

MINORITY RIGHTS PROTECTION IN THE AMHARA
NATIONAL REGIONAL STATE: THE CASE OF THE KEMANT
PEOPLE IN NORTH GONDAR

BY

BELAY SHIBESHI AWOKE

GRADUATE PROGRAMS

FACULTY OF LAW, ADDIS ABABA UNIVERSITY

ADDIS ABABA, ETHIOPIA

JANUARY 2010

GRADUATE PROGRAMS
FACULTY OF LAW, ADDIS ABABA UNIVERSITY

MINORITY RIGHTS PROTECTION IN THE AMHARA NATIONAL REGIONAL STATE: THE CASE
OF THE KEMANT PEOPLE IN NORTH GONDAR

BY
BELAY SHIBESHI AWOKE

APPROVED BY BOARD OF EXAMINERS:

ADVISOR

SIGNATURE/DATE

EXTERNAL EXAMINER

SIGNATURE/DATE

INTERNAL EXAMINER

SIGNATURE/DATE

MINORITY RIGHTS PROTECTION IN THE AMHARA NATIONAL REGIONAL
STATE: THE CASE OF THE KEMANT PEOPLE IN NORTH GONDAR

BY

BELAY SHIBESHI AWOKE

ADVISOR

TSEGAYE REGASSA

A THESIS

SUBMITTED TO THE GRADUATE PROGRAMS OF FACULTY OF LAW, ADDIS
ABABA UNIVERSITY, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF LAWS IN HUMAN RIGHTS (LL. M)

ADDIS ABABA, ETHIOPIA

JANUARY 2010

ACKNOWLEDGEMENTS

I would like to express my gratitude to those who have contributed a lot to this piece of work. In the first place , my gratitude goes to my advisor Ato Tsegaye Regassa, not only for his invaluable and constructive comments and suggestions throughout the work, but also for his willingness to be my advisor at a time when he was so busy advising so many students. In addition, he assisted me a lot by giving source materials relevant to the study. I thank him for all!

Secondly, Dr. Salah Hammad deserves thanks for his financial contribution for the research, and Ato Getachew Assefa for making such arrangements. I owe a debt to the following persons who helped me by disseminating and collecting the questionnaires, and those who were willing to be interviewed during my field work in Gondar, Lay Armachiho and Chilga: Mersha Mengesha, Tesfahun Mulatu, Nega Gete, Mola Jember, Melkamu Sisay, Wombar Muluneh Mersha, Belay Sisay, Asrat Degif, Endeshaw Bogale, Kefyalem Mammo and Kassie Mengistu. Also, Dr.Misrak Mekonnen and Ato Abebe Arega, Speaker and Deputy Speaker, respectively, of the Amhara Regional Council deserve to be thanked for their willingness to be interviewed.

Last but not least, I would like to say thank you my classmates Hiruy Wube and Endawoke Tsegaw for their positive comments and suggestions.

TABLE OF CONTENTS

TOPICS	PAGES	
INTRODUCTION	1	
1.1 Background	1	
1.2 Statement of the Problem	2	
1.3 Research Questions	4	
1.4 Objectives	5	
1.5 Scope of the Research	6	
1.6 Significance of the study	6	
1.7 Methodology	7	
1.8 Organization of the Chapters	8	
CHAPTER ONE		
THE KEMANT: A DESCRIPTIVE SKETCH		9
1. The People	9	
2. Geography/demography	9	
3. History of the Kemant	11	
4. Language	15	
5. Religion	16	
6. Current situations	18	
CHAPTER TWO		
MINORITIES RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW AND ETHIOPIAN		
CONSTITUTION	20	
2.1 Types of Minorities and their Rights under International Law.....	20	
2.1.1 Definition and Types of Minorities.....	20	
2.1.1.1 Definition	20	
2.1.1.2 Types of Minorities under International Human Rights Law	22	
A) Linguistic	23	
B) Religious	24	
C) Ethnic/National	25	
D) Indigenous	26	
2.1.2 Minority Rights and Their Protection Mechanisms	26	
2.1.2.1 Types of Minority Rights.....	26	
A) Recognition (existence).....	27	
B) Language	28	
C) Religion	29	
D) Culture.....	29	
E) Political Participation	29	
F) Education	30	
2.1.2.2 Minority Rights and Self-Determination	30	
A) Application of Self-Determination to Minority Protection	30	
B) Protection Mechanism of Minorities via Self-Determination	35	
I) Federalism.....	35	
II) Autonomy	36	

III) Political Participation and Representation.....	36
IX) Affirmative Action Measures	37
2.2 Minority Rights Regime in Ethiopia?.....	38
2.2.1 Pre-1991 Ethiopia	39
2.2.2 Post-1991 Ethiopia.....	40
2.2.2.1 The Transitional Government of Ethiopia.....	40
2.2.2.2 The FDRE Constitution of 1995	41
A) Formal Equality	41
B) Substantive Equality	44

