WHEATLEY, *supra* note 13, at 19

<sup>33</sup> *Id.* at 19-20.

<sup>34</sup> *Id.* at 20.

<sup>35</sup> Jose Bengoe, *Existence and Recognition of Minorities*, UN Doc.E/CN.4/Sub.2/AC.5/2000/WP.2, 3 April 2000, para.17.

requirement for the introduction of positive measures to protect their ethno-cultural identity. Nonetheless, the group is a minority for the purposes of Article 27, and persons belonging to this group have the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.<sup>36</sup> Thus, a group even if it is dominant, it will constitute minority if it full fill the remaining elements. Members of the group, therefore, can claim protection of article 27 of ICCPR.

From the definition, the third and the most controversial requirement of minority is being a '*national of a State*'. To put it succinctly, the narrower category has exclude aliens, migrant workers, refugees and stateless persons from minority group.<sup>37</sup> Here comes the debate. The first line of argument is that, "holding the citizenship of the State of residence" to constitute minority and to be beneficiaries of Art.27 , as Jung Won Park enunciated, is against the ordinary meaning of the provision as the covenant says 'persons' not 'citizens.'<sup>38</sup> What is more is that, 'the requirement of holding citizenship also seems to be logically inconsistent, because the demand for the existence of the objective elements of having recognizable ethnic, religious and linguistic characteristics assumes long-term residence in the territory of the States in which the minorities reside.'<sup>39</sup> Based on this element, one might argue that, states citizenship policy will matter a lot in identifying minority groups. To this respect, Park asks that 'is it justified to argue that persons who have met all objective criterions with a firmly subjective belief to maintain their ethnic, religious or linguistic identity are to be excluded from a minority status, simply because the demand of holding citizenship of their State of residence has not been met?'<sup>40</sup> The hub of this argument is that the definition of minority shouldn't incorporate citizenship as a requirement for minority status.

On the other side, it is the contention of Thorn berry that, it is not impossible for aliens to claim individual human rights on the basis of non-discrimination but can not claim minority rights(identity rights) as proclaimed under Article 27 since none of the international

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<sup>36</sup> WHEATLY ,*supra* note 13, at 24.

<sup>37</sup> See, PATRICK THORNBERRY, *supra* note 7 , at 8.

<sup>38</sup> Jung Won Park, *Integration of Peoples and Minorities: An approach to the Conceptual Problems of Peoples and Minorities with Reference to Self –Determination under International Law*, 13 *INT'L J.ON MINORITY & GROUP RTS*, 54, 86 (2006).

<sup>39</sup> *Id.* at 85.

<sup>40</sup> *Id.*

customarily law of aliens dictates this .<sup>41</sup>He further declared that ‘states can hardly be expected to promote foreign culture at their own expense; this obligation, if one exists in any legal sphere, would naturally devolve up on the home state of the group.’<sup>42</sup> The writer of this paper avowed the argument of the latter. This is for the reason that rights of minority is not limited to the right to manifest culture tradition, to use its language or practice its religion, but also there exist rights which has political dimension such as autonomy in which it is unlikely to be claimed by aliens. Apart from this the *travaux preparatoires* of the provision confirms the exclusion of aliens as Thornberry provides.<sup>43</sup>

The other criterion of the definition is that, the group must possess a distinct ethnic, linguistic or a religious characteristic which makes different from the rest of the population. It is clear that the definition exclude other minorities such as sexual minorities from the scope. In fact, these characteristics are objective one in which it can be ascertained by factual analysis of the group. As far as what constitutes ethnic, linguistic or religious characteristics is concerned, I will discuss comprehensively in the next sections.

In Capotorti’s definition, the final element is subjective one in which the group must show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language. If members of the group do not reflect a sense or interest to preserve and maintain their identity or reveal desire to assimilate with majority, that group will not qualify as a minority for the purpose of article 27 of ICCPR. Accordingly, this definition recognizes only those refuses assimilation referred as ‘minority by will’ and excludes minority group who has desires of assimilation with other ethnic groups but is barred ,termed as ‘minority by force’.<sup>44</sup>

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<sup>41</sup> See THORBERRY, *supra* note 7, at 171.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> This classification was introduced by Laponce based upon the relationship between minority and majorities. Accordingly, he stated that minority may wish to assimilate or refuse to assimilate. The minority that desire assimilation but is barred is a minority by force. And the minority that refuses assimilation is a minority by will. See J.A LAPONCE, THE PROTECTION OF MINORITY, 12(1960).

### **2.3. Types of Minorities**

The development trend of minority regime evidently reveals that it was religious minorities who were the first protected group through different bilateral and multi-lateral treaties.<sup>45</sup> Yet the League minority system extended its scope of protection towards linguistic and ethnic minorities.<sup>46</sup> From that onward, it became an international norm that these three groups (i.e. religious, linguistic and ethnic/national minorities) are the most widely and legally recognized minorities under international minority regime. Several human rights documents including the only universally binding instrument till now on minorities (Article 27 of ICCPR) have recognized only those three minorities. Article 27 of ICCPR reads as follows:-

*'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such 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.'*

The words of the provision are clear that the protection is only granted to religious, Ethnic and linguistic minorities. Thus, it follows that new emerging minority groups such as 'sexual minorities' are out of the scope of application of article 27. In the next sub title, I will discuss about 'religious', 'linguistic' and 'ethnic/national' minorities.

#### **2.3.1. Ethnic Minorities**

Ethnic minorities are one of the protected groups under article 27 of ICCPR, though the provision failed to depict what ethnic minority constitutes. Making distinction between different ethnic groups seems a complex and difficult task as the definition of ethnicity lacks clarity and uniformity. 'Racial minority' was a common term in United Nations till 1950<sup>47</sup> though later on 'Ethnic' and 'National' minority became also familiar. Thus, the interchangeable use of 'Ethnic', 'Racial' and 'National' minorities in the minority regime and other realms of international law produce a variation in understanding of the concepts. The genocide convention, for example, used 'national, ethnical, racial and religious' groups

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<sup>45</sup> See in General, WELHANGAMA, *supra* note 26, 9-10.

<sup>46</sup> Abdulrahim P Vijapur, *International Protection of Minority Rights*, 43 INT'L STUD. 43,41-2 (2006).

<sup>47</sup> W. MCKEAN, *EQUALITY AND DISCRIMINATION UNDER INTERNATIONAL LAW*, 144(1983).

simultaneously without clarifying the difference.<sup>48</sup>The international convention on the elimination of all forms of racial discrimination has extended 'racial discrimination' 'to include discrimination based on 'race, color, descent, or national, or ethnic origin'.<sup>49</sup>Non-discrimination clauses of Universal Declaration of Human Rights (UDHR) and ICCPR have preferred 'race and nation' as grounds of discrimination.<sup>50</sup> Yet none of them revealed the differences among such terms.

Definitions from secondary sources are also inadequate to make clear distinction among the 'terms' for different scholars define the concepts in their own understandings. In relation to race and ethnicity, race usually denoted to physical characteristics, particularly to color where as ethnic identity is related to cultural manifestation with or without distinct physical characteristics.<sup>51</sup>However, it has been suggested that it would be better 'to deal with the two concepts together in order to prevent unfortunate gaps appearing'.<sup>52</sup>

The most problematic area is the distinction between ethnic and national minorities for the fact that both concepts incorporate highly abstract and objective elements. One has made an attempt to define ethnic group as 'peoples who conceive of them selves as one kind by virtue of their common ancestors (real or imagined), who are united by emotional bonds, a common culture, and by concern with preservation of their group.'<sup>53</sup>In another case, national minorities have been defined as 'a historically formed community of people characterized by common language, a common territory, a common economic life and common psychological structure manifesting itself in common culture.'<sup>54</sup>The first definition focus mainly on subjective elements such as feelings of the group towards themselves while the later emphasize on

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<sup>48</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Article II, 9 December, 1948, 78, U.N.T.S, 277(hereinafter Genocide Convention).

<sup>49</sup> See, International Convention on the Elimination of All Forms of Racial Discrimination ,Article 1(I), 7 March, 1966,195 U.N.T.S, 660 (hereinafter ICERD).

<sup>50</sup> See Universal Declaration of Human Rights, G.A. Res. 217A (III), article 2, U.N. GAOR, 3d Sess. U.N. Doc. A/810 (Dec. 10, 1948) (hereinafter UDHR) & International Covenant on Civil and Political Rights, article 2, Dec.19, 1966, 171 U.N.T.S. 999 (hereinafter ICCPR).

<sup>51</sup> See THORNBERRY, *supra* note 7, at 159.

<sup>52</sup> Malcolm Shaw, *The Definition of Minority in International law*, in THE PROTECTION OF MINORITY AND HUMAN RIGHTS, 1, 17 (Dinstein, Tabory ed.1992).

<sup>53</sup> R.Burkey, DISCRIMINATION AND RACE RELATIONS, REPORT ON THE INTERNATIONAL RESEARCH CONFERENCE ON RACE RELATIONS ,2(1970).

<sup>54</sup> L.B. Sohn, *The Rights of Minorities*, in *THE INTERNATIONAL BILL OF RIGHTS*, 270,281(L.Henkin, ed.1981).

objective elements of common language, common territory and common economic life, though common culture included in both definitions. Yet, no international instrument has affirmed such differences.

In another case, Nowak has observed that 'ethnic minority' has to be appreciated and preferred in order to include 'racial' and 'national' minorities.<sup>55</sup> Based on this, the term ethnic minority seems larger in scope than national minority. Paradoxically, Ermacora came up with definition of national minority as 'a group which in addition to having the characteristics of an ethnic minority, aspire to take part in the policy- decision process with in a given territory or even in the national context of the state with out being on equal footing with other ethnics in the state.'<sup>56</sup>As a result, it is credible to note that the definition and scope of these concepts seems controversial.

For the purpose of article 27 of ICCPR, it has been indicated that the Commission in the drafting process of the Covenant prefer the term 'Ethnic minority' than 'National minority' with the assumption that, many groups would be protected well as the previous term includes both Racial and National minorities.<sup>57</sup>Nonetheless, it should be reminded that there is no comprehensive and standard legal distinction between ethnic and national minorities yet.<sup>58</sup>

### **2.3.2. Religious Minorities**

It can be asserted that the issue of religious minorities is all about objective fact of following same religion. To put it bluntly, religious group is one whose members share the same religion, denomination or mode of worship.<sup>59</sup>But the term 'religion' invites some debate as no clear definition of the concept exists in international instruments. It has been indicated

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<sup>55</sup> NOWAK MANFORD, UN COVENANT ON CIVIL AND POLITICAL RIGHTS; CCPR COMMENTARY, 412(1993).

<sup>56</sup> Felix Ermacora, *The Protection of Minorities Before the Law*, 182, RECUEIL DES COURS, 251,259(1983).

<sup>57</sup> See THORNBERRY, *supra* note 7, at 160.

<sup>58</sup> UN Doc.E/CN.4/1991/53,5 March 1991,para 10,at p.3

<sup>59</sup> See Case 96 Prosecutor v. Okays, International Criminal Tribunal for Rwanda, judgment for example, in Prosecutor v. Okays, International Criminal Tribunal for Rwanda,judgment,2 September 1998,Case No.ICTR-96-4-T, 37 ILM (1998) 1399, para.515.

that 'international instruments reflects not only slipperiness in the usage of appropriate terminology but also a serious failing in defining the concept of religion.'<sup>60</sup>

The draft Convention on the Elimination of All Forms of Religious Intolerance, 1967 under article 1(a) has provided that 'religion or belief' includes theistic, non-theistic, and atheistic beliefs.<sup>61</sup> Even if freedom of conscience, thought and religion is incorporated under article 18 of ICCPR, it is short of definition of religion. The United Nations Human Right Committee in its general comment of 1993 on Article 18 of the International Covenant on Civil and Political Rights has comprehensively addressed the scope of religion and belief. It stated as;

*Article 18 protects theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. The term "Belief" and "Religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The committee, therefore, views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established or represent religious minorities that may be subject of hostility by a predominant religious community.*<sup>62</sup>

Therefore, this comment extends the concept of religion from the traditional understanding of religion that is belief in transcended order or supernatural being, or God as creator of the universe. As a result one may asks that is it possible to constitute 'religion 'for any belief with out institutional characteristic or make its religious doctrines secret ? Thornberry contends in this regard that, such beliefs can be incorporated under religion as the literal reading of both article 18 and 27 and comment of the committee do not prohibit including such groups under the category of religion.<sup>63</sup> But the broad definition of religion has excluded political or aesthetic philosophies from the scope.<sup>64</sup>

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<sup>60</sup> S.C. Neff, *An Evolving International Legal Norm of Religious Freedom; Problems and Prospects*, 7 CAL. WEST ILJ, 543,543(1977).

<sup>61</sup> *Year book of the United Nations* 1967, 488-90; Brownlie, *Basic Documents on Human rights*, 111-115.

<sup>62</sup> United Nations, Human Right Committee General Comment 22, Freedom of Thought, Conscience and Religion (18) of ICCPR, U.N. Doc. HRI/GEN/I/Rev.1 at 2 (48<sup>th</sup> Session) 20 July 1993.

<sup>63</sup> THORNBERRY ,*supra* note 7, at 162.

<sup>64</sup> REHMAN ,*supra* note 31, at 20.

In relation to religious minorities, it has been asserted that it is difficult though not impossible to imagine members of the minority community of atheists invoking article 27.<sup>65</sup> Another feature of religious minority is that the attack on such groups is as likely to be made in religious based or 'theocratic' states as anywhere else.<sup>66</sup>

In fact, the issue of freedom of religion has been dealt separately under article 18 of ICCPR. It has been stated that every individual has a freedom to have or to adopt a religion or belief of his choice, and freedom to manifest his/her religion or belief in worship, observance, practice and teaching. In general, even though there is no comprehensive definition, since the category is broad, it will, at least, reduce the controversies raised in relation to definition of religion and minority religious groups.

### **2.3.3. Linguistic Minorities**

The meaning of language is not yet defined precisely in international discourse. The efforts of some scholars, in this respect, indicated that the concept of language is broadly understood to include all the means (sign and symbols), phonetic and phonemic by which people communicate with each other.<sup>67</sup> The bottom line is that the language must serve as a means of communication for the group. As far as identifying linguistic minorities concerned, albeit not the most contentious, the status of dialect groups need attention. Because the international instruments have done little in clarifying this grey area. The definition by European Charter for Regional or Minority Language has only exclude dialects of official languages from the lists of minority language.<sup>68</sup> This is not, however, universal instrument that, it has not application out of Europe.

In general, albeit some controversy related to 'dialects', one argue, the definition of language is not as such an important issue in interpretation of article 27.<sup>69</sup> Yet if the issue of dialect

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<sup>65</sup> THORNBERRY, *supra* note 7, at 162.

<sup>66</sup> *Id.*

<sup>67</sup> M.S. McDougal, H.D Lasswell, Lung-Chu.Chen, *Freedom from Discrimination in Choice of Language and International Human Rights*, 1, SIULJ, 151 at 187(1976).

<sup>68</sup> The European Charter for Regional or Minority Language, Article 1(a), 5 November 1992, E.T.S, 21 entered into force on 1 March 1998.

<sup>69</sup> Patrick Thornberry, *An Unfinished Story of Minority Rights*, in DIVERSITY IN ACTION 47 (A.M. Biro & P. Kovics eds., 2001).

difference is not handled seriously, it will have virulent effect in the process of protection of minority for it may embroiled different ethnic groups.<sup>70</sup>

One final point in relation to linguistic minorities is that, there exist strong inter-relation and overlap between linguistic minority and ethnic minority .In the context of Article 27, ethnicity is understood in terms of cultural difference, given the syntax of the provision, ‘which literally relates enjoyment of culture to the ethnic group’.<sup>71</sup> And culture in most cases includes the linguistic identity of the group. The marriage between language and culture has been summarized as: ‘The culture of a group depends on the reality and appropriateness of its language. Suffocation of a language has always been part of policies of domination and the struggle for its maintenance was always a pre-condition for any political movement of liberation, whenever it might become possible.’<sup>72</sup> Thus, in many scenario’s there exists an overlap between linguistic and ethnic minority that language serves as a factor to ascertain an individual whether he is from one ethnic group or not.<sup>73</sup>

#### **2.4. Rights of Minorities**

After the collapse of the league system, the United Nation system was reluctant and unenthusiastic towards recognition of minority rights since it focuses only on individual rights. Accordingly, this view was first reflected in the United Nation Charter and Universal Declaration of Human Rights (here in after, UDHR) by only giving an emphasis on individual human rights. It has been suggested that such systems were inadequate in preserving the culture, linguistic and religious identities of minority groups.<sup>74</sup> And as Thornberry properly remarked, ‘individuals do not exist shorn of culture, linguistic, religious peculiarities.’<sup>75</sup> It was

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<sup>70</sup> In this regard ,it is critical to observe the problem in southern nation, nationalities and peoples regional state of Ethiopia in the process of fusing four different languages(i.e. Welayta,Gamo,Gofa and Doerze).Having a bogus assumption from the government that such languages are dialects which basically share common linguistic characteristics, the attempt to create a new language name(WGGD) and develop a new and single teaching material for elementary schools has ended in ethnic conflict.

<sup>71</sup> See THORNBERRY, *supra* note 7, at 161.

<sup>72</sup> LADOR-LEDERE, *INTERNATIONAL GROUP PROTECTION, AIMS AND METHODS IN HUMAN RIGHTS*, 25(1968).

<sup>73</sup> The Ethiopian Constitutional philosophy is based on this assumption that having common culture should be accompanied with common language to constitute a distinct ethnic group. See, Article 39(5) of FDRE Constitution.

<sup>74</sup> See REHAMAN *supra* note 31, 31-37.

<sup>75</sup> THORNBERRY, *supra* note 7, at 12.

the introduction of article 27 of ICCPR that brought to the fore front the issue of minority rights explicitly to the realm of international human rights system.

In general, the contemporary international human rights law has encompassed individual and group /collective rights .As it is known, individual human rights such as freedom of expression, freedom of religion, the right to vote, and the right to culture are bestowed upon every single human beings personally. Collective Human rights, on the other hand, are ‘afforded to human beings communally, that is to say, in conjunction with one another or as a group- a people or a minority.’<sup>76</sup>Dinstein has implied that ‘collective human rights retain their character as direct human rights ..... (Which).....shall be exercised jointly rather than severally’.<sup>77</sup>As a result the rights of minorities, as individual and as a group are exercised indivisibly.

Therefore, rights of minority have individual and group dimensions. The right to equality and non-discrimination may be considered as right of minorities *qua* individual membership.<sup>78</sup>Other rights such as special representation and autonomy are types of minority rights in which the enjoyment of which seeks group existence.