CHAPTER THREE

THE AMHARA NATIONAL REGIONAL STATE CONSTITUTION, MINORITY RIGHTS AND THE RIGHTS OF THE KEMANT	46
3.1 The Law and the Practice in the Region	46
3.1.1 Internal Self-determination	46
3.1.1.1 Recognition.....	47
3.1.1.2 Language/Education	47
3.1.1.3 Religion.....	48
3.1.1.4 Autonomy	48
3.1.1.5 Participation and Representation	48
3.1.1.6 Special Measures	49
3.2 Grounds of Failure of Recognition of the Kemant	50
3.2.1 Inadequacy of the Law (procedural).....	50
3.2.2 Practical Problems	52
3.2.2.1 Lack of Political Willingness.....	52
3.2.2.2 Lack of Affirmative Action	57
3.3 Rights of the Kemant	58
3.3.1 Recognition	58
3.3.1.1 Contiguousness	59
3.3.1.2 Language.....	59
3.3.1.3 Belief in common or related identities.....	61
3.3.1.4 Common culture or similar customs	62
3.3.1.5 Common psychological make-up	63
3.3.1.6 Requirements Combined.....	64
3.3.2 Internal Self-Determination	65
3.3.2.1 Self-rule.....	65
3.3.2.2 Cultural and Linguistic Rights	67
3.3.2.3 Right to Political Participation and Representation	68
3.3.2.4 Affirmative Action	69

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS	72
Conclusion	72
Recommendations.....	74
Bibliography	77
Annexation	

MINORITY RIGHTS PROTECTION IN THE AMHARA
NATIONAL REGIONAL STATE: THE CASE OF THE KEMANT
PEOPLE IN NORTH GONDAR

BY

BELAY SHIBESHI AWOKE

GRADUATE PROGRAMS

FACULTY OF LAW, ADDIS ABABA UNIVERSITY

ADDIS ABABA, ETHIOPIA

JANUARY 2010

GRADUATE PROGRAMS
FACULTY OF LAW, ADDIS ABABA UNIVERSITY

MINORITY RIGHTS PROTECTION IN THE AMHARA NATIONAL REGIONAL STATE: THE CASE
OF THE KEMANT PEOPLE IN NORTH GONDAR

BY
BELAY SHIBESHI AWOKE

APPROVED BY BOARD OF EXAMINERS:

ADVISOR

SIGNATURE/DATE

EXTERNAL EXAMINER

SIGNATURE/DATE

INTERNAL EXAMINER

SIGNATURE/DATE

MINORITY RIGHTS PROTECTION IN THE AMHARA NATIONAL REGIONAL
STATE: THE CASE OF THE KEMANT PEOPLE IN NORTH GONDAR

BY

BELAY SHIBESHI AWOKE

ADVISOR

TSEGAYE REGASSA

A THESIS

SUBMITTED TO THE GRADUATE PROGRAMS OF FACULTY OF LAW, ADDIS
ABABA UNIVERSITY, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF LAWS IN HUMAN RIGHTS (LL. M)

ADDIS ABABA, ETHIOPIA

JANUARY 2010

ACKNOWLEDGEMENTS

I would like to express my gratitude to those who have contributed a lot to this piece of work. In the first place , my gratitude goes to my advisor Ato Tsegaye Regassa, not only for his invaluable and constructive comments and suggestions throughout the work, but also for his willingness to be my advisor at a time when he was so busy advising so many students. In addition, he assisted me a lot by giving source materials relevant to the study. I thank him for all!

Secondly, Dr. Salah Hammad deserves thanks for his financial contribution for the research, and Ato Getachew Assefa for making such arrangements. I owe a debt to the following persons who helped me by disseminating and collecting the questionnaires, and those who were willing to be interviewed during my field work in Gondar, Lay Armachiho and Chilga: Mersha Mengesha, Tesfahun Mulatu, Nega Gete, Mola Jember, Melkamu Sisay, Wombar Muluneh Mersha, Belay Sisay, Asrat Degif, Endeshaw Bogale, Kefyalem Mammo and Kassie Mengistu. Also, Dr.Misrak Mekonnen and Ato Abebe Arega, Speaker and Deputy Speaker, respectively, of the Amhara Regional Council deserve to be thanked for their willingness to be interviewed.

Last but not least, I would like to say thank you my classmates Hiruy Wube and Endawoke Tsegaw for their positive comments and suggestions.

TABLE OF CONTENTS

TOPICS	PAGES	
INTRODUCTION	1	
1.1 Background	1	
1.2 Statement of the Problem	2	
1.3 Research Questions	4	
1.4 Objectives	5	
1.5 Scope of the Research	6	
1.6 Significance of the study	6	
1.7 Methodology	7	
1.8 Organization of the Chapters	8	
CHAPTER ONE		
THE KEMANT: A DESCRIPTIVE SKETCH		9
1. The People	9	
2. Geography/demography	9	
3. History of the Kemant	11	
4. Language	15	
5. Religion	16	
6. Current situations	18	
CHAPTER TWO		
MINORITIES RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW AND ETHIOPIAN		
CONSTITUTION		20
2.1 Types of Minorities and their Rights under International Law.....	20	
2.1.1 Definition and Types of Minorities.....	20	
2.1.1.1 Definition	20	
2.1.1.2 Types of Minorities under International Human Rights Law	22	
A) Linguistic	23	
B) Religious	24	
C) Ethnic/National	25	
D) Indigenous	26	
2.1.2 Minority Rights and Their Protection Mechanisms	26	
2.1.2.1 Types of Minority Rights.....	26	
A) Recognition (existence).....	27	
B) Language	28	
C) Religion	29	
D) Culture.....	29	
E) Political Participation	29	
F) Education	30	
2.1.2.2 Minority Rights and Self-Determination	30	
A) Application of Self-Determination to Minority Protection	30	
B) Protection Mechanism of Minorities via Self-Determination	35	
I) Federalism.....	35	
II) Autonomy	36	

III) Political Participation and Representation.....	36
IX) Affirmative Action Measures	37
2.2 Minority Rights Regime in Ethiopia?.....	38
2.2.1 Pre-1991 Ethiopia	39
2.2.2 Post-1991 Ethiopia.....	40
2.2.2.1 The Transitional Government of Ethiopia.....	40
2.2.2.2 The FDRE Constitution of 1995	41
A) Formal Equality	41
B) Substantive Equality	44

CHAPTER THREE

THE AMHARA NATIONAL REGIONAL STATE CONSTITUTION, MINORITY RIGHTS AND THE RIGHTS OF THE KEMANT	46
3.1 The Law and the Practice in the Region	46
3.1.1 Internal Self-determination	46
3.1.1.1 Recognition.....	47
3.1.1.2 Language/Education	47
3.1.1.3 Religion.....	48
3.1.1.4 Autonomy	48
3.1.1.5 Participation and Representation	48
3.1.1.6 Special Measures	49
3.2 Grounds of Failure of Recognition of the Kemant	50
3.2.1 Inadequacy of the Law (procedural).....	50
3.2.2 Practical Problems	52
3.2.2.1 Lack of Political Willingness.....	52
3.2.2.2 Lack of Affirmative Action	57
3.3 Rights of the Kemant	58
3.3.1 Recognition	58
3.3.1.1 Contiguousness	59
3.3.1.2 Language.....	59
3.3.1.3 Belief in common or related identities.....	61
3.3.1.4 Common culture or similar customs	62
3.3.1.5 Common psychological make-up	63
3.3.1.6 Requirements Combined.....	64
3.3.2 Internal Self-Determination	65
3.3.2.1 Self-rule.....	65
3.3.2.2 Cultural and Linguistic Rights	67
3.3.2.3 Right to Political Participation and Representation	68
3.3.2.4 Affirmative Action	69

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS	72
Conclusion	72
Recommendations.....	74
Bibliography	77
Annexation	

INTRODUCTION

1.1 Background

Ethiopia is one of the oldest states of the world and was the only country in Africa to escape from the yoke of European Colonialism. For a long time, it was ruled by successive monarchies and very recently by a military dictator for about a decade and half. However, both systems of government were not better than colonial rule for the enjoyment of fundamental rights by its citizens in general and minority ethnic groups in particular. After the fall of the military regime in 1991, the Transitional Government of Ethiopia came up with promises for the respect and promotion of human rights and ethnic rights which were later included in the 1995 Federal Constitution.

The Federal Constitution, apart from enshrining fundamental rights of individuals in an extensive way, declared self-determination up to and including secession an unconditional, fundamental right of every 'nation, nationality and people' of Ethiopia. Moreover, unprecedented in the history of the country, the constitution declared federal form of government in accordance with ethnic-based territories. Although it is believed that there are more than eighty ethnic and linguistic groups in the country, the Federal Constitution formed only nine regional states.¹ In other words, there are some ethnic groups within the mainstream groups in whose names the regional states are designated.

While federation is one of the mechanisms whereby differences are tolerated and minority rights are protected, there is fear that, in the present Ethiopian federal context, minorities in each state may fall under the dictate of the mainstream ethnic group. As a member of the federation, each

¹ Of course, the right to form a state is provided for under article 47 of the Federal Constitution by the other ethnic groups which fulfill the requirements provided under article 39(5). However, an ethnic group may undergo a long process to attain the status of 'nation, nationality and people', let alone to form a state as easy as it appears to be.

regional state has its own constitution in which minority ethnic groups may or may not be recognized.