As far as article 27 of ICCPR is concerned, it generates some controversy since the ‘right holders’ are not precisely defined. As the legislative history of this provision indicated, the original draft of the UN sub-commission on the prevention of discrimination and protection of minorities has used the term ‘ethnic, religious and linguistic minority, even though this phrase has been replaced later on by ‘persons belonging to minorities.’<sup>79</sup>This was on the assumption that ‘minorities’ by themselves were not subject of law but ‘persons belonging to minorities ‘could easily be defined in legal terms.’<sup>80</sup>On the other hand, the decision to insert the phrase ‘in community with the other members of their group’ after ‘shall not be denied’ has implication of community or group.

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<sup>76</sup> Dinstein, *Collective Human Rights of People and Minorities*, 25 ICQL, 102,102-103 (1976).

<sup>77</sup> *Id.*

<sup>78</sup> J.B. Kelly, *National Minorities in International Law*, 3, JILP, 253,269(1973).

<sup>79</sup> THORNBERRY,*supra* note 7, at 149

<sup>80</sup> *Id.*

Many scholars have suggested various interpretations concerning the application and meaning of the provision. In view of Thornberry, the right under article 27 is a 'hybrid between individual and collective rights because of the community requirements.'<sup>81</sup> According to Capotorti, the benefit of the doubt as to interpretation of the provision should go to minorities collectively since they are the ultimate beneficiaries.<sup>82</sup> For the fact that the rights usually, involves the whole community together, and the incorporation of the term 'in community with others', the provision has more of collective dimension than individual.

Finally, it should be noted that the next discussions will focus on both collective as well as individual rights of minorities. Readers should also remind that the discussion on rights of minority will be limited on linguistic and ethnic/national minorities as the principal issue of the research focus on such groups of minorities.

### ***2.4.1. Cultural and Language Rights***

It is true that cultural and linguistic rights of minorities are essential for the groups as they have significant role in preserving and protecting their identity. Members of ethnic and linguistic minorities have the right 'to enjoy their own culture' and 'to use their own language' in accordance with article 27 of ICCPR.

Concerning cultural rights, what is of interesting is that the scope and content of this right, and nature of obligation of states. Because article 27 of ICCPR has failed to provide clearly what constitutes the term 'to enjoy their own culture'. Do the obligations entrenched under article 27 of the Covenant have included 'positive' as well 'as negative' obligations on state parties? When is it that one can establish state liability for violation of the right to culture of minorities in the sense of article 27 of ICCPR? One can as well ask that, does the right to culture as enshrined in ICESCR has contribution in clarifying the above issues?

In respect to the above issues, there is a contention that the international instruments are not with problem in determining the scope of application of the rights to culture rather there exist

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<sup>81</sup> *Id.* at 173.

<sup>82</sup> See Capotorti, *supra* note 29.

a difficulty in defining 'culture'.<sup>83</sup> It has been submitted that cultural rights can include the rights delineated in article, 13, 14 and 15, of ICESCR which will have similar application for article 27 of ICCPR.<sup>84</sup> The argument is that the rights to education (Art 13&14 of ICESCR), which 'directed to the full development of the human personality and the sense of its dignity', is part of the right to culture of minority along with article 15 of the same Covenant that declares the rights of every one to 'take part in cultural life' and 'to enjoy the benefits of scientific progress and its applications.' The incorporation of right to education under cultural rights should hardly be a controversial issue since the role of education in preserving and promoting of any culture and tradition is indispensable. Reich has remarkably portrayed that 'schools are a central vehicle of cultural transmission, perhaps the most important vehicle next to the family.'<sup>85</sup> It has been further indicated that 'beyond socialization within the home, schools play a crucial role in initiating children in to the norms, beliefs and rites of the larger group, forming and deepening their cultural identities in the process.'<sup>86</sup>

In relation to nature of obligation of States, as it is provided under Art 15(2) of ICESCR, States shall not only abstain from interference in the cultural affairs but also undertake steps which are 'necessary for the conservation, the development and the diffusion of science and culture.' Particularly to minority groups, though article 27 sounds negative obligations ('shall not be denied'), the Human Rights Committee in its general comment on article 27 has concluded that 'positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group'<sup>87</sup> Nonetheless, the committee has made no indication as to what is specifically expected from the State to fulfill its positive obligation in relation to article 27 of ICCPR.

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<sup>83</sup> Robertson, '*The Right to Education and Culture and its International Implementation*', in *Resume des Cours*, Institut International des Droits de l'Homme, 9<sup>th</sup> Session, 1978.

<sup>84</sup> See THORNBERRY, *supra* note 7, at 188.

<sup>85</sup> Rob Reich, *Minors Within Minorities; a Problem for Liberal Multi-Culturalists*, in *MINORITY WITHIN MINORITY, EQUALITY RIGHTS AND DIVERSITY*, *supra* note 17, at 209

<sup>86</sup> *Id.*

<sup>87</sup> United Nations Human Rights Committee, General Comment 23, *The Rights of Minorities* (Art. 27), U.N. Doc. HRI/GEN/I/Rev.I at Para .6.2 (1994)(herein after General Comment 23)

In general, though it seems not impossible to agree on the nature of obligation of the States (i.e. it encompass both non –interference on cultural affairs of minorities and to take positive steps to facilitate the enjoyment of the culture by such groups) and on the question ‘what entails the right to culture’, the issue related with definition of ‘culture’ remains gray area. Defining culture has significance not only for determining the status of ethnic minority but also help in identifying linguistic minority. One attempted to define culture as ‘that complex which includes knowledge, belief, art ,morals, law, custom and other capabilities and habits acquired by man as a member of society’<sup>88</sup> while others argue that additional components such as language, literature ,philosophy, religion ,science and technology should be included in the list.<sup>89</sup> Shortly, culture for Rodolfo, is ‘the sum total of the material and spiritual activities and products of a given social group which distinguishes it from other similar groups.’<sup>90</sup>

As a result, one can hold a view that the more the list of culture expanded, the more obligation of the States became onerous. Paradoxically, it would have advantage for minorities as it gives them broad right of claim. To sum up, the proscription on the use of a minority language in public and private, or the destruction of the libraries, museums, schools ,historical monuments, places of worship and other cultural institutions of ethnic, religious or linguistic minorities will violate Article27.<sup>91</sup>In this case, it would amount State’s failure to fulfill its obligation of non interference. On the other hand, there are some minorities’ claim which requires State to take actions such as financial and technical support for minority cultural activities; the teaching in, the minority language in public schools; and the provision of State funding for the establishment and maintenance of minority schools.<sup>92</sup>It would be a violation of article 27 of ICCPR by inaction, if the State fails to perform the above duties. This is a distinct character of minority regime that minorities are in need of serious positive interference from the governments to facilitate the enjoyment of their right to culture apart from non interference and non discrimination. Further more, the duty of the government is not

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<sup>88</sup> MURRY TYLOR ,THE PROTECTION OF PRIMITIVE CULTURE ,1(1871)

<sup>89</sup> THORNBERRY, *supra* note 7, at 188.

<sup>90</sup> Rodolfo Stavenhagen, *Cultural rights: a social science perspective*, in CULTURAL RIGHTS AND WRONGS 1, 5(Halina Niec, ed.1998).

<sup>91</sup> WHEATLY, *supra* note 13, at 35.

<sup>92</sup> *Id.* at 42.

only limited to abstain from interference in to minority affairs but also protect such groups from interference of other group of people, usually majorities. Therefore, the government, beyond financial and other support, has to ensure that minorities are enjoying their rights effectively and free of interference from majorities.

When proceed to linguistic minority, article 27 has no precise answer for different questions such as the issue of official language that provides a chance to use minority language as media of instruction in schools, in court proceedings, in publicly controlled news media, in administration, etc. 'To use their own language 'as stated in article 27, can hardly determine the extent of State obligation to wards linguistic minorities. Different multi –lingual States ,in response to linguistic claims and to bring linguistic justice, have adopted various linguistic policies .One has rightly remarks this, ' every country that has a language problem tries to solve it at its way ,and 'there are no universal rules ,except perhaps that language rights must be respected if you wish to have domestic peace.'<sup>93</sup>

In interpreting article 27,Vukas observes broadly that linguistic rights of minorities includes the rights to use their own language in private and in public life ,in business relations ,before court of law and other State agencies ,in religious rites, in the media of public information ,at public gatherings and cultural events ,etc....as well as the rights of minorities to schools of all levels with instruction in the language of minorities'.<sup>94</sup>Yet it has been indicated that there is no evidence whether this is the only and effective interpretation of article 27 in light of contemporary development in minority regimes.<sup>95</sup>However, at least one point needs to be clear that article 27 of ICCPR is not only about non discrimination but guarantee positive rights which includes right to education in minority language,<sup>96</sup> and other rights that enhance and facilitate the preservation and promotion of linguistic identities. This ultimately caters the desire of minority which is equality in fact and in law among minority and majority.

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<sup>93</sup> S.T.Scott, *Language Rights and Language Policy in Canada*, 4 MANITOBA LAW JOURNAL, 243,247-248(1971).

<sup>94</sup> B. Vukas, *General International Law and the Protection of Minorities*,8 RDH,41,47-48(1975).

<sup>95</sup> THORNBERRY, *supra* note 7, at 200.

<sup>96</sup> *Id.* at 199.

### **2.4.2. Political Participation and Representation Rights**

The right to self-determination is the fundamental rights of people in international law. In the contemporary world, one of the mechanisms where the right of peoples to Self-Determination realized is through representative government. General Assembly Resolution 2625(XXV) 'Declaration on Principles of International Law Concerning Friendly Relations, stipulated that a State conducting it self in compliance with the principle of equal rights and self-determination of peoples as one 'thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color'.<sup>97</sup> The argument is that members of the government, including its elected members, should reflect the national, ethnic, cultural, religious and linguistic diversity of the population.<sup>98</sup> Accordingly, whether the government genuinely reflects the diversified characteristics of the society is the essential point. Yet many people observe the electoral and legislative process of the western democracies as 'unrepresentative', in the sense that they failed to reflect the diversity of the population including national/ethnic minorities.<sup>99</sup> I shall say that a government that doesn't accommodate the plurality nature of the society can hardly interpret the will of the people.

In the same vein, minorities may participate in the process of government formation availing article 25 of ICCPR through democratic election. Nevertheless, this by it self could not necessarily be a guarantee for minorities' effective representation in the government as it highly depends on the states electoral system. And the ICCPR expressed no preference for a proportional or a majority system of voting.<sup>100</sup> Thus it follows that 'state is unable to take into account the interests and preferences of members of national, ethnic, cultural, religious or linguistic minorities unless persons from those groups are represented in relevant decision-making processes, including the national parliament'.<sup>101</sup> As a result, the burden vests on shoulder of the government to make accessible the political environment for those groups. The UN Human Rights Committee avowed this in its General Comment on Article 27 of the

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<sup>97</sup> United Nations Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance With the Charter of the United Nations, United Nations GA Res. 2625(XXV), adopted 24 October 1970.

<sup>98</sup> WHEATLY, *supra* note 13, at 143.

<sup>99</sup> KYMILIKA, *supra* note 2, at 132.

<sup>100</sup> Gregory Fox, *The Right to Political Participation in International Law*, 17 YALE JOURNAL OF INTERNATIONAL LAW, 539, 556(1992).

<sup>101</sup> WHEATLY, *supra* note 13, at 108.

ICCPR that the rights of persons belonging to minorities‘ may require ... measures to ensure the effective participation of members of minority communities in decisions which affect them’.<sup>102</sup> Later on the Committee, in its opinions concerning Article 27, hardens the formulation that ‘measures must be taken to ensure the effective participation of members of minority communities in decisions which affect them.’<sup>103</sup>

Unless States are committed to undertake an action for the effective political participation of minorities through special representation and other political mechanisms, such group of people will remain disadvantaged and marginalized in the political process. It is usually perceived that group representation rights conceived as a response to some systematic discrimination and barriers in the political process which makes it impossible for the group’s preferences and interests to be effectively represented.<sup>104</sup> Special minority representation would enable representatives from minority groups to bring issues of minorities to the Political environment, to rectify factual errors and to ensure that their interests and preferences are, at least, recognized.<sup>105</sup>

States, it can be asserted that, shall give effect to the provisions of article 27 of ICCPR by some institutional mechanisms such as group representation for minorities in the legislative organ and by involving them in other decision-making process. The other wise would brought little chance for minorities to enjoy their culture, to use their language and to profess and practice their religion.

Through different measures including modifying the electoral system to comply with minority situation, states can provide opportunities for minority representation. By rectifying some representation barriers such as laws, which required political parties to achieve a minimum

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<sup>102</sup> See General Comment 23, *supra* note 87, at 158 para.7.

<sup>103</sup> United Nations Human Rights Committee, on case, *Lañs man et al. v. Finland* (No.1), Communication No.511/1992, UN Doc. CCPR/C/52/D/511/1992, 8 November 1994, para.9.5.

<sup>104</sup> KYMILKA, *supra* note 2, at 141.

<sup>105</sup> Jane Mansbridge, *What Does a Representative Do? Communicative Settings of Distrust, Uncrystallized Interests, and Historically Denigrated Status*, in *CITIZENSHIP IN DIVERSE SOCIETIES*, 99, 105 (Will Kymlicka & Wayne Norman, eds. 2000).

percentage of the popular vote in order to have parliamentary representation<sup>106</sup> or laws that require political parties to have branches in all parts of the State,<sup>107</sup> and through reserving seats for representatives from minorities in the national parliament, minorities can be effectively represented.

In general, States have many options at their disposal to resolve the problems of under-representation of minorities in the legislative organ of the States and to enhance the political participation of these group of people .Shortly ,minorities effective involvement in the decision-making process, as Young put succinctly, may depend on the political situation ,on the nature of the structural cleavages of the Polity ,possible trade-offs with other political values, and the institutional Context for representation.<sup>108</sup>

### **2.4.3. Non-Discrimination and Equality**

The principle of equality and non –discrimination can be regarded as the twin pillars up on which the whole edifice of the modern international human rights law is established.<sup>109</sup>The inclusion of non-discrimination and equality in the international human rights discourse is for the reason as usual, a reaction for historical discriminatory practices based on sex, race, religion, nationality and color etc .The right to equality and non- discrimination can be demonstrated as the manifestation of human dignity. One has indicated that ‘protecting minorities and engendering substantial equality is the only means of advancing into a moral, civil society that respects human dignity.’<sup>110</sup>These rights can be labeled as intrinsic element of most international human rights instruments for it isn’t uncommon to observe principle of equality and non-discrimination in most human rights documents.<sup>111</sup> That is why many

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<sup>106</sup> Opinion of the Advisory Committee on Framework Convention for the Protection of National Minorities, (Adopted by council of Europe, on 1 February 1995) (Hereinafter Opinion of the Committee) on Germany, ACFC/INF/OPI (2002)008, Para. .63.

<sup>107</sup> Opinion of the Committee on Russian Federation, ACFC/INF/OPI (2003)005, para.105.

<sup>108</sup> IRIS MARION YOUNG, INCLUSION AND DEMOCRACY, 149 (2000).

<sup>109</sup> REHMAN, *supra* note 31, at 104.

<sup>110</sup> Charles R. Lawrence III, *Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV 819, 836 (1995).

<sup>111</sup> Principles of Equality and Non-Discrimination are incorporated in many international and regional human rights documents such as; Bill of Rights((UDHR art 2,7,25)(ICCPR art.2,26)(ICESCR art.2), the International Convention on the Elimination of All Forms of Racial Discrimination(CERD),Convention on the Rights of Child( CRC art 2,7), the United Nations General assembly Declaration on the Rights of Persons Belonging to National or Ethnic ,Religious and Linguistic Minorities(art 2,3,4), The International Labour Organization Convention (No. 111) Concerning Discrimination in respect of Employment and

contend that the prohibition of discrimination now bears the values and status of customary international law, which per se takes of the norm of *jus cogens*.<sup>112</sup> Indeed, minorities as individuals and groups are among those who disproportionately experience discrimination in any society<sup>113</sup> for they lack the necessary weapon to ensure their equality.

The ICCPR<sup>114</sup> and the ICESCR<sup>115</sup> have incorporated provisions of equality and non-discrimination as basic principle of the Covenants though it is in the individual context not in a group form .Nevertheless, the documents are short of clear provisions relating to affirmative action in which one can assume that in the absence of it, the realization of *de facto* equality seems an intricate issue. Rehman has remarked that the absence of any explicit provision in the covenants relating to policies of affirmative action tends to re-enforce the anti-collective stance.<sup>116</sup> But as one provides the existence of group/collective rights apart from individual rights is a paramount step for over all genuine equality between minority and majority, since it grants for group members the appropriate legal protection on both individual and collective level.<sup>117</sup>

To ensure equality between minority and majority in meaningful and sensible manner, it would be mistaken if policy of affirmative action, even if it is temporary measure, is ignored. Capotorti has rightly reflected that, ‘the prevention of discrimination and implementation of special measures to protect minorities are merely two aspects of the same problems that of fully ensuring equal right to all persons.’<sup>118</sup> It is for this reason that the Race Convention has come up with strong recognition of group rights in terms of affirmative action as well as *locus*

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Occupation, The UNESCO Convention Against Discrimination in Education, The European Convention on the protection of Human Rights and Fundamental Freedoms(European Convention,art.14,),African Charter on Human and Peoples’ Rights (African Charter ,art 2,28), American Convention on Human Rights (‘Pact of San Jose’, art 1,24).

<sup>112</sup> IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW , 513-315(4<sup>th</sup> ed.1990), See also Jabareen, *supra* note 1, at 650

<sup>113</sup> See Capotorti ,*supra* note 29, at 7

<sup>114</sup> Article 2(1), 25, 26 are some of the ICCPR provisions that are dedicate to the principle of equality and non discrimination.

<sup>115</sup> See for example article 2(2) of ICESCR. .

<sup>116</sup> REHMAN, *supra* note 31, at 114.

<sup>117</sup> Jabareen, *supra* note 1, at 655.

<sup>118</sup> See Capotortii, *supra* note 29, at 27.

*standi*<sup>119</sup> as provided under article 1(4) and article 2(2) of the Convention. It can be asserted, therefore, that such provisions of the Convention strengthen the view that the principle of equality and non-discrimination would have full-fledged application if it is substantiated with special temporary measures of affirmative action. In the scrutiny of article 1(4) and 2(2) of the Race Convention, McKean has put that a 'definition of discrimination which incorporates the notion of special temporary measures, not an exception to the principle but as a corollary to it,....., the method by which the twin concepts of discrimination and minority protection can be fused in to the principle of equality.'<sup>120</sup>

#### **2.4.4. Right to Self-Government**

In the previous discussions, a lot has been said as to the right to culture, language, and the right to equality and non discrimination of minority groups. Yet it would be inadequate and inefficient minority protection system if it is short of right to self-government /autonomy.

Concerning the interchangeable use of terms of self-government and autonomy, since autonomy/self government has not yet established as a principle in international law, the works of jurists and academicians are indispensable in understanding of these concepts. Accordingly, in the context of this paper, the terms of autonomy and self government may be used interchangeably for autonomy is generally taken to mean 'self-government' or 'self rule'.<sup>121</sup> It has also been indicated that autonomy and self-governments are identified as synonyms.<sup>122</sup> The argument is that autonomy or self government for minorities in general, can be 'used to take control over their own affairs effectively with out interference from the center and to preserve their cultural identity, their custom and tradition and their institution on the way they like.'<sup>123</sup> Hence, the autonomy granted to minorities is restricted to internal self determination which contributes to the protection of minority identity and cultural values.

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<sup>119</sup> REHMAN, *supra* note 31, at 114.

<sup>120</sup> MCKEAN, *supra* note 47, at 159.

<sup>121</sup> An avalanche number of scholars affirm this view. See, for example, WELHENGAMA, *supra* note 26, at 100, See REHMAN *supra* note 31, at 166.

<sup>122</sup> Hannikainen. K, *Self-Determination and Autonomy in International Law*, in AUTONOMY; APPLICATION AND IMPLICATION, 79, 79(M. Suski, ed. 1998).

<sup>123</sup> WELHENGAMA, *supra* note 26, at 100.

Reference to minorities in relation to right to self-government was made neither in United Nations Charter nor in UDHR. Article 27 of ICCPR, which specifically dedicated to minorities, has not also mentioned the right to self government of minority groups. Here is the critical question that where is the legal foundation of the right to self –government of minority groups in international law. The most overwhelming and strong argument is that the right to self-determination of people as enshrined in United Nations Charter shall be extended to encompass minorities to enjoy autonomy through internal self determination. Kymilika has suggested that the absence of definition for the term ‘People’ in the Charter may entitle minorities the right to self-determination since they can argue that they too are people.<sup>124</sup>In the same vein , Welhengama contends that even though the term ‘peoples’ does not intended directly for minorities ,since the term ‘people’ in the Charter refers to the people of one territorial unit ,minorities are also beneficiaries of the right for they are an important unit of the people.<sup>125</sup>

The other argument in favor of right to autonomy of minorities is based on common article 1 of both Covenants (ICCPR & ICESCR).One argue that the Right of All Peoples to Self – Determination has bearing on the position of minorities in spite of its direct connotation to minorities.<sup>126</sup>Furthermore, there is an explicit recognition for measure of autonomy in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities ,though the right to autonomy per se failed to be incorporated in the Declaration directly.<sup>127</sup>Yet the problem is in relation to the status of the declaration for it is not binding instrument. In general, it is important to note that the right to self-government of minorities will not extend to the full-fledged right of Self-Determination of peoples that includes independence /secession.

Different States deploy different models of autonomy since the international law has set no standards to be followed by states in recognizing the rights to self-government of minority

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<sup>124</sup> KYMILIKA, *supra* note 2, at 27.

<sup>125</sup> WELHENGAMA ,*supra* note 26, at 89.

<sup>126</sup> See Generally REHMAN, *supra* note 31,171-173.

<sup>127</sup> The argument in this regard is that article 2, 4, 5, 6&7 of the declaration reflects the spirit of autonomy since they impose positive obligation on States to protect economic, social and political rights of minorities. *Id.*at 176.

groups. States may adopt territorial or cultural/personal autonomy to accommodate the interest of minorities where the previous model applied by delineating part of a territory of the State to minorities irrespective of differences amongst the population, while the latter model focuses at a particular ethnic ,religious or linguistic groups irrespective of their place of birth or origin.<sup>128</sup>To put it succinctly, cultural/personal autonomy does not necessarily require members of the group to live in contiguous territory and it is predominantly related with the enjoyment cultural and linguistic rights of the group. Cultural or personal autonomy may entitle limited rights for minorities, including hunting, language, education, religion and other rights that do not directly affect the territory or state's authority regardless of their place of residence.<sup>129</sup>This form of autonomy, one has suggested, might be a practical solution in the promotion and protection of minority rights whose members are dispersed through out the state because territorial autonomy involving constitutional diffusion or other ordinary legislation is impracticable in such cases.<sup>130</sup>

The operation of Territorial autonomy, on the other hand, may be limited only to a designated province or a region in the state which will have a direct effect on every individual and group of people living with that territory.<sup>131</sup>Territorial autonomy, in contrast to cultural autonomy, might have considerable advantage for less dispersed minorities since they can establish their own autonomous regional government and enable members of the group within the territory to preserve, protect and promote cultural and traditional values of ethnic groups.<sup>132</sup>

In another scenario ,there are also other mechanisms of recognizing the claims of minorities for self-government such as autonomy with 'shared' or 'divided sovereignty' and Self – government with in federal structure. In the previous model, there is a practice of devolving of power between central and territorial governments, yet the sovereign power vests on the nation-state (central government) that the autonomous authority subjects to the sovereign authority.<sup>133</sup>Paradoxically, the federal set up may be based up on equal constitutional

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<sup>128</sup> WELHENGAMA, *supra* note 26, at 102.

<sup>129</sup> *Id.* at 103.

<sup>130</sup> Y. Dinstein, (1981), *Autonomy*, in MODELS OF AUTONOMY , 291, 292 (Y .Dinstein, ed. 1981).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 108.

recognition of the central government and constitute units where minorities may be granted strong autonomy. The relationship between minority rights and federalism will be discussed in detail in the next section.

### **1.5. Minorities under Federal State Structure**

Federalism originates from a Latin word *foedus*, meaning a covenant<sup>134</sup>. It is one of the political mechanisms that endeavor to answer the claims of minority groups for autonomy. Basically, federalism is a form of State structure where power is divided between the central government and constituent units (regions, cantons, provinces or states). Recently many states with multi-national diversity prefer the federal state structure since it is a form of government which enables to accommodate the diversified interest of different ethnic groups and serve as a means of resolving inter-ethnic conflicts<sup>135</sup>. In many states, the devolution of power between the central and regional governments is delineated in the constitution (i.e., Ethiopia, United States of America, South Africa). What is implied is that the constitute units have constitutional recognition in the sense that the source of the autonomy is not the will of the central government. Paradoxically, in the absence of federal arrangement, regional governments may be granted autonomy by the ordinary act of parliament where it would be subjected to expand, amend, override or revoke by simple majority vote (for example, the United Kingdom, Italy, France).<sup>136</sup>

Federalism as a process of governance can be considered an important technique for the protection of ethnic, cultural, linguistic, and /or religious minority groups at national (central governments) and regional (sub unit) level.<sup>137</sup> Where the boundary of the federal arrangement is drawn based on ethnic identity, it will accord extensive self-government for ethnic/national minorities and secure an ability to make decisions in certain areas without being outvoted by the larger society.<sup>138</sup> This, in turn, would facilitate the development of their culture, enable to

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<sup>134</sup> Bertus De Villiers, *Federalism in South Africa: Implications for Individual and Minority Protection*, 9, S.AFR.J.ON HUM.RTS, 373-387, 375 (1993).

<sup>135</sup> James L. Buckley, *Federalism and Separatism: Responses to Cultural and Ethnic Diversity*, 21 CUMB.L.REV 565, 566-569 (1990-1991).

<sup>136</sup> Bertus De Villiers, *Comparative Study of Federalism ; Opportunities and Limitations as Applied to the Protection of Cultural Groups*, 2, J.S .AFR.L.209, 210 (2004).

<sup>137</sup> *Id.*

<sup>138</sup> KYMILIKA, *supra* note 2, at 28.

speaking freely and promoting their language, and providing an opportunity to preserve their identity. Minority rights may be enforced well through federalism since national/ethnic minorities may constitute local or regional majorities and would be granted certain degrees of legislative, executive, judicial and financial autonomy.<sup>139</sup> Kymilika concludes that federalism can only serve as a means of autonomy or self-government if the structure has been arranged in such a way that minorities in national level form majorities in the region or sub units.<sup>140</sup>

In contrast, if the federal arrangement ignores the fate of internal minorities found within those established minority regions or minorities within minorities, it would only be attractive for the types of minorities who form their own regions,<sup>141</sup> In other words, internal minorities or minorities within minorities may be at a disadvantaged position if minorities (i.e., majority at regional level) use such power to oppress or discriminate against their own minorities.<sup>142</sup> It follows that the arrangement of federal structure by itself would not be an end for effective and adequate protection of minorities. Unless the federal arrangement is designed to give effect for the interests and rights of internal minorities, federalism will be worth less for it becomes a weapon for one minority to oppress another minority.

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<sup>139</sup> WELHENGAMA, *supra* note 26, at 114.

<sup>140</sup> KYMIKA, *supra* note 2, at 29.

<sup>141</sup> 'Internal minorities' or 'minorities within minorities', in federal state structure, as Allan Patten put it, can include (1) minorities at local as well as national level, (2) those groups of people who constitute majorities in national level but form minorities at regional level, or (3) those minority groups that constitute majorities in another region but are minorities in one specific region. See Alan Paten, *The Rights of Internal Linguistic Minorities* in MINORITY WITHIN MINORITY, EQUALITY RIGHTS AND DIVERSITY; *supra* note 17, at 135, 136-137.

<sup>142</sup> Moore, *supra* note 17, at 272.

## CHAPTER THREE

# PROTECTION OF MINORITIES UNDER THE F.D.R.E AND TIGRAY CONSTITUTIONS

### *3.1 Minorities under the FDRE Constitution*

#### *3.1.1. Introduction*

The modern State of Ethiopia is a home for multi-ethnic and multi-lingual society .It is believed that more than eighty ethnic groups are living in Ethiopia. Yet the history of the previous regimes was oppressive and branded in its ignorant and discriminatory approach towards the claims of ethnic equality. The notorious policy of building ‘nation-state’ with evil execution mechanism of realizing one people having one language, one religion and one culture resulted in crisis . The failure of successive regimes to recognize the poly-ethnic nature of the country and unwillingness to accommodate different ethnic groups in the political process intensified ethnic consciousness and rebellion.<sup>1</sup>Some labeled the previous century as ‘years of unsuccessful nation building in the history of Ethiopia.’<sup>2</sup>It is after those processes, the Ethiopia Peoples Revolutionary Democratic Front (EPRDF), which is a coalition of different political parties established with ethnic line, has come to power in 1991. EPRDF formed Transitional Government of Ethiopia based on the Transitional Period Charter.

It was this Charter that has explicitly recognized the rights of nation and nationalities for the first time.<sup>3</sup>The Charter was enthusiastic for the claims of nation, nationalities and peoples of Ethiopia for it introduce the right to self-determination including the right to use and develop their language, to promote their culture and preserve their history and identity.<sup>4</sup>In 1995, the Transitional Period Charter gave way to the new Constitution of Federal Democratic Republic

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<sup>1</sup>Brietzke Paul, *Ethiopia's 'Leap in the Dark': Federalism and Self-Determination in the new Constitution*, 39 JOURNAL OF AFRICAN LAW, 20, (1995).

<sup>2</sup>Abera Dagafa, *The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia*, 1 SERIOUS ON ETHIOPIAN CONSTITUTIONAL LAW, 1, 90(2005).

<sup>3</sup>The Transitional Period Charter of Ethiopia, *Negarit Gazeta*, 50th Year, 1991, No.1.

<sup>4</sup> Article 2(a) & (b) of the Transitional Period Charter.

of Ethiopia (here in after FDRE Constitution) though the making process of the new Constitution has generated criticism.<sup>5</sup> Generally, the new Constitution proclaimed the questions of nation and nationalities as the founding principle of the document and granted them essential powers including right to Self-Determination.<sup>6</sup> The Constitution has also declared federalism as the State structures of the country thereby some Ethnic groups have established their own autonomous regions.<sup>7</sup> Under article 8 of the Constitution, it has stated that ‘All sovereign power resides in the Nation, Nationalities and Peoples of Ethiopia’.

### **3.1.2. Definition of Minorities under FDRE Constitution**

The Constitution seems unclear concerning the definition of minorities and their status since it creates ambiguity with the terms of ‘nation, nationalities and peoples.’ The term minority nationalities is only incorporated under article 54(3) of FDRE Constitution with out definition and for limited purpose of special representation in House of People’s Representative (HPR)<sup>8</sup>. For the purpose of this provision, proclamation No.111/1995 has defined ‘Minority Nationality’ as ‘community determined, by the House of People’s Representatives or its successor, to be of a comparatively smaller size of population than that of other nations/nationalities.’<sup>9</sup> Accordingly, some suggested that, for the reason of special representation in HPR, ‘minority nationalities’ are ethnic groups that are not numerically sufficient to have their own representative in the house; below one hundred thousand.<sup>10</sup>

On the other hand, ‘nation, nationality or people’ in the syntax of FDRE Constitution is

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<sup>5</sup> See Abera, *supra* note 2, at 92; a number of criticism focuses on the making process contending that it was under control of the ruling party (EPRDF) and the involvement of opposition political parties were minimal. It is the view of many scholars too that, effective and full participation of the nation & nationalities in the drafting process of the constitution was debatable.

<sup>6</sup> Art 39 of FDRE constitution has recognized the right to Self –Determination up to session which is the most controversial provisions among different scholars and the opposition political parties.

<sup>7</sup> Art.1&47 of FDRE Constitution.

<sup>8</sup> House of Peoples Representative (Hereinafter HPR) is the federal legislative organ of Federal Democratic Republic of Ethiopia where its members are elected directly by the people based on free and faire election (article 54 of FDRE Constitution).Hence special representation of minorities (54(3)) is an exception to the election system.

<sup>9</sup> Art. 2(5) of Proclamation No.111/1995,A proclamation to Make the Electoral Law of Ethiopia Conform to the Constitution of the Federal Democratic Republic of Ethiopia ,*Negarit Gazeta*,54<sup>th</sup> year,No.9,23<sup>rd</sup> February 1995

<sup>10</sup> See Abera, *supra* note 2, at 102. This conclusion has been reached based on the reading of article 15(2) of proc.No.111/1995 which says that each constituency shall be made up of one hundred thousand (100,000) inhabitants. Hence an ethnic group whose members are below one hundred thousand can not have one constituency, thereby would be entitled for special representation in HPR.

*a group of people who have or share 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.*<sup>11</sup>

Based on this, one may surmise that, FDRE Constitution has made distinction between ‘minority nationalities’ (art.54 (3) & proc.No.111/1995) on one hand, ‘nation, nationality and peoples’ (39(5)), on the other hand both in terms of definition and, scope and content of the rights.

Yet, it can be argued that, this distinction is enigma. Because, since the definition of nation, nationality or people have set no minimum requirement of numerical size of the group, any ethnic group can exercise the rights granted for nation, nationality or people if it full fill the remaining elements regardless of its numerical size.<sup>12</sup> More over, such distinction would be at odd with principles of international minority regime and the real objective of minority protection since the rights of minorities; based on this distinction, seems to limit only on special representation rights which precludes from cultural, linguistic and self-government rights. But this is against the basic notion of minority rights and article 27 of ICCPR. And article 13(2) of ICCPR has made clear that part of bill of right of FDRE Constitution<sup>13</sup> shall be interpreted in a manner conforming to the international covenants. Hence, even though the term minority nationalities generate controversy, the definition of minority nationality may serve only for special representation of some minorities in HPR.

Thus, the definition of ‘nation, nationality or people’ is more important in clarifying the issue of minorities in Ethiopia. As one can observe from the definition, the elements in FDRE Constitution have some similarity with Capotorti’s definition of minority except the previous .excludes essential elements of ‘non-dominant position’ and ‘numerically inferior to the rest of the population’.<sup>14</sup>

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<sup>11</sup> Article 39(5) of FDRE Constitution.

<sup>12</sup> See Aberra, *supra* note 2, at 102

<sup>13</sup> Chapter three of FDRE Constitution (from article 13-44) is commonly referred as bill of rights.

<sup>14</sup> See Aberra, *supra* note 2, at 104

In light to international law and for the purpose of article 27 of ICCPR, where no group constitutes a numerical majority of the population, all ethnic, religious or linguistic groups within the State, including the largest, constitutes minority.<sup>15</sup> It follows that all ethnic groups in Ethiopia constitutes minority for the reason that no ethnic group is more than 50% of the population of the country.<sup>16</sup> What is important ,finally, is that, in the absence of any clear standard in the constitution that enable to make distinction between the terms ‘nation’, ‘nationality’ ,’people’ and ‘ minority’, any attempt to exclude some groups from category of ‘nation ,nationality or people’ because of their numerical size ,would, inevitably, invites controversy. The concept of minority, therefore, may be applied to Ethiopia as a whole for the fact that ‘Ethiopia is a multinational state with out clear majority population.’<sup>17</sup>

### **3.1.3 Rights of Minorities under FDRE Constitution**

As revealed under article 39(5) of the Constitution, minority regime of FDRE Constitution is based on territoriality principle in which the group, at the first place, must reside in territorially confined area to acquire recognition and protection. Thus, one may hold a view that, the federal minority protection system exclude disperse minorities that are not confined in a given territory. Concerning rights of minorities, the Constitution has delineated several rights for the group such as right to self determination up to secession, representation rights, cultural and linguistic rights. The rights to self-determination of nation, nationality and peoples, is unconditional and can not be suspended even in time of emergency<sup>18</sup>. In the next discussion, I will devote some time on these specific rights.

In relation to representation rights, the FDRE Constitution under Art 39(3) has provided that each nation, nationality and peoples have a right to equitable representation in regional and federal governments. The literal understanding of the provision seems to extend this representation rights to the entire governmental machinery. By virtue of this Constitutional provision, minorities at regional level may be represented in the Woreda, Zone or regional

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<sup>15</sup> STEVEN WHEATLY, DEMOCRACY, MINORITIES AND INTERNATIONAL LAW, 19(2005).

<sup>16</sup> *Id* at 105, As Abera reflected this position seems less sound because its focus only on numerical size of the group by disregarding other essential elements such as dominance (i.e. economical and/or political) which are indispensable in determining the status of the group.

<sup>17</sup> See Abera, *supra* note 2, at 105.

<sup>18</sup> Article 93 of FDRE Constitution.

State Council. Representation at federal level may take place at House People's Representative and House of Federation.

The House of Federation is composed of representative of nation, nationality and people of Ethiopia.<sup>19</sup>In accordance with article 61(2), each nation, nationality and people of Ethiopia has at least one representative in the house and with additional one million, another one representative will exist. Yet argument goes on that since the House of Federation lacks legislative power, it would be hard to reflect the interests of minorities in the policy making process. The Constitution has also recognized the representation of minorities in the Lower House (House of People's Representative) by reserving 20 seats for minorities from the total 550 seats.<sup>20</sup>

In terms of language and cultural rights, the constitution has proclaimed the equality of all languages in the country and declared Amharic as a working language of the federal government.<sup>21</sup> More importantly, nation, nationality and people of Ethiopia are entitled with 'the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.'<sup>22</sup> This provision of the Constitution is in line with article 27 of ICCPR that clearly granted cultural and linguistic rights of minorities.