Among the members of the federation is the Amhara National Regional State, which is the second largest in population and area among the members of the Federal Democratic Republic of Ethiopia. It shares a common border in the north with Tigray, in the east with Afar, in the south with Oromia and in the west with Benishangul/Gumuz, and the Republic of Sudan.² According to the 2007 Population and Housing Census, the region has a population of above 17 million. Different nationalities live in the region. It is divided into seven administrative zones and three Nationality Administration Zones, in addition to Bahir Dar Special Zone Administration. In the Region the Oromo, Awi and Wag Himra nationalities are granted zonal administration,³ the Argoba has a special nationality woreda administration.⁴

However, although the Amhara Region is claimed by some to be an exemplary in the protection of minority rights in the country,⁵ there are nationalities such as, the Kemant, the Woito, which are not given self-administration, nor recognized as a nationality either by the 1994 Amhara Constitution or by the Revised Amhara Constitution of 2001.

1.2 Statement of the Problem

Among scholars there is a wide acceptance that general human rights cannot give adequate protections to minorities. In other words, it has been found necessary to have special rights to protect their interests. Hailbronner has written that “Although the League of Nations Minorities System became obsolete after World War II, its basic idea of special rights and public action in

² The Revised Amhara National Regional Constitution of 2001, article 2.

³ According to article 45(2) of the Revised Amhara National Regional Constitution, they shall have their own councils. As per sub article 1 of the same the constitutionally constituted state hierarchies are the Regional, Woreda and Kebele administrative units, the Regional Council is entitled to establish by law other administrative units and as a result, Zonal Administrations have been established, *see infra* footnote 169 on page 66.

⁴ Argoba Nationality Woreda Establishment and Determination of Its Powers and Duties Proclamation No.130/2006, Amhara National Regional State Zikre Hig-No.15 April 18, 2006.[Hereinafter ‘Argoba Nationality Proclamation’]. Under article 3(1), the Argoba Nationality Woreda is established as autonomous self-governance.

⁵ It is not uncommon to hear in some public forums and deliberations that there is effective and full protection of minorities in the Region. This assertion may have emanated from the mere observance of protection of those ethnic groups which have already been recognized and have enjoyed their rights as enshrined both in the regional and federal constitutions. However, concluding from the particular, the case of the three or the four ethnic groups, to the general may lead to erroneous conclusion. *See generally*, Christophe Van der Beken, *Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level*, 20AFRICA FOCUS 105 (2007).

ethnic, linguistic or religious groups gained wide acceptance.”⁶ The silence of the UN Charter or/and the Universal Declaration of Human Rights regarding minorities did not silence the claimants. Not accommodating differences became a source of conflict both within states and beyond, particularly after the Cold War. For Kymlicka “the question of minority rights has moved to the forefront of political theory.”⁷ Hence, the importance of minority rights, in countries which have diversified societies, is unquestionable.

As a ‘nation of nations,’⁸ different ethnic groups live in Ethiopia in different regional states which constitute the federation. Amhara Regional State is not an exception to this; some ethnic groups exist in the region. Some of them were recognized by the 1995 Regional Constitution and by 2001 Revised Constitution of the same and have enjoyed minority rights enshrined both in the Regional and Federal constitution.

Both the Regional and the Federal constitutions give equal rights to the majority and the minority, just as general human rights does treat equally the ‘unequals’. To put it in simple terms, the constitutions do not provide for minority rights. On the contrary, practically and legally speaking, they give more protection to the majorities, particularly in regional context. According to article 47(1) of the Federal Constitution the Tigre, Amhara, Afar, Oromo, Somali and Harare are expressly recognized as ‘nation or nationality’. Others are yet to prove their existence as per article 39(5), though they were in existence before the Constitution was adopted.⁹ Questions of self determination are to be first considered by the states within which they reside before finally decided by the House of Federation.¹⁰

⁶ Kay Hailbronner, *The Legal Status of Population Groups in a Multinational State under Public International Law*, in *THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS* 123 (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinus Nijhoff Publishers, 1992).

⁷ KYMLICKA, WILL, *POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM AND CITIZENSHIP* (Oxford University Press, 2001), at 17.

⁸ FASIL NAHOM, *A CONSTITUTION FOR A NATION OF NATIONS: THE ETHIOPIAN PROSPECTIVE* (Red Sea Press Inc., Asmara: 1997.)

⁹ See for instance Office of Population and Housing Census Commission, Central Statistical Agency, Federal Democratic Republic of Ethiopia, *The 1994 Population and Housing Census, Results at the National Level, Volume 1 Statistical Report*, Addis Ababa, June 1998, at 66. [Hereinafter ‘Census 1994’].

¹⁰ A Proclamation to Provide for Consolidation of the House of Federation and Definition of its Powers and Responsibilities Proclamation No. 251/2001, article 20 cum article 19.