The right to Self-Determination is another crucial right that the Constitution has explicitly granted for minorities. It is true that, the claims of minorities can be satisfied by Constitutional power devolution between the central and regional governments in the form of federal arrangement .It is for this reason that the FDRE Constitution has introduced federal set up based on ethnic identity.<sup>23</sup>Therefore, nation, nationality and people in Ethiopia have the right to establish their own region or their own country to the extreme case based on the right of Self-Determination up to session.

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<sup>19</sup> Art. 61 of FDRE Constitution.

<sup>20</sup> Art.54(2) of FDRE Constitution.

<sup>21</sup> Art.5 of FDRE Constitution.

<sup>22</sup> Art. 39(2) of FDRE Constitution.

<sup>23</sup> Art 47 of FDRE Constitution has provided clearly that the state demarcation shall be drawn based on settlement pattern, language, identity and consent of the people. Nevertheless the practice evidenced that the state demarcation was primarily based on language pattern though this has little application for southern nation, nationality and people's regional state.

In relation to Self-Government, every nation, nationality and peoples has the right to establish institutions of government in the territory that it inhabits. Accordingly, an ethnic group who successfully establish its own regional state will have legislative, executive and judicial organ at the regional level .In the real sense, however, the right to statehood is not given for all ethnic groups even if they live in contiguous territory and fulfills the remaining requirements of ‘ nation, nationality and People’<sup>24</sup>.Even though it is believed that having territorial autonomy would put minorities in better position to develop their culture, to use and promote their language and to preserve their identity, the Ethiopian federalism is criticized for it has given major economic and financial powers to the central government.<sup>25</sup>What is implied that in the absence of strong financial power, it would be problematic for minorities to establish cultural museum, language centers, and to undertake other essential measures that helps to safeguard the interests of minorities effectively.

What is left is the right to secession of minorities, which is the most controversial right, encompassed under article 39(1) of the constitution. The right to secession is part of the broad right to Self-Determination of nation, nationalities and peoples of Ethiopia which is unconditional and is not subjected to suspension in the time of emergency.<sup>26</sup>This right, however, has invited a bundle of criticism for one thing, it might result in balkanization of the country and for the other thing, it will defeat the objective of Ethiopian federal arrangement of resolving conflicts and prevailing peace.<sup>27</sup>Furthermore, the incorporation of this secession clause seems incompatible with the other objective of the FDRE constitution; ‘building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing economic and social development’.<sup>28</sup>This right to secession of nation, nationality and peoples is subjected to complex procedures in order to have application on practice<sup>29</sup>.Henceforth, some holds the

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<sup>24</sup> In accordance with article 47 of FDRE constitution ,nine regional states have been established .Those are the state of Tigray, Afar, Amhara, Oromia,Somalia,Benshangu/Gumuz,the State of Southern Nation, Nationality and Peoples, the State of Gambella People and the State of Harari People.

<sup>25</sup> See Abera, *supra* note 2, at 120.

<sup>26</sup> Art. 93(4(c)) of FDRE Constitution.

<sup>27</sup> See Abera, *supra* note 2, 142-147.

<sup>28</sup> *Id.*

<sup>29</sup> It should be clear that for the right to secession to have effect, the nation, nationality and people which demand secession should have at least its own legislative council in accordance with article e 39(4) of FDRE Constitution.

view that this right to secession is hard to exercise both for political reason and the complex nature of the procedure.<sup>30</sup>

### **3.1.4. Some Remarks about Internal National Minorities**

Finally, it would be indispensable to make discussion about the issue of ‘internal national minorities’ in light with FDRE Constitution. It should be noted that the concept of internal minority is, mainly, related with the introduction of federalism in Ethiopia which enabled some ethnic groups to establish their own regions. As a result, there are different ethnic groups in the country who constitutes majority in one region but minorities in another region because of different reasons. Of the reasons, some ethnic groups have separated from their original descent because of historical war of expansion<sup>31</sup> while others migrated from drought affected areas to better areas as a result of 1980’s resettlement and villagization program of the government.<sup>32</sup> It is those types of minorities, I prefer to call, basically, ‘internal national minorities’.

I adopt this term from Alan Patten’s definition for internal linguistic minority<sup>33</sup> and FDRE approach of minority protection. ‘Internal national minorities’ for this paper, primarily, encompass different elements. (1) It includes both national and linguistic groups as one for the reason that cultural and linguistic characteristics are the manifestation of nation & nationality under FDRE Constitution. Thus, the FDRE Constitution towards minority rights develop bizarre approach in the sense that linguistic and ethnic/national minority as ‘national minority.’(2) That group must constitute majorities in another region of the country but minorities in the region they reside. (3) That group must live in the region which is established by another minority group in national level but majorities for that region. That is to mean that the group in question is minority with in another minority group. Thus I prefer

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<sup>30</sup> Aalen, Lovis, *Ethnic Federalism in Dominant Party State: The Ethiopian Experience 1991-2000*, Chr. Michelson Institute of Development and Human rights, Bergen, 2001 at 63.

<sup>31</sup> Oromo ethnic group in Wollo and in Raya are minorities in Amhara and Tigray Regional States respectively but majorities in Oromia Regional State. There exist a consensus among historians that these people came to the present areas through fifteenth and sixteenth century of war of expansion.

<sup>32</sup> In this category, the Amahara’s and the Oromo’s resided in Gambella and Benshangulg Gumuz regional states are worth mentioning.

<sup>33</sup> Alan Patten has used this term in the context of linguistic minorities. See in general Alan Paten, *The Rights of Internal Linguistic Minorities* in *MINORITY WITH IN MINORITY, EQUALITY RIGHTS AND DIVERSITY*, 135,136-37(Avigail Eisenberg & Jeff Spinner, eds.2005).

this term for my issue in the sense that Oromo is a dominant group in Oromia region but constitutes minority in Tigray region.

Concerning these groups, even though it is true that the FDRE Constitution has granted a number of rights for every ethnic groups provided that the elements of ‘nation, nationality or people’ are fulfilled, the Constitution is not exhaustive. They can not, for instances, claim representation in the House of Federation<sup>34</sup> and the level of their claim to territorial autonomy may vary. In another case, the Constitution is nebulous concerning, whose power is to determine the claims for distinct identity.<sup>35</sup> But the House of Federation in its decision on Silte case has concludes that the regional States have to decide on the issue of identity of a group before they established the State administration based on Self-Government principle.<sup>36</sup>

Hence, it seems reasonable to depict that the interest and claims of such internal national minorities has been left to regional states. Consequently, it is not uncommon to see different accommodation system in different regional states. One may indicate that there are no uniform and comprehensive standards in the FDRE constitution that can serve as guiding principles for regional States in respect with those peoples. It follows that under the current system, even though those groups may claim their constitutional rights against the regional governments, the effective protection of internal minorities will depend on good will of the regional administration.<sup>37</sup> Having this point, it would be appropriate to proceed to the discussion of minority protection in Tigray regional state.

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<sup>34</sup> Article 61(2) of FDRE Constitution has proclaimed that ‘Each Nation, Nationality and Peoples shall be represented in the House of Federation by at least one member. Each Nation or Nationality shall be represented by one additional representative for each one million of its population.’ Hence, the representation of internal national minorities in House of Federation is hardly impracticable.

<sup>35</sup> See Decision of the House of Federation on identity claims of Silte People,1, JOURNAL OF CONSTITUTIONAL DECISIONS, The House of the Federation of Federal Democratic Republic of Ethiopia 40,44(2000).

<sup>36</sup> *Id.*

<sup>37</sup> See Christopher Van Der Beken, *Federalism at the Regional Level ?Unity in Diversity in Ethiopia’s Multi-Ethnic Regions*, 3 ETHIOPIAN CONSTITUTIONAL LAW SERIES, 124, 150(2010). This argument would be more strong and feasible for regional states that has clear majority in the region. It is, for instance, in states of Tigray, Afar, Amhara, Oromia and, Somalia, the government of the regions are established by Tigray, Afar, Amhara, Oromo and Somali ethnic groups respectively. Hence, it can be said, for example, that the fate of Amharas, Oromo, and Agew in Tigray State: Oromo and Afar, in Amhara regional State is highly depended on each State government.

### ***3.2. Protection of Minorities in Tigray Regional State***

As indicated above, the Ethiopian ‘ethnic based federalism’ came up with nine regional states though Ethiopia is believed to be a home for more than 80 ethnic groups. Accordingly, the creation of Tigray National Regional State (hereinafter Tigray region) is the result of the new ethnic based federal set up as clearly provided under article 47 of the FDRE Constitution. This region shares boundary in the north with Eritrea, in the east with Afar region, in south-west with Amhara region, and in the west with Sudan.<sup>38</sup> The Tigray regional State, like other regional States, has its own legislative, executive and judicial organ. State Council exercised legislative power, executive power given to executive Council and regional courts are State judicial organ.<sup>39</sup>

Regarding ethnic composition and population, according to the result of 2007 population and housing census, the population of Tigray region is 4,313,456 from which 96.55% constitutes a Tigray ethnic group.<sup>40</sup> The region adopts the name of the Tigray ethnic group since it is a dominant group not only numerically but also politically. Yet there are other ethnic groups living in this region including Amhara, Oromo, Kunama, and Irob. Concerning religious composition of the region, Orthodox Christianity is the dominant with 95.5% of the total population followed by Muslim, Catholic and Protestant with 4%, 0.4% and 0.1% respectively.<sup>41</sup>

As far as territorial organization of the region, the State Constitution has provided three administrative divisions. Region, (the highest administrative organ), Woreda (the second administrative organ) and Kebele (which is the lowest administrative unit) are the administration division of the region.<sup>42</sup> However, based on the proclamation No.48/1994, Zone administrative division, which is below the regional administration and above woreda

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<sup>38</sup> Article 2 of Tigray Constitution.

<sup>39</sup> Article 46 of Tigray Constitution.

<sup>40</sup> Summary and Statistical Report of the 2007 Population and Housing Census (Hereinafter, report of the 2007 Population and Housing Census), Federal Democratic Republic of Ethiopia Population Census commission, Addis Ababa (2008).

<sup>41</sup> *Id.*

<sup>42</sup> Article 45 of Tigray Constitution.

administrative level, has been included to the above administrative division.<sup>43</sup> Thus, the region is structured with five normal zones and one special zone<sup>44</sup> and forty seven woredas.<sup>45</sup>

In the next parts, I will discuss protection of minorities in Tigray regional State including the existing practices. In the first part, I shall deal with issues of minority recognition and its procedures. Then I will proceed to deal with specific rights granted for minorities.

### **3.2.1 Recognition of Minorities**

Recognition of minority is the first step in minority regime since by recognition we certify the existence of the group. In our case, though Tigray ethnic group is the dominant in the region, there are also other ethnic groups among which Irob, Kunama, Oromo and Amhara are worth mentioning. The preamble seems enthusiastic to the existence of diversity using the term ‘we the people of Tigray regional state.’ And the sovereign power of the region is also vested on the people of Tigray.<sup>46</sup>

Nevertheless, the State Constitution has granted recognition and entitled group-specific rights only for three ethnic groups. The beneficiaries of this special group rights are Tigray ‘Nation’ and, Irob & Kunama ‘Nationalities.’<sup>47</sup> Like the FDRE Constitution, it avoids the word minority and instead preferred the terms ‘Nation, Nationality and Peoples’ as holder of group rights. According to the 2007 Ethiopian Population and Housing Census result, numerically Tigray ‘nation’ is the dominant with population of 4,165,749(96.55%), Irob and Kunama ‘nationalities’ have 30,515 (0.71%) and 2,976 (0.07%) respectively.<sup>48</sup> The

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<sup>43</sup>Proclamation No, 48/1994 of Negarit Gazeta of Tigray regional State was enacted by the State Council of the region in accordance with article 49(3(b)) of Tigray Constitution. This constitutional provision gives power to the state council to establish additional administrative divisions.

<sup>44</sup>It should be remind that this special zone is not a type of administrative units for minorities rather it is an administrative division which gives special administrative status for the capita city of the region (Mekelle special zone).Except Mekelle special zone, the remaining zonal administrations are not entitled to have their own legislative Councils. (Article 8 of proclamation No.48/1994 of Negarit Gazeta of Tigray Regional State).

<sup>45</sup> Proclamation, No.47/1994 of Negarit Gazeta of Tigray Regional State.

<sup>46</sup> Art.8 of Tigray Constitution.

<sup>47</sup> Art.39 of Tigray Constitution.

<sup>48</sup> See Report of the 2007 Population and Housing Census.

recognition of minority in this Constitution is based on the definition for ‘Nation, Nationality and Peoples’<sup>49</sup> which is a facsimile of the FDRE Constitution.

Therefore, any ethnic group would constitutes ‘nation, nationality and peoples’ if that group; (1) have a common culture or similar custom though not clear what these terms means,(2) speaks mutually intelligible language,(3) believes that they have common or related identity, (4) develops common psychological make-up and,(5) reside in identifiable predominantly contiguous territory. Hence, it can be presumed that Tigray, Irob and Kunama ethnic groups have fulfilled such elements.

An important point about this definition is that, like the FDRE Constitution, it is mute concerning numerical inferiority of the group. Therefore, any ethnic group, who reside in the region and fulfill the commutative elements, can make a legitimate claim for recognition and protection as a minority group regardless of numerical size of the group. That is why; it may be asserted that, the Constitution has recognized Kunama as minority group and entitled some special group rights irrespective of their numerical inferiority. Thus, the case of other ethnic groups including Oromo’s in Raya is part of this process that they have a right to claim for recognition and protection if they are in a position to meet the elements. Apart from this, there are some critical issues in the Constitution that quest for detail scrutiny.

The first issue that need to be tact is that why the Constitution preferred to call ‘nation’ for Tigray ethnic group while it affixes ‘nationality’ for Irob and Kunama . What is surprising is that the definition for nation, nationality and peoples is indifferent that gives no room for such contentious taxonomy. It is, thus, unknown whence this approach of the text comes. It seems that creating distinction between ‘Nation’ and ‘Nationality’ is self-contradicting as no indication concerning this classification, could be deduced from the definition. What is more is that it would also be at odd with the FDRE Constitution since the later has made no distinction among nation, nationalities and peoples of Ethiopia; both in its definition and in enjoyments of group rights. At least rhetorically, it declared that all nation, nationalities and peoples in Ethiopia are entitled to the right of self-determination including secession and other

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<sup>49</sup> Art.39 (6) of Tigray Constitution.

group rights.<sup>50</sup> So that, it can be said that, the federal Constitution doesn't adopt such differential treatment by making distinction between nation and nationalities nor does it allow to do so. And any law which contravenes with federal Constitution is of no effect.<sup>51</sup>

The other intriguing point in relation to issues of recognition is the interpretation of the requirements of the definition on practice. As it is known, minority regime in both FDRE and Tigray Constitutions is territorial based that, the group must live in territorially confined areas in order to get recognition as nation, nationality and peoples. However, the Kunama 'nationality' is among minority groups recognize by the State Constitution notwithstanding they reside in different areas. An interview conducted with some organs reflected that part of Kunama ethnic group inhabit in remote areas around Tekeze river Coast while others made their residence in adjacent with Eritrean border.<sup>52</sup> Based on the present administrative division, some of the members of the group are parts of *La'elay Adiabo woreda* while the rest are in *Humera Woreda* where the distance between these *woredas* is substantial.<sup>53</sup> This reality speaks that the state practice is incompatible with the constitutional philosophy of territorial principle and in its place non-territorial minority accommodation is deployed in the region.

But, on the other hand, there exist some argument that except territorial autonomy, minorities claim for cultural, linguistic and representation rights may be granted notwithstanding they reside in intersperse areas.<sup>54</sup> Whether this contention has got ground in Tigray Constitutional practice is not clear. But from the practice, one may assert that, even if this enthusiastic approach is indispensable for protection and preservation of their identity, other disperses minorities in the region should also be protected if they show an interest of recognition. It should be clear, however, that if the State require the fulfillment of Territoriality requirement for the other group, it would amount discrimination.

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<sup>50</sup> Art 39 of FDRE Constitution.

<sup>51</sup> Art 9 of FDRE Constitution.

<sup>52</sup> Interview with Ato Girmay Shadi, representative of Kunama minority in House of Peoples Representative (HPR), Addis Ababa (October 4, 2002 E.C).

<sup>53</sup> *Id.*

<sup>54</sup> Van Der Beken, *supra* note 37, 145-151

### 3.2.2 Right to Self-Determination

As far as right to self determination is concerned, different regions in Ethiopia adopt different approaches to accommodate the claims of minorities found in their territories. In Tigray Constitution, this right to self determination including secession is granted only for the ‘Nation’ of Tigray and, ‘Nationalities’ of Irob and Kunama.<sup>55</sup> However, a close scrutiny over this provision reveals some contentious issues both theoretically as well as practically.

In the first instances, though it introduces conditions, like other regional State Constitutions<sup>56</sup>; the incorporation of secession clause would remain the most controversial issue as the case of Federal Constitution. The condition for secession reads as;

*Nation, nationality and peoples shall exercise their rights of self-determination, including the right to secession in accordance with [art 39] the constitution of the FDRE where it believes that the rights specified in sub-articles 1 to 3 are suspended, denied and not fully implemented and such violations could not have been rectified within the unity.*<sup>57</sup>

Therefore, any nation, nationality and people may not claim the right to secession if there is a possibility to alleviate the problem within the federation through internal Self-Determination and other accommodative mechanisms. In fact, setting pre-condition for secession may reduce the threat of disintegration since it gives precedent for internal self-determination. Nevertheless, some argue that, by providing less protection for the right to secession, those regional Constitutions have ‘inroad on collective rights’.<sup>58</sup> It is believed, however, that as far as these conditions are at odd with the federal Constitution, it is of no effect in accordance with article 9(2).<sup>59</sup> Having the above argument, when it comes to the essential question that who are the real beneficiaries of the rights, I shall argue that this right to Self-Determination (both internal and external), in the strict sense and full-fledged manner, is granted only for Tigray ethnic group. Here is why.

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<sup>55</sup> Art 39(1) of Tigray Constitution.

<sup>56</sup> Regional Constitutions that have incorporated similar conditions on the right to secession include constitutions of Oromia (Art 39(4)), Benishangul-Gumuz (Art 39(4)), Harari (Art 39(4)), Amhara (39(4)), Afar (39(4)).

<sup>57</sup> Article 39(4) of Tigray Constitution, Translation by Tsegaye Regassa.

<sup>58</sup> Tsegaye Regassa, ‘Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level’ 3 MIZAN LAW REVIEW 33, 55 (2009).

<sup>59</sup> *Id.*

To exercise the right Self-Determination, the concerned ethnic group has to fulfill the procedures provided under art 39(5) of Tigray Constitution.<sup>60</sup> It is my sense that the incorporation of this clause in the Constitution is of no practical significance for Kunama and Irob minorities. Rather it seems mere window dress for the engineers of the Constitution to comport with the federal model concerning claims of nation, nationalities and people. The reason is clear that, for the right to secession to have effect, the demand for secession must be approved by 2/3 majority of the members of the State Council (art 39(5)); in which case, the council is taken dominantly by Tigray ethnic group which is unlikely to support the claim for secession. Therefore, minorities' right to secession which is incorporated under the Constitutions of FDRE and Tigray seems impracticable, as long as neither Irob nor Kunama have their own legislative council.

Regarding territorial autonomy or 'nationality administration'<sup>61</sup> within the State, the Constitution has explicitly granted this right only to Tigray ethnic group. It says that the right to self-government of Tigray 'nation' includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in Federal government.<sup>62</sup> This right to establish institutions of government is not extended to Irob and Kunama like the case of Self-determination right. In relation to Irob and Kunama, the Constitution has demonstrated that it is the power of the State Council to permit the creation of special zone or woreda considering the numerical size of the group, the area size of the region and socio-economic situation of the region<sup>63</sup>. In fact, the right to have territorial autonomy hardly applicable for Kunama, since they are dispersed minorities. In case of Irob, it would be effective, if the State Council, which is the house of the dominants, has shown political willingness to accommodate minorities.

What has been said above is also true in practice. Neither special zone nor special Woreda, which aimed to give territorial autonomy or self-administration for Irob peculiar to their

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<sup>60</sup> Art 39(5) of Tigray Constitution has provided procedures for secession which is similar with FDRE Constitution except that the former says the secession claim shall be approved by 2/3 of the members of the state council of Tigray and the latter looks for approval by legislative council of any nation, nationality and peoples who is demanding secession.

<sup>61</sup> The term is used for the first time by the constitution of Amhara Regional State to refer for special zones of minorities (i.e. Oromia, Awi and Wag Himera.)

<sup>62</sup> Art 39(3) of Tigray Constitution.

<sup>63</sup> Art 49(3(b)) of Tigray Constitution.

interest, has been arranged in Tigray. Even though Irob minorities have their own woreda, they have neither successfully introduced their own languages in administration and courts nor able to organize their own political organizations.<sup>64</sup>It remains enigma why the regional State refuse to give special Woreda for Irob ,since the establishment of normal Woreda is self-evident for their territorial contiguousness .

To sum up, what ever the intention of the drafters of the regional Constitution might be, to deny self-government rights provided that the requirements are fulfilled, is against the FDRE Constitution .As it is known every nation, nationality and peoples have the right to self-government including the right to establish institution of government in the territory that it inhabits.<sup>65</sup>And any law including regional Constitution, customary practice or a decision of an organ of a State or a public official which contravenes the federal Constitution shall be of no effect.<sup>66</sup>As a result, ethnic group of Irob can claim their right of self-government based on the federal Constitution. With out this important right, it would be difficult to imagine effective and complete minority protection system as they are disempowered to preserve their identity.

### ***3.2.3 Language and Cultural Rights***

The regional Constitution has granted minorities with broad cultural and linguistic rights including; right to preserve their identity, to protect and develop their history, to promote and use their language, develop and enjoy their culture.<sup>67</sup>Moreover, it has declared equality of all languages spoken in the regional State and Tigrigna is the working language of the region.<sup>68</sup>Though the right to equality and non-discrimination is essential for minority protection, it is inadequate unless supported by other mechanisms.

The point is how can we ensure the free development of culture and the effective enjoyment of linguistic rights? Arranging mother tongue education for minority children, among other things, is an important measure in the protection of minority cultural and language. Because, it enhances the use and promotion of minority language in schools, and pave the way to

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<sup>64</sup> Interview with Ato Berhe Zigita ,Representative of Irob Woreda in House of Peoples representative(HPR) , Addis Ababa(October 5,2003 ,E.C)

<sup>65</sup> Art.39 (3) of FDRE Constitution.

<sup>66</sup> Art.9 (1) of FDRE Constitution.

<sup>67</sup> Art 39(1) of Tigray Constitution.

<sup>68</sup> Art 5 of Tigray Constitution.

preserve and transfer their culture to the next generation. In this respect, the regional government has taken some initiatives to facilitate mother tongue educations for children of minorities. The policy of mother tongue education in Irob language has been started since September 2008 in public elementary schools.<sup>69</sup>In the same way, since September 2010, the region has implemented education in Kunama language for children of Kunama ethnic group.<sup>70</sup>

In another case, inspite of lack of territorial autonomy for minorities, there are some commitments from the government that directed on preserving and protecting minority cultures and traditional values. Kunama cultural Museum has been constructed in *Sheraro* town with a cost of 500,000 Birr<sup>71</sup> which, in my opinion, is a leap forward in development of minority culture and preservation of minority identity. Though it is very recent (from September 2010), the initiation of Radio broadcast in Irob language at the expense of the regional government would have also paramount advantage in promotion and development of Irob language and culture.<sup>72</sup>

Finally, what is of interested us is that though it is impressive to see government's commitment in protection of cultural and linguistic rights of minorities, it would be better if the government adopts some standards of treatments since differential treatment may create sense of discrimination among members of minorities .Moreover, the role of territorial autonomy (i.e. Irob) to the development of minority cultural and language shouldn't be underestimated. If the group garnered the right to administer it self, the language of minorities will gain a chance to be a media of communication not only in private but also in public spheres. That is to mean that minorities can freely use their language in court room, in governmental offices, and in zonal or woreda legislative councils. They would also be in a position to prevent the domination and threat of assimilation from the majority group.

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<sup>69</sup> Interview with Ato Berhe Zigita, *supra* note 64.

<sup>70</sup> Interview with Ato Girmay Shadi, *supra* note 52.

<sup>71</sup> *Id.*

<sup>72</sup> Interview with Ato Berhe Zigita, *supra* note 64.

### **3.2.4 Political Participation and Representation Rights**

As discussed in chapter two, mere entitlement of political rights for individual members of minorities may not be adequate to ensure the political participation of minorities in the decision making process. In the contemporary western democratic systems, it is, usually, the will of the majority that is implemented and it is not uncommon to observe problems of under-representation of minorities in the government organs including the legislative branch. Therefore, the point is that through special representation mechanism in the legislative and other government branches, States can accommodate and protect the interests and preferences of minorities. That is why many states adopt different electoral systems that aimed to ensure minority representation and strengthen effective political participation.

Accordingly, the FDRE Constitution has accorded special consideration for minority representation in both House of Federation and house of people's representatives. This is to mean that the participation of minorities in political affairs is not limited to law making process, but extended to Constitutional interpretation matters. In a similar way, regional governments have also adopted some Constitutional mechanisms which endeavored to increase the participation of minorities in the political process. The first and familiar way is special representation of minorities in the State Council. This will give a chance for the group to reflect its view in any regional legislation matters. In this regard, it is, for example, interesting to see the Constitutions of Amhara,<sup>73</sup> Benishangul/Gumuz,<sup>74</sup> and Southern Nation, Nationalities and people's regional states (SNNP).<sup>75</sup> In another scenario, it is also possible to secure special representation of minorities in the executive branch of the regional government. Nevertheless, neither the FDRE Constitution nor regional Constitutions has adopted such accommodation mechanism. Apart from this, it is also possible to involve minorities in the process of Constitutional interpretation by guarantying special representation in Constitutional interpreting organ though this is not common and hardly be the basic claims

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<sup>73</sup> Article 48(2) of Amhara Regional State Constitution has guaranteed special representation of minority nationalities (i.e. Oromo, Awi and Himira) in the state council of the region.

<sup>74</sup> Similarly Article 48(2) of Benishangul-Gumuz Regional State Constitution has declared the special representation of Mao and Komo nationalities in the state council.

<sup>75</sup> Article 50(2) of the Constitution of Southern Nation, Nationalities and Peoples Regional State has also pay attention for the special representation of minority nationalities in the regions legislative organ.

of minorities under international law. This situation has gained momentum application in some regional States of Ethiopia such as Amhara<sup>76</sup>, Benishangul-Gumuz<sup>77</sup> and SNNP<sup>78</sup>.

As far as Tigray State is concerned, considering the possibilities of under-representation of minorities in the first pass the post electoral system,<sup>79</sup> attempts have been made to ensure special representation of minorities in the State Council. The Constitution has made clear that the representation of other nation, nationalities and peoples in the region will be considered in special case.<sup>80</sup> As a result both Irob and Kunama have four representatives each in the State Council.<sup>81</sup> It would be interesting to appreciate this bizarre but important approach of minority regime since it enabled for them to reflect their interests and propagate their voices loudly. They can involve comprehensively in the law making process of the region.<sup>82</sup> However, representation of minorities in the executive branch of the government is not part of the Constitutional philosophy of the regional document, like the case of federal and other regional Constitutions. Thus, the executive branch of the government is predominantly controlled by Tigray ethnic group.

Concerning interpretation matter, this power is given for the Constitutional interpretation Commission. The Commission consists of a representatives nominated from each Woreda Council and those members of House of Federation represented from the region.<sup>83</sup> Hence, one

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<sup>76</sup> As it is known, Oromo, Awi and Himira national minorities in Amhara regional state have their own Council of nationalities because they have already established their own territorial administration. By including members from such council of nationalities in to Constitutional interpretation Commission, the regional Constitution has attempted to involve minorities in Constitutional interpretation process.

<sup>77</sup> By virtue of article 71 of the Constitution of Benishangul-Gumuz, the constitutional interpretation commission must included equal representatives from five nationality groups (i.e. Berta, Gumuz, Shinasha, Mao and Komo.).

<sup>78</sup> The 2001 revised constitution of SNNP has introduced council of Nationality as constitutional interpretation organ which is composed of representatives of all ethnic groups in the region (Article 58 of SNNP Constitution). This council shares some similarity with the House of Federation of the federal government in its purpose, and structure. Therefore, minorities in SNNP region involve in constitutional interpretation process through their representatives in council of nationalities.

<sup>79</sup> Article 48 of Tigray Constitution has declared that members of the State Council should be elected by plurality or first passes the post electoral system where the chance for representation of minority groups in the council remains little.

<sup>80</sup> Article 45(2) of Tigray Constitution

<sup>81</sup> An interview with Ato Girmay Shadi, *supra* note 52. & an interview with Ato Berhe Zigita, *supra* note 64.

<sup>82</sup> Of course this practice of the regional government has invited some complains and criticisms among the members of the majorities. It has been alleged that though special representation of minorities is essential, four representatives for each minority groups will amount to over-representation and defeats the basic principles of democracy. (*Id*).

<sup>83</sup> Article 68(1) of Tigray Constitution.

can hold a view that, since Irob and Kunama have one representative each in the House of Federation, they will have at least one representative each in the commission. Beyond that Irob would secure one more representative in the commission since they have their own woreda Council even though they didn't gain the chance to use their language in administration affairs including court proceeding.

### ***3.2.5 Affirmative Action***

As implied in chapter two, the idea of equality and non-discrimination might remain dream unless some temporary special measures are employed, which lifted up the unequal's to some level of equality. It is of my view that, providing special measures for the group may be considered as compensating for previous marginalization and discrimination practice against the group by either the majorities and/or the government. Equality on the paper would lead to equality on the street if we introduce the notion of affirmative action for minorities that intended to increase the level of competency of such disadvantaged groups. To put it shortly, affirmative action for minorities is a track to equality via discrimination for good. It should be taken for granted, however, that, this preferential measure shall end after the intended result is achieved. Accordingly, governments may incorporate measures of affirmative action for members of minority groups in their social, political and economical policies or may provide under the lists of bill of rights where the minority in question may bring legitimate claim as of rights.

The Constitution of Tigray, in this respect, has enunciated the issues of affirmative action or special support under chapter ten which is devoted to policy principles and objectives of the regional State. Under Article 98 of the Constitution, it has declared that the government shall give special emphasis on political participation of minorities (Irob and Kunama) to ensure their equal enjoyment. In a similar vein, affirmative action is part of the economic policy of the regional State that the Constitution has revealed the commitment of the government to confer special support for economic empowerment of Irob and Kunama Minorities.<sup>84</sup> Yet, the provision of the Constitution dedicated to social and cultural objectives of the region have kept silence concerning affirmative action for minority groups. It seems questionable why the

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<sup>84</sup> Art. 99 of Tigray Constitution.

constitution ignores the need for special measures in social and cultural matters. Of course, this contention seems immaterial when we come to the State practice.

The State practice, I would argue, appears more protective and enthusiastic than the Constitution regarding the enjoyment of affirmative action. Members of Kunama and Irob minorities are beneficiaries of special treatment in education, health service, water facilities and other social services<sup>85</sup>, notwithstanding; affirmative action in social policy is not included in the Constitution. To ensure minority equality in educational competency, students from Kunama and Irob minorities are allowed to join preparatory classes and other governmental colleges with lower grade than others.<sup>86</sup> Some special efforts are also exerted to fulfill better health facilities, schools, water supply and telephone services even in all kebelas where members of minorities reside.<sup>87</sup>

According to some informants, better employment opportunities are available for members of these ethnic groups through quota system and other mechanisms.<sup>88</sup> These treatments are part of affirmative action which endeavors to make minorities beneficiaries of their economical rights in equal footing with the rest. To ensure the overall equality of these minorities, the regional government allocates annual budget for both groups of minorities.<sup>89</sup> It shall be stressed that without this, it would be peril for minorities particularly for Kunama since they are in disadvantaged position both geographically as well as demographically. Such special economical and social support would attract members of the minority group to come from different parts of the country; and this would contribute a lot in preserving the existence of the group as a group.

Finally, I would say that the affirmative action granted for disadvantaged groups is crucial in enforcing the international principles of equality and non-discrimination. Yet, since

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<sup>85</sup> An interview with Ato Girmay Shadi, *supra* note 52 & an interview with Ato Berhe Zigita, *supra* note 64.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> It has been indicated that the government budget for the group increased from time to time and it has reached 2,000,000 birr this year for Kunama alone. ( Interview with Ato Girmay Shadi, *supra* note 52). In the same way, the government allocates special distinct budget for Irob minorities apart from normal annual budget allocated to that woreda. (Interview with Ato Berhe Zigita, *supra* note 64).

affirmative action is part of regional policies and principles, they are not enforceable by the court .Unlike the provisions of bill of rights, policy objectives are not directly justifiable<sup>90</sup> that members of the minority groups may not claim in court of law if the regional government quits such measures.

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<sup>90</sup> Sisay Alemahu, *The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia*, 22, ETHIOPIAN JOURNAL OF LAW, 135,140-143(2008).

## CHAPTER FOUR

### THE CASE OF RAYA OROMO AND THEIR RIGHTS

In this chapter, I will make a comprehensive discussion on two essential points. The first part will be devoted to historical and geographical background of Raya Oromo. Further more, this part will also provide discussion about the cultural identity of Raya Oromo. In the second part of this chapter, I will explore the issue of recognition of Raya Oromo as a distinct ethnic group in Tigray regional state. As in the previous chapter indicated, the Tigray Constitution, like the federal Constitution, has provided similar requirement to hold the status of ‘nation, nationality and peoples’. Accordingly, I will examine the fulfilment of each subjective and objective elements of the definition through standard questionnaire distributed to members of the group. Having discussed the issue of recognition, I will trace over the rights of minorities as a distinct group.

#### ***4.1. General Overview about Raya Oromo***

##### ***4.1.1. Geographical Background***

The term Raya in the contemporary federal demarcation refers to both northern Wollo and southern Tigray of north eastern part of Ethiopia. Traditions in Raya widely testifies that the area which was under domination of Raya Oromo extended from Ala Wuha River ,found between the towns of Woldiya and Gobiye in northern Wollo ,Didigis Ala in Afar region to Ibo in Wajirat Tigray regional State.<sup>1</sup>This wide area shares border in the north with Inderta woreda of Tigray region, in the south with former Yajju Awraja, in the east with Afar region and in the west with Wag Awraja.<sup>2</sup>

Raya, in another expression, represent to the people of Raya-Qobbo of Wollo and Raya Azebo of Tigray. Because of its controversial geographical location, its administrative history of twenty century revealed that this people were administered under provinces of Tigray, Wollo and Wag at different times. If we see the recent history, for example, until 1991, Raya-Qobbo Aweraja was under former Wollo district with two Woredas; Alamata and Qobbo.

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<sup>1</sup> Interview with Sheik Yusuf& Ato Tekuare Abaye, elders and members of the community, in Garjjale (17, August ,2010)

<sup>2</sup> Getachew Merresa, *The Gas Tradition among the Raya and the Afar*, 2(Unpublished B.A Thesis, Addis Ababa University; History Department, 1998).

Alamata town used to serve as an administration centre of Raya-Qobbo Aweraja administration. Raya-Azebo Awrajja, on the other hand, was under Tigray administration which included areas such as Moheni, Chercher, and Kukufto. Yet After 1991, Alamata, which was under Wollo administration, became part of Tigray regional State. Raya-Rayuma is a common term used by the people of Raya to refer for the people living in Raya-Azebo and Raya-Qobbo as one and the same people who share similar culture and history.

The present day name of Raya came after the arrival and domination of Oromo's around sixteenth century in which it was previously referred as Angot, Doba and Qeda.<sup>3</sup> Concerning the ethnic identity of these people, there is no certain evidence. However, some argue that this province was inhabited by the Doba people, who were an Islamized pagan Tribes and Hamatic (Cushitic) language speakers.<sup>4</sup> Therefore, it can be suggested that the Doba's were not Tigreans. In view of Franchetti, the introduction of Tigray ethnic group in this area was during the period of emperor Yohannes IV (1872-1889) who settled his Tigrean regiments at Zobul in the form of resettlement programme.<sup>5</sup>

The elevation of the region extends from 2550 meter above sea level in the west to 600 meter to the east.<sup>6</sup> As far as weather condition of the locality, one can easily observe diverse climate condition though 'Dega', 'Weinadega' and 'Qolla' are the predominant climate zones. The average rain fall also varies from 700 mm to 1000 mm annually and temperature on average varies from 25°C to 16°C. From June to August, as in many part of Ethiopia, is the most rainfall season in Raya and to some extent people used to enjoy some rainfall in 'Belg' that is during March and April. Initially, Raya Oromo's in Raya were predominantly pastoralist, though, they later shift to farming activity as their basic livelihood along with animal husbandry.<sup>7</sup> There are big and small rivers in Raya which their name is believed to have connection with Oromo language and culture such as Ala Wuha, Golina, Ittu, Harra and

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<sup>3</sup> Merid Wolde Aregay, Political Geography of Ethiopia at the Beginning of the Sixteenth Century 619(1974).

<sup>4</sup> J. SPENCER TRIMINGHAM, ISLAM IN ETHIOPIA 81 (1965).

<sup>5</sup> R. FRANCHETTI, NELLA DANCALIA ETHIOPIA; SPEDIZIONE ITALIANA 1928-29(1935) at.349.

<sup>6</sup> Working Paper of the Relief Society of Tigray in Raya Valley, (Unpublished Document, Branch Office at Alamata, 1998).

<sup>7</sup> Interview with Sheikh Yesuf, Tekure Abbaye Elders and members of the Oromo community, in Garjjale, &Agamete. (, August 17, 2010).