In the same vein, both the 1995 and 2001 Revised Amhara Regional constitutions did give equal rights for both the majority and the minorities. As we saw above, the Awi, Himra and Oromo, including, of course, the Amhara, were recognized.

However, some others, like the Kemant, have not been recognized. At a time when their language and religion, and as a result their sheer identity, are at the verge of extinction,¹¹ the Kemant are not given due attention by the Federal and the Regional state. This is reflected partly by the fact that they are not officially recognized and are not exercising their right of self administration.

1.3 Research Questions

As a matter of fact, the right of self-determination of a minority emanates from its status as such. In other words, in the absence of recognition, it cannot claim a right to self-determination. The same holds true political representation at the regional and federal level. The Kemant, who had ever recognized officially before 1995, have failed to make use of such rights. Where do the problems lie? The researcher assumes that the problems may be due to the insufficiency of the law to protect minorities and practical enforcement constraints.

In the discourse of minorities and their rights that may come first is their recognition. In legal terms, it is the recognition that gives personality to a group to avail minority rights protection. Unfortunately, many states deny recognition to a certain ethnic, linguistic or religious group with a view to deny their existence. By such denial, states assume they are relieved of enforcing and protecting minority rights in their jurisdiction.

It is prima facie evident that giving states power to determine such recognition contradicts the *raison d'être* of minority rights, for the former decline to recognize the latter thereby free themselves from enforcing them.

¹¹ ZELALEM LEYEW, THE KEMANTNEY LANGUAGE: A SOCIOLINGUISTIC AND GRAMMATICAL STUDY OF LANGUAGE REPLACEMENT 30 (Unpublished PhD Dissertation, Addis Ababa University, 2000).

- 1) So, who should have or does have such right? Is it the concerned group or other neutral body? In our case, is it the Amhara Regional State or the neutral Federal Government or the Kemant who have the power to determine whether the Kemant are distinct people or not?

Whoever may be the holder of such right to determine recognition, there should be set criteria to be met as prerequisites for recognition. Such requirements are provided under article 39(5) of the Federal Constitution.

- 2) The issue is: who determines whether such objective and subjective elements exist or not? Is it sufficient that the claimants, in our case, the Kemant, demand irrespective of the interest of the state in which they are found? Or shall there be the involvement of third party, i.e., the Federal State? Can the Kemant, legally speaking, fulfill these requirements?

In this regard, the sufficiency of both the Federal and Amhara Region constitutions will be evaluated.

- 3) Do they give better protection of minorities? In other words, do they give special procedures to minorities? The paper raises and discusses such issues with a view to finding gaps in the law which affected the Kemant to use their right of recognition, self-administration and representation.

1.4 Objectives

The Kemant, like many other ethnic groups of the country, had been denied of their right of using and developing their culture, language, religion and history. What makes them unique is that they have been victims for a very long time, i.e., seven centuries, and the fact that they are not beneficiaries of minority rights as enshrined in the 1995 Federal Constitution of Ethiopia and Regional Constitution.

One of the objectives of this research is, therefore, to identify factors which have hindered the Kemant from being recognized as distinct people since the adoption of the Federal and Regional constitutions. A related objective the research tries to address is to determine whether the Kemant fulfill the definition of ‘nation, nationality or people’ as per article 39 of the Federal Constitution.

One of the rights which accompany the recognition of a group as distinct ethnic group is the right to self-administration. Therefore, this paper, once comes to the conclusion that the Kemant should be recognized, assesses whether they have a right to self-administration at the appropriate level-woreda or zonal administration.

In addition, the research attempts to figure out the right of the Kemant to be represented at both Regional and Federal government bodies. This right can be an extension of right to self-administration and makes a nexus between the local, i.e. nationality administration, with that of the Regional and Federal Governments.

Finally, in determining the above points, there would be an evaluation of the sufficiency of the Federal and the Regional Constitution regarding minority rights protection.

1.5 Scope of the Research

Minority rights include a set of rights reserved to only a minority group. This paper does not deal with each type of these rights .It discusses only the three rights, namely, right to recognition, self-administration and political representation of minorities in the Amhara Region with main focus on the Kemant people. It does not, however, mean that other rights will not be dealt with; they will be discussed as found necessary to elaborate the aforementioned rights.

In the discourse on these rights, factors which have affected the Kemant in making use of them are within the scope of the paper. However, it is out of the scope of this paper to address the consequences of lack of self-determination and representation. Again, as exception, and if they are found necessary, some consequences will be covered.

1.6 Significance of the Study

The Kemant have been outcast and excluded people in the country,¹² probably next to the Falashas who were their neighbors and who have been caused to flee to the state of Israel. As a

¹² HENRY A. STERN, WANDERINGS AMONG THE FALASHAS IN ABYSSINIA: TOGETHER WITH A DESCRIPTION OF THE COUNTRY AND ITS VARIOUS INHABITANTS 43(London: Wertheim, Macintosh, and Hunt, 1862).

result, no Ethiopian has tried to write about the history, culture and language of these people, let alone about their rights under international and national laws. It is only foreigners who have attempted to uncover their culture and history.