Harosha<sup>8</sup>Including the term Raya, there are a number of villages and towns which inherited their name from Afaan Oromo and Oromo culture such as Ibo, Kobo, Genda Arrases, Genda Jalla, Gerjjale, Kukufto, Gabbate, Merrewa, Dayyu, Worrabayye, Facha and Bale.

Even though the entire plains of Raya were under control of Oromo, currently members of the Oromo ethnic group, who particularly speak Afaan Oromo, are restricted to some parts of Raya. They reside in the present Tigray regional state in Alamata and Raya Azebo Woredas. These areas are the main parts of the research.

#### **4.1.2. Historical Background**

The historical origin of Raya Oromo is not isolated from the history of Great Oromo movement and expansion of the fifteenth and sixteenth century. There is a widely accepted view that the Oromo during their movement had two major groups; the Borana and the Barentu where they separated in the course of movement.<sup>9</sup> According to some writers, Barentu group move from south and ascended the Juba and Wabishebele valleys and settled in the present day Arsi, Harrarge, Bale, Wollo, Yeju and Raya.<sup>10</sup> Thus, one may assert that Wollo, Yeju and Raya Oromo are the northern tip of the Oromo movement who shares the same descendants. In this respect, some argue that the name of the place called Barentu found in eastern Raya near the town of Chercher, which is the residence of the Oromo community, has derived its name from the first settlers of the Oromo community.<sup>11</sup>

There is widely spoken tradition in Raya among the community that the Oromo people come from 'Awash Gama' after the destructive war between the central highlands of Christian Kingdom and Muslim states of Adal in sixteenth century though they failed to precisely locate this area in the contemporary geographical demarcation.<sup>12</sup> This contention, in fact, has been avowed by Trimingham. He states that;

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<sup>8</sup> *Id.*

<sup>9</sup> MOHAMMED HASEN, *THE OROMO OF ETHIOPIA; A HISTORY 1570-1860* (1990) at 4.

<sup>10</sup> C.F. BECKINGHAM & G.W.B HUNTINGFORD, *SOME RECORDS OF ETHIOPIA 1593-1646* (1954), 209-210.

<sup>11</sup> Agezew Hidaru, *The political History of Raya-Qobbo; 1872-1943*, 11 (Unpublished B.A Thesis; Addis Ababa University; History Department, 2000).

<sup>12</sup> Interview with Aarese Ale, Sheik Yesuf, Elders and Conversant about the History of Raya Oromo, in Garjjale (August 17&18, 2010).

*Tribes (the Oromo) travelling up the Hawash ascended in to the Dankil Depression...and those by the Ala and Golima (Golina) are the Raya.*<sup>13</sup>

What is complicated is that, the exact time in which this branch of Barentu Oromo came to Plains of Raya remains nebulous. Based on the allegation of Aleka Astme which says that the Oromo who moved north east direction invaded Lasta and Raya during Mulata Luba, some surmised that, it was between 1563 and 1570 that the Oromo people settled in Raya.<sup>14</sup> One has also affirmed this assertion that ‘they (Raya Oromo) inhabit in the great plains of north east of Ethiopia, which is watered by the Ala and Golima (Golina) river, at the end of sixteenth century.’<sup>15</sup> Though the exact time of the arrival of the Oromo’s to Raya still remain contentious, there exist wide consensus among the community that those people first settled at a place called ‘Chuhun’ in Qualim some kilometres north of Allawuha river then extended to the remaining areas of Raya-Rayumma (a common name for place and people of both Raya-Azebo in Southern Tigray regional State and Raya-Qobbo of north Wollo of Amhara regional State).<sup>16</sup>

Unlike the Wollo and Yeju Oromo, Raya Oromo has not played significant role in the politics of Ethiopia for they were independent from the direct control of the central government.<sup>17</sup> But this people have maintained its ethnic and cultural identity for a long period of time though they were trapped between the high land Christians (i.e., the Amhara and Tigrean) and Muslim Afar lowlanders.<sup>18</sup> Politically, they had internal autonomy with in their territory, which enabled them to; protect their distinct identity from assimilation with the neighbouring ethnic groups and from intervention of the central government.<sup>19</sup> They had also strong control over the Caravan routes between Tigray and Shoa.<sup>20</sup>

As it is known, the Oromo people have democratic socio-political system called Gada-system. In the same fashion, the people of Raya Oromo had its own Gada system called Gada-

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<sup>13</sup> TRIMINGHAM, *supra* note 4, at 193.

<sup>14</sup> C.F, BECKINGHAM & G.W. HUNTINGFORD, THE PRESTOR JHON OF THE INDIES 73-74 (1961).

<sup>15</sup> TRIMINGHAM, *supra* note 4, at 194.

<sup>16</sup> Interview with Ararse Ale, *supra* note 12.

<sup>17</sup> TRIMINGHAM, *supra* note 4, at 193-195.

<sup>18</sup> GEBRU TAREKE, ETHIOPIA; POWER AND PROTEST, PEASANT REVOLTS IN THE TWENTIETH CENTURY 93 (1996).

<sup>19</sup> *Id.*

<sup>20</sup> TRIMINGHAM, *supra* note 4, at 193.

Merowe where committee of elders were elected by the people to administer the institution.<sup>21</sup> Until the beginning of twenty century, the Raya chiefs remained in charge of office for a period of seven years.<sup>22</sup> To join the committee, one has to be; an elder person with superior wisdom or judgment, an outstanding intelligence, reputation and responsibility acquired while leading successful raids, and significance to influence through considerable kingship.<sup>23</sup> It was through this system that they used to administere themselves and addressed any socio-political problems. Franchetti has confirmed that ‘they (Raya Oromo) administered them selves through the leadership of elders.’<sup>24</sup> Sad to say, this socio-political system of Geda-Merrewa is among the values and institutions of the people of Raya Oromo that has gone.

As far as socio-economic history of the Raya Oromo concerned, they were essentially pastoralist but now do a good deal of cultivation. As a result, they practiced a mixed form of economy both raising cattle and farming system.<sup>25</sup> Religiously, they were pagans when they arrived initially though converted to Islam as recently as the first half of nineteenth century.<sup>26</sup> This was one of the basic reasons which puts them inveterate enemy of Tigray and Amhara Christian highlanders. In general the history of Raya Oromo is full of ups and downs and conflicts with the central governments of the time for, they were Muslims and they need to secure their autonomy.

The most devastating attack against Raya Oromo comes from Emperor Yohannes IV (1872-1889) based on his ambition to unify the country under one religion of Orthodox Christian.<sup>27</sup> Trimmingham has remarkably portrayed that ‘... the Raya Oromo enjoyed complete independence until the time of Emperor John IV who atrociously devastated their country’<sup>28</sup> In March, 1872 Yohannes marched to Raya to launch a decisive and destructive campaign against the Raya-Oromo under the guise to freed Christians from persistent attack of Muslim

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<sup>21</sup> Aberra Gesses, *A Tentative History of the Oromo of Raya Azebo*, 8 (Unpublished B.A thesis, Addis Ababa University; History Department, 1998).

<sup>22</sup> TRIMINGHAM, *supra* note 4, at 194.

<sup>23</sup> Getachew, *supra* note 2, at 11.

<sup>24</sup> FRANCHETTI, *supra* note 5, at 5.

<sup>25</sup> GEBRU, *supra* note 18, at 93.

<sup>26</sup> TRIMINIGHAM, *supra* note 4, at 194.

<sup>27</sup> *Id*

<sup>28</sup> *Id.* at 195.

Oromo's and to subjugate the people of Raya Oromo by destroying its political institutions.<sup>29</sup> Bayru has depicted that;

*'the fury men sent by Yohannese reached fast the land of as far as Adari and Cari, as far as Dande and Teltal...they occupied the springs of the country so that they might despair because of the lack of water. After this tough action, they killed the warriors and burnt it with for God remembered its sin. After going over it all and having stuck it. Terribly took booty of its cattle and sheep having nothing that belong to it.'*<sup>30</sup>

The atrocities of the Emperor over Raya Oromo reached its climax by the massacre of 'Engoyemeda'. For the reason that the messenger of the Emperor has been killed around Qobbo, the Emperor slaughtered around three thousand Oromo's at 'Engoyemeda' after he ordered them to gather through their leader Aba Bona Kubi.<sup>31</sup>

The other strategy of Yohannese to castrate the inveterate Oromo institutions and strong holds was the policy of settlement and Christianization of the area. Yohannes has declared resettlement programme from Wollo, Lasta, Yajjiu and Tigray in to Zobil Raya –Qobbo by granting them a plot of lands.<sup>32</sup> Trimmingham has described this event asserting that, 'when Kassa became Emperor John IV, they (Raya Oromo) included in his campaign of religious unification; he sent expeditions against them and depopulated parts of their country, in which Tigreans settled and introduced agriculture.'<sup>33</sup> As a part of Christianization of the area and the community, several churches have been built in different parts of Raya, and notable Muslim Oromo's were forcibly baptized, among which Tola Aba Merrwa in to Gebreselasse.<sup>34</sup>

Even after Yohannes, the people of Raya Oromo were on continuous clash with the central governments. The famous first Woyyane rebellion was believed to start in Raya and Azebo

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<sup>29</sup> BAYRU TAFLA, A CHRONICLER OF EMPEROR YOHANESSE IV 1872-1889(1977), 117-120.

<sup>30</sup> *Id.*

<sup>31</sup> FRANCHETTI, *supra* note 5, at 349.

<sup>32</sup> Fekadu Begna, *Land and Peasantry in Northern Wollo 1941-1972; Yajju, Raya and Qobbo Awrajja*, 15 (Unpublished M.A Thesis, Addis Ababa University, History Department, 1990).

<sup>33</sup> TRIMMINGHAM, *supra* note 4, at 194.

<sup>34</sup> Interview with, Takuare Abaye, Ato Bori Ali, Elders and Respected Community Members, in Garjjale (August 17, 2010 E.C).

where the Raya Oromo's were the prominent participants.<sup>35</sup> This revolt has been crushed by government forces in collaboration with British forces, using air planes for the first time in Ethiopian history.<sup>36</sup>

#### **4.1.3. Cultural Identities of Raya Oromo**

Cultural and traditional values of a certain community are the most important characteristics that distinguish one ethnic group from the other. Based on this, Raya Oromo, as distinct ethnic group, has their own cultural and traditional values. In this part, I will briefly discuss their dressing styles, spiritual cults, methods of conflict resolution mechanisms.

The male members of the group are well-known in their cotton made cloth called 'Gonbiso', or 'Gildem' in the place of trouser and 'Erbo' or 'Netela' instead of Jacket. Similarly women in Raya wear a special cultural dress, which is processed locally from cotton and decorated with various colourful and glamorous threads. This women's dress referred to as *Tiftif* or *Ye Raya Kemise*. Both men and women members of the group have also distinct and special shoes fabricated locally from strong leather. This shoe has thick sole and open surface like slipper, and known as *shifay* by the community. Informants from the group revealed that this unique dressing style is peculiar for the community and it was a manifestation of the previous pastoral life of Raya Oromo.<sup>37</sup>

They have also developed different spiritual rites and practices which are peculiar to Raya Oromo such as *Zar*, *Wedajja*, and *Dubaritte*. *Zar* is a spiritual possession practice which is originated in Raya and Lake Ashenge but extended to other parts of the country.<sup>38</sup> The *Zar* ceremony is a traditional ceremony prepared when a member of the community who possessed a spirit (*zar*) suffered from a disease. This ceremony includes the preparation of varieties of foods and drinks accompanied with songs in accordance with the interest of the *zar*. The *bale zar* dressed special kinds of clothes adored with attractive colours and there is

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<sup>35</sup> GEBRU, *supra* note 18, at 94.

<sup>36</sup> *Id.* at 114.

<sup>37</sup> Interview with Sheik Zeynu Arabo, Elder and Religious Leader, in Garjjale, (August 15, 2010).

<sup>38</sup> E.F. Torrey, *The Zar Cut in Ethiopia*, in Proceedings of the Third of ICES. vol. III, (Addis Ababa, Addis Ababa University, 1970), .53

an ornament made of leather and hair from horse tail called *Gama* which placed over his /her head.<sup>39</sup>

*Wedajja* is another spiritual practice of the Oromo community where a group of prayers known as ‘qalichas’ and ‘Abba gars’ came together chewing chat and beating drums to pray for the sick .In this time, it is only the family members who participate in the ceremony and is performed on night. *Dubarttei* is, on the other hand, a ritual practice which mainly involves females to pray to Allah/God when they faced with shortage of rain, epidemic diseases and other community problems .They prepare Special songs conveying a message to Allah and they put piece of butter on their heads. These groups of women called *Duberte*, a name derived from an Oromo term *dubartti* to mean women.<sup>40</sup> This practice is also held publicly in day time in the months of May and October. Villagers’ gathered under the big tree called *Odda* and serves the Allah with sacrifices. They strew the shade of the tree with fresh grass, slaughter a full black, white or red goat or sheep and sprinkle the blood over the root of the *Odaa* tree. Varieties of roasted and boiled grains, coffee and bread are prepared. When every preparation is finished, they throw a hand full of every roasted and boiled grain and beans in every direction from the ‘Odaa’ tree before testing them. The sprinkling of blood and dispersing the roasted grains and loaves of bread is believed as feeding the spirits. After that they eat every thing prepared, chant and sing a *menzuma* following the *beats* of a *dibe* (a religious drum). At the end of the feast, nothing is taken back home, but thrown away from the ‘*Odaa*’tree. Elders known as *Ragicha*, *Edensa* and *Boke* pray to God for health, Wealth and Peace of the community.<sup>41</sup>

The other strong manifestation of identity among the group is their special conflict resolution mechanism. They had traditional dispute resolving system through *Gereb* or *Zweld* who are council of elders elected by the public based on their talent and wisdom.<sup>42</sup> Persons who are respected and feared because of their spiritual power such as *Abagar*, *qalicha*, *Sheik*, *dubertti* extensively involve in the negotiation process to persuade the victim in the conflict. Specially

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<sup>39</sup> *Id.*

<sup>40</sup> Interview with Aresu Belay ,Conversant about the practice ,in Alamata (August 20,2010).

<sup>41</sup> Moges Belay ,*The Struggle for Ethnic Maintenance and Self-Determination; Historical and Contemporary Analysis of Raya Case*,40(Unpublished B.A Thesis, Addis Ababa University, Sociology &Social Anthropology Department,2005).

<sup>42</sup> *Id.*

the *dubartti* (a collection of female elders) beseech the victims saying ‘*Erfo Mereba*’(to mean on the power of the spirit of *Dubaratti*) holding a long stick smeared with butter .Once the negotiation is over ,the decision concerning compensation and penalties will transfer and pronounced by the council of elders. Women got special respect in the community with relation to dispute resolution and other socio-economic affaires.

Finally, it is true that such cultural practice along with their language constitutes an intrinsic part of their life and source of pride of the community. Since it is a manifestation of their identity, prohibition to practice their culture and to enjoy their language is an attack against there identity. However, the practices of such traditional and spiritual rites of Raya Oromo are diminishing from time to time. The reason is that apart from the influences of the majorities, the government has explicitly prohibited such cults and other ritual practices both in private and publicly in community with others. An informant has succinctly stated that, ‘previously they were effectively resist and protect any interference (from majorities) against their values, traditions and institutions, and able to exercise in freedom.’<sup>43</sup> But now they are practicing secretly and under threat for they may be arrested by local administrators.<sup>44</sup> Another informant testifies that she was arrested because of her participation in ‘Zar’ ceremony. In general, the peculiar manifestation of Raya Oromo’s which includes their socio-political institutions and other traditional practices needs considerable attention. Concerning the situation of Afaan Oromo language, it is indicated that, it had been the dominant language of Raya up to the first half of 20<sup>th</sup> Century.<sup>45</sup> However, the numbers of speakers of Afaan Oromo in Raya are declining from time to time at alarming rate. Currently Afaan Oromo serve as a means of communication for different purposes predominantly in Alamata Woreda particularly in Dayu, Ta’o , Garjjale localities and in Raya Azebo Woreda in Bale, Daggaga, Kube Jabelle, Basso, Gabatte, and Warabbaye .<sup>46</sup>

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<sup>43</sup> *Id.*, at 36.

<sup>44</sup> *Id.*

<sup>45</sup> Mengesha Retie, *Conflict Resolution and Ritual Practices; Raya Since 1930*, 23(Unpublished B.A Thesis, Addis Ababa University, History Department, 2003).

<sup>46</sup> Interview with Ali Abdo, Dargie Tolla, Mustefa Yasin & Muleta Challa, Elders and Conversant about Current Settlement of Raya Oromo, in Dayu and Kukfto, (November 29 & 30, 2010).

## ***4.2. The Claims of Raya Oromo for Recognition and Protection as Internal National Minority Group in Tigray Regional State***

The previous discussion, hopefully, has given an idea about the historical, geographical and cultural background of the people of Raya Oromo. This part, basically, will analyse first, the issue of recognition of Raya Oromo as a minority group (nation, nationalities and peoples in the syntax of the Tigray and F.D.R.E Constitutions) in light with the requirements set forth in the Constitutions. After the issue of recognition, the next discussion will give more time and space for group right protection as envisaged under such Constitutions and other instruments.

### ***4.2.1. Requirement for Recognition***

As reflected in chapter three, the requirement for recognition as ‘nation, nationalities and peoples’ constitutes five subjective and objective elements. These are;

- 1) Have or share large measure of common culture or similar custom
- 2) Mutual intelligibility of language
- 3) Belief in common or related identity
- 4) Common psychological make-up
- 5) Inhabit in identifiable, predominantly contiguous territory

Hence, I will analyse the fulfilment of each elements independently in light with the response for the questionnaires.

#### ***4.2.1.1. Common Culture or Similar Custom***

Common culture or similar custom is the first requirement for recognition even though it is imprecise what common culture or similar custom constitutes. Nor it is possible to understand the difference between common culture and similar custom .But in general, culture includes way of life, traditions, spiritual rites, dressing style, eating style among other things<sup>47</sup>. Even

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<sup>47</sup> WILL KYMILIKA, *MULTICULTURAL CITIZENSHIP; A LIBERAL THEORY OF MINORITY RIGHTS*, 76(1995).

though it is an objective factor, to affirm with the standard procedure, respondents are asked whether they share common culture / similar custom.

Question	Variables	Number	Percent
Do you have common culture or similar custom which makes distinct Raya Oromo from others?	YES	331	89.5
	NO	39	10.5

Table 1

As the facts on the above table 1 indicates, the majorities of the respondents, which is about 89.5%, reply in affirmative for the question while the remaining 10.5 % answered in negative. Therefore, as the requirement doesn't look for 100% perfection, it suffices to conclude that Raya Oromo is a distinct ethnic group with different cultural manifestation. Furthermore, as the matter is an objective reality, it is not impossible to give judgement through factual analysis. As I have briefly provided in the first part of this chapter; the people of Raya Oromo have peculiar cultural identity. It is obvious that the people in question shares unique dressing style, distinct spiritual practices and have their own socio-political institutions. Though there were some trends of assimilation with the majorities, it is undeniable that the community have its own life style, its own traditional values and ceremonies. They are also struggling to maintain and transfer their culture to their children.

Accordingly, based on the figures on the table and factual observation, it can be concluded that the first requirement for nation, nationality and peoples is fulfilled.

#### ***4.2.1.2. Mutually Intelligibly Language***

The existence of mutually intelligibly language among the group is the second criteria for recognition as nation, nationality or people. What is required in this time is to approve a distinct identity by ascertaining the existence of mutually intelligible language among the group; that is Afaan Oromo. Even though the matter of common language is an objective

element which can be approved by factual analysis of the language, it is apt to deploy similar method as we did in the previous requirement. Accordingly the result of the questionnaire, as shown in the next table, divulge that majority of the interviewees still speak Afaan Oromo.

Question	Variables	Number	Percent
Do you speak Afaan Oromo?	Yes	261	70.5
	No	109	29.5

Table 2

From the figure of the above table, 70.5% of the interviewees respond that they speak Afaan Oromo where as 29.5% of the respondents, most of whom are children and young age group reply in negative. Since majorities of the respondents speak the language, it can be generalized that there is mutually intelligible language among the group that produces a sense of distinct identity. What is more is that even though 29.5 % of the respondents don't speak the language, when we come to claims of ethnicity, 93.2% of the total respondents still considered them selves as Oromo, as it is shown in table 3.

Question	Variables	Number	Percent
To which ethnicity you belong?	Oromo	355	93.2
	Tigray	14	3.8
	Amhara	11	3.0

Table 3

One may gauge from above table that, even those who do not speak the language still retain the belief that they are Oromo. As the next table reflect, it is also the conviction of majorities of the respondents that speaking Tigrigna or Amharic alone wouldn't entail Tigray or Amhara identity.

Question	Variables	Number	Percent
Whether speaking Tigrigna or Amharic alone would entail Tigray or Amhara identity?	Yes	13	3.5
	No	357	96.5

Table 4

One can easily surmise from the responses of the respondents that members of the group have inveterate sense of distinct identity even though they inhabit with in the majority group. Therefore, it can be conclude that majority speaks the language of Afaan Oromo, and those who don't speak the language still believe in their Oromo identity. Therefore, the second requirement for recognition, that is the existence of mutually intelligibility of language, is satisfied by the group.

#### **4.2.1.3. Common or Related Identity**

Belief in common or related identity is the third requirement. Both the FDRE and Tigray Constitutions have done little in clarifying this concept. Relying on secondary sources may raise our understanding of the issue. One has defined 'belief in a common or related identity' as 'subjective conviction of the concerned group in having and sharing distinguishing characteristics.'<sup>48</sup>Therefore, it should be noted that, it would be contentious if one firmly conclude about the subjective sentiment of a certain group based on factual observations. Yet one may assert that, any ethnic group may develop a belief of common or related identity based on historical events and/or the current situation of the group. Some people usually evaluate common or related identity in terms of descent, history and other subjective emotion apart from common language and culture. To ascertain this personal belief, I have approached the respondents with some questions related to their descent, history and their present belief towards each other.

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<sup>48</sup> Abera Degefa, *The Scope of Rights of National Minorities Under the Constitution of Federal Democratic Republic of Ethiopia*, 1 ETHIOPIAN CONSTITUTIONAL LAW SERIOUS 1,107(2005)

Question	Variables	Number	Percent
Do you share the same Descent?	Yes	358	96.8
	No	12	3.2
Do you have common or related history?	Yes	351	94.9
	No	19	5.1
Do you believe you share common identity and sense of solidarity?	Yes	290	78.4
	No	80	21.6

Table 5

It is the belief of the writer that the above questions would enable to achieve the specific objectives intended from the questionnaires. When we came to the result, as one can observe from table 5, majorities (96.8) of the respondents believe that they share the same descent where as few respondents revealed their disagreement with the contention. In fact, as I have pointed out in their historical back ground part, there is widely accepted view that the present members of Raya Oromo are descended from the Barentu moiety of the Oromo group. This view is not only the scholars but also the members of group too. In terms of history, it is possible to assert that Raya Oromo shares common history because significant numbers of respondents, which is about 94.9%, supports this view even though 5.1% of the respondents remain at odd with the idea. Of course, the historical background of the group is in favour of this assertion that they used to enjoy a paramount political autonomy with in their territory.

Concerning the third question, about 78.4 % of the interviewees feels that they have common or related identity. And it is the credence of majorities that they still retain a sense of solidarity among each other. As a result, one may come up with conclusion that majorities of the respondents believe that they have common history, descent, common or related identity and sense of solidarity among each other .Therefore, one of the subjective element of the definition is fulfilled by the group.

#### 4.2.1.4. Common Psychological Make up

Common psychological makeup is another subjective and tiring criteria in which one may not establish by mere factual analysis of the characteristics of the group in question. The Constitution is also imprecise concerning the meaning and elements of the term. Usually, some people coined this term with desires, attitudes, aspiration, emotions, preference and other psychological traits of the group.<sup>49</sup> Accordingly, the commonness of such emotional states and physiological traits among the group may be considered common psychological make up.

Question	Variables	Number	Percent
Do you think members of Raya Oromo share common aspiration and emotions?	Yes	309	83.5
	No	61	16.5

Table .6

Like the other elements, a majority of the respondents (83.5) reply in affirmative which means that the group reflects common psychological make up .As a result, this requirement of the definition is satisfied by the group in question.

#### 4.2.1.5. Contiguous Territory

As we did see in chapter two, the definition of minority given by Capotorti lacks the element of territorial contiguousness, and most of the rights of minority, except territorial autonomy, don't necessarily require the group to live in defined and restricted territory.<sup>50</sup> Nevertheless, minority regime in Ethiopia (both the Federal and regional system) is territorial based where it avoids dispersed minorities. Even though, one may identify this characteristics feature of

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<sup>49</sup> PIERGIORGIO CORRBETTA ,SOCIAL RESEARCH ,THEORY, METHODS AND TECHNIQUES,164-165 (2003)

<sup>50</sup> .Even though the territorial confinement of the group would foster the protection system, it is not impossible to assign special representative for dispersed minorities. It is also possible to facilitate the enjoyment of cultural and linguistic rights of minorities not with standing they failed to live in single limited area. In fact, this model of minority protection is implemented in Tigray as well as in Federal government for Kunama minority. As I depict in chapter two, even though the ethnic group inhabit dispersedly, they have representatives in both in house of Federation and house of people's representative.

minority with out much difficulty, respondents were asked about the present settlement pattern of Raya Oromo.

Question	Variables	Number	Percent
What do you think about the present settlements pattern of Raya Oromo'?	Contiguous	260	70.3
	Dispersed	43	11.1
	Mixed settlement	67	18.6

Table. 7

As one can see from the above table, the allegation that the resident of Raya Oromo is in closely confined territory, has been avowed by majorities of the interviewees (70.3%) while 18.6% of the respondents respond that the settlement of the group is mixed with other ethnic groups. The remaining 11.1% believe that the people of Raya Oromo reside dispersedly. Since the requirement is to show that the resident of the groups in question is 'predominantly' in defined contiguous territory, it can be conclude that, this requirement is fulfilled by Raya Oromo. Concerning population distribution of the ethnic group by place of residence, 82.1% of the total respondents are in the opinion that the concerned community made its permanent settlements in rural areas as the next table reflects.

Question	Variables	Number	Percent
If your answer is contiguous and mixed settlements to the previous question, where do you think the place of residence of majorities of members of the group?	Urban	23	7
	Rural	304	93

Table.8

Accordingly, 82.1% of the respondents confirm that rural areas are the residence of Raya Oromo. From Personal observation and an interview conducted with some members of the group, areas called Dayu, Ta'o, Garjjale in Alamata Woreda, and Villages such as Bale, Daggaga, Kube Jabelle, Basso, Gabatte, and Warabbaye in Raya Azebo woreda are the prominent areas where the members of the group live contiguously. Even though they are

adjacent villages, for administrative purpose, the first three are under the administration of Alamata Woreda while the remaining six villages are part of Raya Azebo Woreda both in Tigray regional State.

#### **4.2.1.6. Requirements Jointly**

Concerning the requirements jointly, the conclusion is that Raya Oromo has fulfilled the required elements for ‘nation, nationality and peoples’ as provided under 39 of the regional and federal Constitutions. The demand for recognition as distinct ethnic group has also been reflected collectively by members of Raya Oromo since the Transitional Government .An interview with an elders and community leaders, demonstrated that the claim for recognition and protection of their Oromo identity was made to the government officials through their representatives (Abo Gereb, Qualichas &Sheikhs) <sup>51</sup> in 1992.<sup>52</sup> It has been suggested that this request has been intentionally suppressed and some representatives were threaten and arrested by government officials.<sup>53</sup> Even after the transitional government, members of the group have revealed their demand for recognition and protection in some public conferences to representatives of Tigray government though it was not formal and through procedures.<sup>54</sup> As a result, I hold a position that this people must be recognized as distinct ethnic group having distinct cultural heritage, traditional values, language, and unique identity.

To treat this ethnic group as one and the same with majorities (Tigreans), while the requirements are satisfied, would amount denying the objective reality. Legally speaking, it would be a violation of Constitutional rights of the group to be recognized as distinct group. Denying the existence of the group may also constitute discrimination and marginalization of the group which is against the principle of equality and non-discrimination, up on which the international human rights law is founded. This is to mean that Ethiopia has failed to discharge its international obligation which makes liable the State. Therefore, since the

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<sup>51</sup> Abo Gereb, Qualichas and Sheikhs are traditional community leaders .Abo Gereb is respected community leader who is involved in traditional conflict resolution mechanisms. But Qualichas and Sheikhs are religious leaders who have good reputation among the community.

<sup>52</sup> An interview with Ato Ali Abdo and Mustefa Yasin, *supra* note 46.

<sup>53</sup> *Id.*, Telephone interview With Ato Yonas Gidey, Former Legal Councilor of the President of Tigray State Council. (21, November, 2010).

<sup>54</sup> *Id.*

subjective and objective requirements are satisfied by the group, the government have to give Constitutional recognition for Raya Oromo as distinct nation, nationality and people.

#### ***4.2.2. Internal Self-Determination***

Once the issue of recognition has been exhausted, it is not debatable that the concerned minority should be entitled with some group rights, which are inherent to their nature and essential for their survival as a group. Hence, it is an apt approach to proceed with specific rights of Raya Oromo as internal national minorities. As the previous chapters portrayed, the right to self government (autonomy), right to political participation/representation, cultural and linguistic rights, and affirmative action would have considerable significance for the group in the preservation and protection of its distinct identity. Such issues will be canvassed in detail in light to international principles, and Constitutions of FDRE and Tigray.

##### ***4.2.2.1. Territorial Autonomy***

Ensuring territorial autonomy for minorities is the most enthusiastic approach of minority accommodation. As indicated in chapter two, any minority group will preserve its identity in effective manner, if the group is in a position to administer it self with in its territory. That is to mean that, they will be endowed with ample opportunities to control their own matters with out interference from the majorities and /or the government, and to preserve their traditional and cultural institutions. The group will have effective access and control over public spheres such as governmental institutions. In general minorities' aspirations, preferences and interests will be recognized and effectively enforced through territorial autonomy. They will also be relieved from majority hegemony .States may deploy varieties of autonomy models which might be varied in terms of content, scope and nature of the right. This might be related with population size of the group, peculiar interests and aspiration of the group, economic situation and political system of the given country.

The Ethiopian experience, as the discussion in chapter three demonstrated, is welcoming for self-government claims of minorities.<sup>55</sup> However, minorities' right to establish a governmental institution, which is suitable to their interests and nature, is not yet implemented in Tigray

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<sup>55</sup> Article 39(3) of FDRE Constitution has declared that; 'Every nation, nationality and peoples in Ethiopia has the right to full measure of self government which includes the right to establish institutions of government in the territory that it inhabits .....

except for the dominant ethnic group.<sup>56</sup> It is of my view that, since it is the duty of the regional governments to give effect and affirm the principles of the federal Constitution, minorities in Tigray region should be entitled with a right to self-government which includes establishing some governmental institutions.

When we come to our case, since Raya Oromo have already fulfilled the requirement for nation, nationality or peoples', they have a right to self-government by virtue of article 39(3) of FDRE Constitution. The regional government have to permit and facilitate special territorial entity with in territory they inhabit in comport with their population size and geographical coverage.

Demographically, though it is difficult to identify the exact number of the group in the present time, according 2007 housing and population census, there are 7,498 Oromo ethnic group in the region.<sup>57</sup> In fact , whether the standard of ethnicity deployed by the Census commission is based on the criteria's of FDRE Constitution or not, is unclear. Whether it includes territoriality principles or it only consider language matters remains nebulous. Hence relying solely on this data may not effectively support in achieving the desire objective of this paper. But even this result of the commission has been denied by the members of the group alleging that the number of Oromo Community is far more exceeding up to 35,000.<sup>58</sup>The demand for self-government of Raya Oromo has also confirmed by majority of the respondents.

Question	Variables	Number	Percent
Do you have an interest to establish special woreda for Oromo's which enable s you to administer your self in your territory?	Yes	299	80.8
	No	71	19.2

Table 9

<sup>56</sup> Art 39(3) of Tigray Constitution.

<sup>57</sup> Summary and Statistical Report of the 2007 Population and Housing Census, FDRE Population Census Commission, Addis Ababa (2008).

<sup>58</sup> Telephone Interview with Ato Yonas Gidey, *supra* note 53 & Sheikh Zeinu Arabu, *supra* note37.

The above table indicated that 80.8% of the respondents reflect their interest in establishing their own special woreda in the region while 19.2 % reveals no interest of the administration division. Surely, the formations of special woreda, would snowballed the free development of their culture and promote the use Afaan Oromo language among the group. Thus, it can be concluded that, based on the federal and regional Constitutional declarations , they should be granted the right to self government at Woreda level. The State council of the regional State should also facilitate the means to the enjoyment of this right by eliminating the situations of threats and suppressions made by government officials against the members of the group.

#### ***4.2.2.2. Language and Cultural Rights***

Culture and language of the group are the most valuable characteristics of minorities which makes them distinct from others groups .And they strongly need to protect it. Accordingly, article 27 of ICCPR has made clear that, minorities have a right to enjoy their own culture and to use their language freely. Similarly there are some provisions in ICESCR which have cultural importance in one or another way.<sup>59</sup>

Article 39(2) of FDRE and article 39(1) of Tigray Constitutions are imperative as far as cultural and linguistic right of minorities at national and sub-national level is concerned. As I tried to touch tightly in chapter three, ‘the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history’ are cultural and linguistic rights delineated under FDRE Constitution. At sub-national level, though there exist some similarity in content and scope of the rights, article 39(1) of the regional Constitution proclaimed that, peoples of the region have the right to protect and to ensure respect its national identity, to preserve and develop its history and heritage, to use and promote its language, and to express, to develop and to promote its culture.

It follows that, Raya Oromo have Constitutional right to preserve, protect and promote its culture, and maintain its historical legacies and to use its language. In another words, any act or measure of the government which has the effect of proscription, (directly or indirectly,) on free exercise of their culture and the use of their language among the group, would amounts to violation of Constitutional rights of the group. It should also be noted that they have a right to

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<sup>59</sup> For instance article, 13, 14, & 15 of ICESCR are the most important provisions in relation to minority culture.

establish cultural museums, libraries, schools, and, to maintain their historical monuments, political and social institutions.

At this juncture, it is essential to point that the traditional practices and spiritual rites of Raya Oromo such as 'Zar' 'Dubarete' 'Tufta' and other cultural activities are at the verge of disappearance. This is for the reason that the government organs have explicitly prohibited such practices, contending that it is an irrational belief or superstition which, according to their understanding, is at odd with the belief of the majorities; orthodox religion.<sup>60</sup> And as I indicated at the beginning of this chapter, there are some members of the community who were arrested merely because they participated in their cultural activities. Members of the community are prohibited to enjoy their culture both in private as well as in community with others. But such practices have been part of the life of Raya Oromo that has prestige and important value among the community. Moreover, it is hardly possible to establish that such traditional activities are at odd with the enjoyment of individual rights of the members since the practices are performed by the free will of the members. It is to mean that members of the group have an exit option in which they may forsake participation in the ceremonies.

Hence, by any standards, there is no legitimate and logical justification for the government to rule out the cultural practices of Raya Oromo's. Nor is the government or majorities in a position to judge or evaluate and give decision up on the enjoyment of minority culture. In other words, the majority culture and religion should not, in any way, be a standard to evaluate minority culture. Because cultural values and claims are identity related claims and as Walton describes, they are 'interpersonally and socially non-negotiable because they are deeply personal and often based on doctrines or beliefs whose authenticity rests with the rationales they have for those who follow or practice them and not with external political or legal institutions.'<sup>61</sup> The practice of the regional government might be considered as imposing majority culture/norm as a right norm on minorities which doesn't accept that norm. One has

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<sup>60</sup> Interview with Ato Ibrahim Kado, Muleta Kedir, Members of the Oromo Community, in Tao (26 August, 2010)

<sup>61</sup> Avigail Eisenberg, *Identity and Liberal Politics; The problem of Minorities With in Minorities*, in MINORITIES WITH IN MINORITIES, EQUALITY, RIGHTS AND DIVERSITY, 249, 262-263 (Avigail Eisenberg and Jeff Spinner-Halev eds. 2005)

remarkably depict that in the absence of neutral standards to assess rival claims, it is not appropriate to judge the cultural values of other groups.<sup>62</sup>

Legally speaking, the prohibition of minority cultural practice for the advantage of majority culture and religion is against the principle of non-discrimination and equality of international human rights law. It would also amount to an infringement of article 27 of ICCPR and article 13, 14 & 15 of ICESCR which Ethiopia is a signatory state to these conventions<sup>63</sup>. From an international perspective, thus, Ethiopia has failed to discharge her duty to respect, protect and fulfill of international human rights law.

Domestically, the position of the regional government which forbids the enjoyment of such cultural practices by the group is a violation of article 39(2) of FDRE Constitution. Furthermore, by so doing, the regional government has also acted against article 39(1) of Tigray Constitution. Therefore, the regional government should respect the international instruments, the FDRE Constitution and Tigray Constitution by granting members of Raya Oromo the right to enjoy, to protect and develop their culture.

In another case, children of the group shall have an access to mother tongue education in Afaan Oromo language in public schools. It is through this method that we can ensure the free transfer of culture to the next generation of the group. Mother tongue education is also the best device of preserving Afaan Oromo language among the group. The strong ambition of members of the group towards education in Afaan Oromo for their children can be deduced from the response to the questionnaires.