This paper will be the first to address the rights and the problems of these people. The finding of the research will enable the Kemant know their rights both in the regional and federal constitutions and how to use them. Secondly, the research tries to come up with practical problems related to implementation of provisions of laws relevant to minorities.

Thirdly, by finding gaps in the existing laws governing ethnic minorities' protection, it proposes amendments.

The research, therefore, tries to come up with the reasons for failure of recognition of the Kemant as distinct people and to use the rights guaranteed in the Federal constitution, particularly article 39 of the Federal Constitution and Regional Constitution and thereby suggest solutions to the concerned regional and federal bodies to take appropriate measures before violation of minority rights gets worse and leads to instability.

1.7 Methodology

The Kemant are not recognized as nationality and do not have self-administration. Nor are they recognized. The reasons may be practical or legal ones .So, in order to find out the reasons, analysis of laws and fieldworks has been carried out. Informants from the Kemant people and from regional and federal officials concerned with the issues were interviewed.

Questionnaire was one of the methods I used to get the relevant data. Questionnaires were distributed randomly among the members of the Kemant ethnic groups in Gondar city, Lay Armachiho and Chilga woredas. I chose questionnaire to get appropriate and relevant information from members of the ethnic group who are literate and those who have cross-ethnic relationships. Respondents represent different age groups, occupations, and education backgrounds, the majority being ages 18-30, government employees, and graduates (degree) and secondary high schools levels, respectively.

Of course, review of literature to update the jurisprudence of minority rights and self-determination has been made.

1.8 Organization of the Chapters

This Study is divided into four chapters. As the Study focuses on the minority rights of the Kemant people, Chapter One introduces the people, their location, history, origin, language, religion and their current situations with a brief description. This description helps better understand their positions versus other ethnic groups and helps determine their rights.

Under Chapter Two, minorities and their rights in international human rights will be discussed in a brief way. Definition of minorities, types of minorities and some lists of their rights but with special emphasis on self-determination will be explored. This gives a reader a clue about minorities and their rights in international law against which to evaluate Ethiopian laws regarding minorities. Also included in this chapter is the protection of minorities in Ethiopia in a very general and historical perspective, including the present situations.

Chapter Three deals with the protection of minorities in the Amhara National Regional State. Analysis of the Regional Constitution will be made with reference to the actual practice. The findings why the Kemant failed to be treated as ‘nation, nationality or people’ will be in detail explored. The rights of the Kemant to self-determination, particularly recognition, self-administration and representation, will be assessed against the distinct characteristics the Kemant have as described in Chapter One, the provisions of Article 39 of both the Federal and Regional constitutions and the international law standards as discussed in Chapter Two.

Lastly, Chapter Four is devoted to Conclusion and Recommendations. Under this chapter, the finding of the research will be made, and based of this some suggestions will be forwarded.

CHAPTER ONE

THE KEMANT: A DESCRIPTIVE SKETCH

1. The People

The Kemant are an ethnic group (or to use Gamst's term 'Caucasoid people') residing in the North Gondar Zone of Amhara Region; they speak a dialect of Cushitic language and practice a religion of 'Pagan-Hebraic'.¹³ According to the anthropologist Gamst, the Kemant belong to the branch of the Agaw:

*Today there are eight Agaw groups, remnants of a former much wider distribution of Agaw throughout northern and central Ethiopia. Seven groups- the Kemant , Awiya, Kumfal, Hamir ,Bilan, Damot ,and Hamta –are found enclaves and the eighth –the Falasha – is found dispersed among the Amhara .*¹⁴

Physically, they are mainly indistinguishable from the neighboring peoples, the Amhara. Most of them are peasant farmers and only very few reside in towns; occupationally, unlike the Falasha, they are not distinct from their neighbors. In this regard, "Both Agew and **Kemant** peoples conduct plough agriculture and are difficult to distinguish from their Amhara neighbors in their everyday life."¹⁵ During the second half of the 19th century, Stern described the Kemant: "They are, as a body, an industrious, energetic, and active race, residing in districts where they have fine pasture for their cattle, and fertile soil to reward their field labor."¹⁶

2. Kemant Land and Demography

Located in North Gondar Administrative Zone, Northwest of Amhara National Regional State, the Kemant contiguously reside in Chilga woreda, Lay Armachiho Woreda and the Town of Gondar, and some kebeles of the neighboring woredas of Gondar Zuria, Dembia, Wogera,

¹³ FREDERICK C. GAMST, *THE QEMANT: A PAGAN-HEBRAIC PEASANTRY OF ETHIOPIA* (New York: Holt, Rinehart and Winston, Inc., 1969), at Vii.