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<sup>62</sup> Margaret Moore, *Internal Minorities and Indigenous Self-Determination*, 271, 275 in MINORITIES WITH IN MINORITIES, EQUALITY, RIGHTS AND DIVERSITY, 271, 275 (Avigail Eisenberg and Jeff Spinner-Halev eds. 2005)

<sup>63</sup> Ethiopia Acceded to both ICCPR and ICESCR on 11 June 1993. Available on [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en), last visited on November 12, 2010

Questions	Variables	Number	Response
Do you need to start education in Afaan Oromo?	Yes	345	93.2
	No	25	6.2

Table 10

About 93.2% of the total respondents seem to understand the value of mother tongue education for protection and development of Oromo culture and language. I will argue that denying education in Afaan Oromo for members of the group has implication not only on cultural and linguistic rights but also on the right to education of the group.<sup>64</sup> Sad to say, the researcher met with some members of the group who were subjected to discrimination and denied the access to education because they speak only Afaan Oromo.<sup>65</sup> One member of the group has expressed his feeling towards the domination of Tigrigna regretfully and painfully that, 'though we are struggling to maintain our language, the victory goes to Tigrigna.'<sup>66</sup> Thus the government has to provide different protections and facilities to preserve and transfer the language to the next generation.

In general, cultural and linguistic rights of minority should be protected both through non-interference from the government and/or majorities in the enjoyment of such rights as well as through positive measures including facilitating education in minority language ,which would have cultural and linguistic importance.

#### **4.2.2.3. Political Participation and Representation Right**

Minorities involvement in the political process via special representation in different branches of the government is indispensable for the group .Because, it enable them to reflect and protect their interests and preferences in the decision making process. For this reason, it is

<sup>64</sup> The Vienna world conference on human right has proclaimed that all human rights are indivisible, inter-related and inter-dependence in which giving precedence among rights would be violation of human rights. See Vienna Declaration and Programme of Action of the World Conference on Human Rights ;Vienna,1993.A/CONF.157/23.

<sup>65</sup> An Interview with Member of the Oromo Community ,in Garjjale & ,Ganda Garo, name Kept confidential, (21 August 2010).

<sup>66</sup> An Interview with Arbse Tola, Member of the Oromo Community, in Ganada Garo (23, August 2010).

appropriate to ensure proportional representation of minorities in the governmental institutions.

Based on this, the FDRE Constitution under article 39(3) has granted every nation, nationality and peoples the right to equitable representation in federal and regional government. This provides a chance for the group to participate in different administration level. In a similar way, nation, nationality and peoples in Tigray region have a right to make political participation in federal government in free, non-discriminatory, fair and equitable manner.<sup>67</sup> At regional level, the Constitution has provided that the representation of other nation, nationality and peoples living with the regional state will be considered in special case.<sup>68</sup> As I indicated in chapter three, to ensure effective political participation of the group, representation of minorities shall be extended to both legislative and executive organs of the government.

As a result, since Raya Oromo has fulfilled the requirements for nation, nationality and peoples as enshrined commonly in FDRE and Tigray Constitutions, the government has to ensure the right to political participation of the group. As Raya Oromo is part of the entire Oromo ethnic group, the claim to have representative in House of Federation is impracticable.<sup>69</sup> Yet, it should be noted that, the group has a right to make political participation in political issues of the regional government based on article 39(3) FDRE & 45(2) of Tigray Constitutions. Therefore, this minority group should have representative in Tigray regional government including in the State council of the region. I would argue that the special representative of Raya Oromo in both the legislative and executive organs of the government would reflect the preferences and interests of the group in the policy and political decision making process. As a result, the cultural identity of the group would be effectively protected. The existence of special representative, like the case of Irob and Kunama, would play significant role in improving the current situation of the group.

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<sup>67</sup> Article 39(2) of Tigray Constitution.

<sup>68</sup> Article 45(2) of Tigray Constitution.

<sup>69</sup> Article 61 of FDRE Constitution.

#### **4.2.2.4. Affirmative Action**

Affirmative action would be feasible and indispensable for minorities if we see in light with the principle of equality and non-discrimination. Unless supported by temporary special measures, minorities would remain disadvantaged and marginalized as they were. This means that viable equality between minority and majority in the enjoyment of social and economic rights would be impracticable if minorities are not beneficiaries of affirmative action.

The Ethiopian minority regime (both the Federal and Regional) with regard to affirmative action seems less encouraging for it is not part of exhaustive lists of bill of rights.<sup>70</sup> Affirmative action for minorities is part of chapter ten of FDRE Constitution which is devoted to 'National policy principles and objectives' with which any organ of government at both federal and state level shall be guided in the implementation of the Constitution, other laws and public policies.<sup>71</sup> It has stated that, 'Government shall provide special assistance to Nations, Nationalities, and Peoples least advantaged in economic and social development.'<sup>72</sup> In a similar way, special assistance for least developed nationalities is part of the political and economic objectives of the Tigray Constitution.<sup>73</sup>

As indicated in Chapter three, the regional government has undertaken different affirmative measures for disadvantaged nationalities in the region. Raya Oromo, I would argue, is an ethnic group sustained different sufferings and oppressions particularly in cultural and linguistic rights, in the hands of the government and the majorities. Accordingly, affirmative action is both compensation as well as a best means to improve the situation. Affirmative action in education such as lower admission requirements for members of the group in preparatory schools and in colleges would ultimately increase the beneficiaries of economic rights among the group. This is for the reason that education plays a decisive role for economic empowerment of minorities. Moreover, the government has to pay attention to offer some privileges in employment and other social and economic sectors for members of the group. Because, mere declaring equality and non-discrimination, and granting the individual

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<sup>70</sup> Neither the FDRE nor Regional Constitutions have incorporated affirmative action in the long list of bill of rights.

<sup>71</sup> Article 85 of FDRE Constitution.

<sup>72</sup> Art. 89(4) of FDRE Constitution.

<sup>73</sup> Art. 98(2) & 89(3) of Tigray Constitution.

socio-economic rights for members of disadvantaged group, is inadequate by itself unless complemented by special treatments.

Since the group has already fulfilled the requirements for nation, nationalities and peoples, they have to be beneficiaries of affirmative action like Irob and Kunama minorities. Failing to do so would apparently mean discrimination among minority groups.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATION

#### ***5.1. Conclusion***

It has become apparent that after the end of World War II, individual human rights appear as the vogue of United Nation Human Rights system. The prevailing view was that individual persons must be protected from the abuse of power of parliaments, governments and public authorities.<sup>1</sup> Yet in the second half of 20<sup>th</sup> Century, the issue of minority accommodation has also emerged as inescapable and critical matter in international discourse for the reason that ethnic based or minority-majority conflicts has become common events in a number of states. Consequently, group-differentiated rights of minorities such as cultural & linguistic rights, the right to autonomy, and representation & political participation have acquired considerable attention in international discourse. The introduction of article 27 in ICCPR was a leap forward in protection of minority groups in international human rights law even though critics go on concerning lack of definition of the concept and other issues related with formulation of the provision. The international progress for minority accommodation has also avowed domestically in different countries by introducing minority regimes in their municipal laws.

The FDRE Constitution has explicitly recognized the multi-ethnic features of the country. Under its peculiar Constitutional etymology of ‘nation, nationality and peoples’, it has granted them essential group-specific rights including unconditional right to Self-Determination. The introduction of federal State structure by FDRE Constitution is with the objective of minority accommodation via power devolution for different ethnic groups. The federal set up came with nine regional States where, the Afar, Tigray, Amhara, Oromia, Somalia, and Harari regions were designed basically for Afar, Tigray, Amhara, Oromo, Somalia and Harari ethnic groups respectively, and the State of Benshangul/Gumuz, Gambella, and Southern Nations, Nationalities and Peoples are administered jointly. The right to statehood of other ethnic groups with in established regions is subjected to procedure which invites critics.

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<sup>1</sup>F.VON PRONDZYNSKI, FREEDOM OF ASSOCIATION AND INDUSTRIAL RELATIONS; A COMPARATIVE STUDY I (1987).

As far as minority protection of Tigray Regional State is concerned , the Regional Constitution has bestowed recognition for Kunama and Irob minorities in the region but other internal national minorities such as Raya Oromo are required to fulfil the requirements for Nation, Nationality and peoples .In the State practice ,some minorities are entitled better protection not with standing that they failed to satisfy all elements of the definition cumulatively while the other group is denied protection even though it fulfilled the requirements and revealed its demand for recognition and protection.

Neither the FDRE Constitution nor the Tigray Constitution is clear regarding the questions whose power is to determine the identity of a certain ethnic group when it is contested and the procedures to be followed therein. Yet, based on the practice of the House of Federation, the claim for distinct identity should be first submitted to the State Council where the claimant group resides even though the case may be transferred to the House of Federation if the Council and the claimant disagree. This arrangement may bestow unlimited power for the local majorities/dominant ethnic groups at regional level to control the process and decide the issue based on their political consideration and preferences. The Raya Oromo case is a typical example for this illustration. Even though this ethnic group has shown an interest for recognition and protection as distinct ethnic group and made a request against the regional government through different mechanisms since 1992, it has been suppressed by regional officials and members of the group enforced to assimilate with majorities. To make it worst, the enjoyments of some of their cultural rights such as spiritual rites are explicitly prohibited by the regional government. As a result, members of the group perceive them selves as alien citizen with out any human rights. Hence, it seems difficult to conclude that the State Council, who is empowered to receive the claim in the first hand and responsible to approve the fulfilments of the conditions stipulated under article 39(5) of FDRE Constitution,<sup>2</sup> would be neutral and fair in examining the claim.

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<sup>2</sup> Any ethnic group who is claiming distinct identity should submitted, first, its case to the State Council in which the group is included. After receiving the application, the State Council ascertains the fulfillments of the requirements of article 39(5) of FDRE Constitution and organized a referendum for the group. Yet if conflict arises between the claiming group and the council, the issue will be submitted to House of Federation. See Letter to the House of Federation, No.Fe15/40/3/1 of Tir 17, 1992.Ethiopian Calendar.

Of course, the claimant group may submit their claim before the House of Federation. But this by itself may not be conclusive evidence for the fairness and neutrality of the process since the House of Federation decision making process may fall under the influence of the representatives of an ethnic group who constitutes, local majority in the region in which the case first submitted. It is to mean that as the House is more of political organ, the political motive and interest of the local majority may outvoted than the claimant interest .In our Case, the influence of Tigray representative in the House of Federation may affect the process.

In the process of this research, I have found out that the claims of Raya Oromo as distinct ethnic group is considered more of political and unnecessary claim than legal claim.<sup>3</sup> It should be implied that once objective and subjective elements of minorities are fulfilled, to vest the power on majorities to decide on recognition claim is not a legitimate way. It would amount to prolong the discrimination and marginalization of minorities by those local /regional majorities. Minase Haile has remarkably asserted that, ‘the Ethiopian ethnic federation would not be able to limit the powers of the state government ,thereby placing the fate of minorities in the subunits at the mercy of tribal majorities with out any protection of the central government.’<sup>4</sup>

The findings of this research demonstrated that, the group in question (Raya Oromo) was the dominant ethnic group politically as well as socially in Raya for long period of time. But they have also been suffered from discrimination and marginalization by the government and majorities. Failing to give recognition and protection for such types of ethnic groups is not only denying their fundamental rights but also defeating the objectives of the FDRE Constitution which is rectifying the historical unjust relations ships and remedy the historically legacy of inequality.<sup>5</sup>

Finally, what this research has found out is that, even though both the federal and the regional Constitutions have granted different rights for minorities, there is no strict monitoring system

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<sup>3</sup> An Interview with Ato Yonas Gidey, former legal advisor of the president of the Tigray State Council has revealed that the claim of the group for recognition is usually considered as outraging political question among the regional state Officials. Interview with Ato Yonas Gidey, *supra* note 53.

<sup>4</sup> Minase Haile, *The New Ethiopian Constitution; Its Impact up on Unity, Human Rights and Development*, 20 SUFFOLK TRANSNATIONAL LAW REVIEW, 52 (1996).

<sup>5</sup> See Preamble of FDRE Constitution, Para 4.

in the implementation process. Minority regime in federal level lacks an institution which is exclusively dedicated for minorities to follow and monitor the implementation process and to entertain grievances about violation of different Constitutional rights.

## ***5.2. Recommendations***

The introduction of federalism in Ethiopia has provided some ethnic groups to establish their own regions thereby constitute regional majorities. But these regional majorities at some region may become internal minorities in another region because of different historical events. Yet the fate of such groups remaine under those regional majorities. There is no comprehensive system in FDRE Constitution or in the practice of House of Federation concerning these groups. Some regional Constitutions have recognized and protected those internal national minorities while others remain mute .And the FDRE Constitution has failed to provide comprehensive provisions concerning the identity clams and recognition. In order to respond and alleviate the problems identified, the writer recommends the following sets of recommendations.

In the first place, the FDRE Constitution has to incorporate some detailed provisions concerning the protection of internal national minorities in sub-national governments. Based on that, uniform and justified minority accommodation system will be established through out the country. The involvement of the Federal government at sub-national minority protection system is indispensable particularly for internal national minorities. With out which, internal national minorities would be in a difficult position to enjoy their Constitutional rights effectively. In the absence of this system, the federalism would only satisfy the interest of ethnic groups who establishes their own region. Further more, it may provide chance for local majorities to oppress minorities with in the regions.

The members of Raya Oromo have fulfilled the requirements for nation, nationality and peoples as envisaged in the FDRE and Tigray Constitutions. They can made a legitimate claim against the Tigray State Council but if they fail to agree it is not impossible to submitte there claim before the House of Federation. If they came through this procedure, the house of Federation has to give Constitutional recognition for the group since they have already fulfilled the requirements.

However, the power to determine distinct identity claims when the identity of a certain group is contested and the process to be followed would be better if it is incorporated under the FDRE Constitution in a fair and neutral way in the sense that it should not affect adversely the claiming group. Specifically, the power given for the regional State Councils to address the claims of identity at the first hand may influence the neutrality and fairness of the procedure. Thus, it would make more beneficiaries for internal minorities if it is transferred to House of Federation. Conditions should be facilitated to ensure the fairness of the proceeding followed by the House of Federation while examine the case of identity claims.

I would also suggests that an institution should be established at national level such as minority Commission to monitor the implementation of Constitutional rights granted to minorities and legislations adopted by various governmental organs in this regard. This organ may also involve in conducting and promoting researches concerning minority issues and recommend to the government measures to effectively implement minority rights. Further more; they can also involve in reporting function to the central government any issues pertaining to minorities on a periodical or ad hoc basis. Such types of institutions may be easily accessible to members of minority group who are at disadvantaged positions in the regional arrangement.

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# ANNEX



4. Whether speaking Tigrigna or Amharic alone would entail Tigray or Amhara identity?  
A)Yes      B)No
5. Do you have common Culture or similar Custom which makes Raya Oromo distinct from others?  
A) Yes      B) No
6. Do you have common or related history?  
A) Yes      B) No
7. Do you share the same Descent?  
A) Yes      B) No
8. Do you believe you share common identity and sense of solidarity?  
A) Yes      B) No
9. Do you think members of Raya Oromo share common aspiration and emotions?  
A) Yes      B) No
10. Do you think Raya Oromo have distinct identity which is different from Tigray or Amhara?  
A) Yes      B) No
11. What do you think about the present settlements pattern of Raya Oromo'?  
A) Contiguous      B) Dispersed      C) Mixed settlement
12. If your answer is contiguous and mixed settlements to the previous question, where do you think the place of residence of majorities of members of the group?  
A) Urban      B) Rural
13. Do you have an interest to establish special woreda for Oromo's which enables you to administer your self in your territory?  
A) Yes      B) No
14. Do you need to start education in Afaan Oromo?  
A) Yes      B) No

## Annex II: Summary of the Data

### 1. Personal Information of Respondents

Variables	Item	Number	Percentage
Sex	Female	150	40.5
	Male	217	59.5
Age	18-30	59	16
	31-40	120	32.4
	41 & Above	150	40.5
	Not responding	41	11.1
Occupation	Farmer	310	83.8
	Student	30	8.1
	Employed(Government & Private)	26	7
	Other	4	1.1
Educational Background	Degree or Diploma	12	3.3
	Elementary or Secondary	36	9.7
	Reading and writing	17	4.6
	Not responding	305	82.4
Residence by Woreda	Alamata	172	46.5
	Raya Azebo	198	53.5

### 2. Summary of the Main Data

Questions	Item	Number	Percentage
1	Oromo	355	93.2
	Tigray	14	3.8
	Amhara	11	3.0
2	Yes	261	70.5

	No	109	29.5
3	Yes	357	96.5
	No	13	3.5
4	Yes	331	89.5
	No	39	10.5
5	Yes	351	94.9
	No	19	5.1
6	Yes	358	96.8
	No	12	5.1
7	Yes	290	78.4
	No	80	21.6
8	Yes	309	83.5
	No	61	16.5
9	Contiguous	260	70.3
	Dispersed	43	11.1
	Mixed settlement	67	18.6
10	Urban	23	7
	Rural	304	93
11	Yes	299	80.8
	No	71	19.2
12	Yes	345	93.2
	No	25	6.2

## **ANNEX III SAMPLE INTERVIEW QUESTIONS**

### **1. Sample Interview Questions Concerning Raya Oromo**

1. Do you know anything about the Historical and Geographical background of Raya Oromo?
2. What is the historical background of Raya Oromo in general?
3. What do you know the historical relationships of Raya Oromo with the Central governments of the time and neighbouring ethnic groups?
4. Can you please tell us about the Geographical & Demographic situations of Raya Oromo in the previous times?
5. Where, do you think the Current Settlement patterns of Raya Oromo?
6. What are the unique cultural identities of Raya Oromo which makes distinct from other ethnic groups?
7. Where do you think Afaan Oromo serves predominantly as a means of communication in Raya?
8. What sort of problems do you face in relation to manifestation of your cultural and linguistic identities?
9. Do you have any interest for recognition and protection as distinct ethnic groups by the Regional Government?
10. Was there any attempt from the government to protect your distinct identity?
11. Have you ever made any claim, or do you know any attempts made by the group (Raya Oromo) for recognition and protection as distinct ethnic group?
12. What are the attitudes and perceptions of the government organs and the majorities about your identities?

### **2. Sample Interview Questions In Relation To Minority Protection in Tigray**

1. What is the Settlement pattern of Kunama & Irob Ethnic group in Tigray National Regional State?
2. What Kinds of support do you get from the Regional government in protection of Kunam and Irob identities?
3. Does members of Irob/Kunama minority groups acquired mother tongue education in Irob /Kunama Language?

4. Can you please tell me any measure taken by the regional government to protect and promote your culture and language?
5. Do you have special representatives in both Federal and regional legislative organs?
6. Do you know any affirmative measures granted for the members of Irob and Kunama Ethnic groups?
7. Do you think the administrative arrangement of Irob Woreda enables the group to administer them selves and enjoy its language in different governmental institutions?