¹⁴ *Id.* at 6-7. Today almost of all the Falashas are in Israel while the Awi and Himra are granted autonomous administration as nationality zones in Amhara Region, the Bilen being in the state of Eritrea.

¹⁵ Kjetil Tronvol, *Minority Rights Group International, Ethiopian: a new start?* 7 (2000).

¹⁶ STERN, *supra* note 12, at 44.

Metema and Quara.¹⁷ The land, as part of the western escarpment of Ethiopia, is very rugged and mountainous and much of it is not suitable to cultivation. Climatically, however, it is conducive as most of it is either *woina dega* or *kola* and has enough rain for cultivation and animal husbandry. As a result, their livelihood depends much on subsistence production.

The population of the Kemant, according to the 1984 Population and Housing Census, was 169,169.¹⁸ According to the 1994 Census, it rose to 172,327.¹⁹ However, at that time this number may not have reflected the exact size of the population, for the time was not yet convenient for the people to identify themselves. In both Censuses, the Kemant were eighteenth in rank among ethnic groups of Ethiopia.²⁰ Despite the fact that there might have been discrepancies between the Censuses and the exact population size, the Kemant had ever been recognized as distinct people.

Paradoxically, the Transitional Government of Ethiopia did not include the Kemant among the ethnic groups eligible to establish national/regional self-government.²¹ This law was essential during the transitional period and was a prelude to the Federal Constitution.

Unfortunately, and to the disadvantage of the Kemant, by the 2007 Population and Housing Census, they were not counted as a separate ethnic group while it did count eighty five ethnic groups.²² Although there is lack of official census concerning the Kemant at present, according to the group of Kemant struggling for its recognition and self-determination, the population is estimated to be well over 900,000.²³ This makes them rank 12th in population size among Ethiopian ethnic groups.

¹⁷ GAMST, supra note 13, map of the Kemant of Ethiopia.

¹⁸ Office of the Population and Housing Census Commission, Transitional Government of Ethiopia, The 1984 Population and Housing Census Analytical Report at National Level, Addis Ababa, December 1991, at 46. [Hereinafter 'Census 1984'].

¹⁹ Census 1994, supra note 9, at 66.

²⁰ Census 1984, supra note 18, at 44-47; Census 1994, supra note 9, at 66-67.

²¹ See Proclamation No.7/1992 to provide for the Establishment of National/Regional Self-governments -51th Year, No. 2.

²² Population Census Commission, Federal Democratic Republic of Ethiopia, Summary and Statistical Report of the 2007 Population and Housing Census, Addis Ababa, December 2008, [Hereinafter 'Census 2007'], at 86-87.

²³ Two years ago, a group of people belonging to the ethnic group applied to the Amhara National Regional State for recognition and self-administration and the population was estimated to be well above 900, 000. The estimation, according to an interview with Ato Nega Gete, see infra note 30, is made based on statistics on Kebeles and woredas

3. The History of the Kemant

Due to lack of written evidences, for some scholars, the origin of the Kemant, as that of the Beta Israel (Falasha), is obscure.²⁴ However, according to the Kemant myth, they are descended from Yaner (also called Ayaner). He is "...the grandson of Canaan, the fourth son of Ham, son of Noah. According to some legends, Canaan's son, Arwadi, came to Ethiopia from the land of Canaan to found the Qemant group, whereas in other legends it is Arwadi's son, Yaner did so."²⁵

However, all agree that Yaner had a wife called Entala²⁶ and the spouses came to Ethiopia during the seven year of drought and formed the different groups of the Agaw, including the Kemant.²⁷ And the place where they came from is Canaan Land²⁸, that is, supposedly, the present day territories of Israel and Palestine. However, the Wamber does not seem to maintain this myth. In my interview with him, he denied that the Kemant came from somewhere and he is not comfortable to hear that they came from other place of origin.²⁹ In the same vein, other members of the Kemant claim that Kemant's place of origin is nowhere but in Ethiopia.³⁰

This view seems to be influenced by the current legal and political situations of the country. In other words, even if the Kemant is not still recognized, there may be a sense of belongingness to Ethiopia among members of the ethnic group since the change of government and particularly by the inclusion of article 39 in the Constitution in favor of diversity, which may be some time implemented in favor of them. In this regard, it has been argued that "by allowing and ensuring

in relation to development works of the government. However, in Census 2007, supra note 9, ethnic groups as small as 298 (Qewama) and 320 (She) were recognized and counted.

²⁴ James Quirin, *Caste And Class In Historical North-West Ethiopia: The Beta Israel (Falasha) And The Kemant, 1300-1900*, 39 JOURNAL OF AFRICAN HISTORY, 195 (Cambridge University Press, 1998), at 197.

²⁵ *Id.* at 35-37.

²⁶ There is a sacred grove called Entela about 5 km Northeast of Tikle Dingay, an administrative town of Lay Armachiho Woreda. Through it passes a long way to and fro the town and any one that passes through this road is expect to seat (rest) at the grove and not respecting this is believed that something bad will happen to him/her. This is observed not only by Kemants who follow the traditional religion and by Christian Kemants but also by Amharas. This is to venerate Entela, the wife of Yaner, for her body is believed to have been buried there.

²⁷ Quirin, supra note 24, at 37.

²⁸ The Kemant religious leader, Wamber Muluneh Mersha, as cited by Graham Hancock, *The Sign and the Seal: A Quest for the Lost Ark of the Covenant* (William Heinemann LTD, 1992, Reprinted in 1997 by Alley Books), at 245.

²⁹ Interview with Wamber Muluneh Mersha, the highest religious leader of the Kemant religion (Hege-Lebona) at Aykel (on 17 November 2009) and at Gondar (on 18 November 2009).

³⁰ Interview with Ato Nega Gete, who wrote a book about the Kemant and who has struggled for their recognition and self-governance since the 1991, on 18 November 2009 at 4: 00- 6: 00 pm, Gondar.

the various groups a certain right to identity, they will feel more disposed to integrate and identify with the state in which they live.”³¹

Or else, claiming the origin of the ethnic group abroad might have imprinted an impression that can affect their right of self determination. This fear can be substantiated by two facts: firstly, those who have relatively reliable evidence that their origin is other than Ethiopia, the Falasha, fled to Israel, rather than enjoying self-determination, and secondly, the Kemant, whose myth claims the same origin with the Falashas, did not enjoy recognition or self-determination since the change of government.

In other words, there might be attachment of the origin of the ethnic group with the territory they inhabit and ultimately with self-determination. Because of these reasons, the Wombar might be influenced by those groups of Kemants striving for Kemant’s recognition and self-governance.³²Some of these groups believe that the Kemant did not come from other places; rather, they claim the same origin with that of the Amhara and Tigre. For instance, Ato Nega Gete argues that “the present Amhara and Tigre are convert Kemant; both were Kemant before the introduction of Christianity into Ethiopia.”³³

In one tradition, the origin of the Kemant is the same as that of their neighbor ethnic groups. Henry Aaron Stern wrote the following during his visit of the area:

*According to Abyssinian tradition, the Kind of **Tigre**, soon after his conversion to Christianity, crossed the **Taccazy**, and invaded **Semien** and **Amhara**. Here he met a people who were neither Pagans nor Christians, a marvel which aroused the monarch’s curiosity , and he inquired what they believed ; to which , in a larconic style, they replied*

³¹ Kristin Henrard and Stefaan Smis, Recent Experiences In South Africa And Ethiopia To Accommodate Cultural Diversity: A Regained Interest In The Right Of Self-Determination, 44 JOURNAL OF AFRICAN LAW1, 18 (2000).

³²In my interview with him, he was hesitant to respond to questions relating to the origin of the Kemant and suggested it would be better for him to answer such questions in the presence of those groups of persons. Accordingly, in the presence of one of them, the Wombar reluctantly replied that the Kemant did not come somewhere and required even confirmation from such person.

³³ Ato Nega Gete, supra note 30.

*in their own dialect **Kamant**, or **Kam Ante**, i.e, as thou, from whence they obtained their present appellation.*³⁴

However, despite such tradition, Stern held a different view regarding their origin in that “. . . among themselves they speak in the Falasha tongue; and the striking Jewish features of many a man and woman amongst them inclined us to credit the report which assigns to them a Jewish origin.”³⁵ Surprisingly, this view goes in tandem with the Kemant myth. Even presently, the view is supported as follows:

*The land [of Israel] is the Hebrews’ to share with the **Qemants** of Ethiopia, who were the original residents of the Land of Canaan. . . . Citizen Makeda, widely known as the Queen of Sheba, an erudite and sophisticated Nubian lady, was a Queen of the Qemant Nation living in Ethiopia. The Qemants still live in Ethiopia, where they adopted the language of their hosts, the **Agaw** Nation.*³⁶ (Original color changed).

The view, in addition, gives a reason why there is no everlasting peace between the modern state of Israel and Palestinians in that “both countries are fighting over land that is not theirs.” It goes on to argue “Whoever chooses to live on the Nubian land known as the **Land of Israel** must be either a Hebrew [Ethiopian Jews or Falashas] or a Qemant; otherwise, he or she must pay equitable rent to the true owners of the land.”³⁷ (Original color changed).

Although language and religion are main elements of ethnicity, the Kemant give more emphasis to their common ancestor. Because of their ancestry, they are distinct from others, for “Traditional Kemant believed they had ‘pure blood’ and that their ancestors had been ‘white’ or ‘pure’ (*chewa*).”³⁸ That’s why, even if most of the population do not use the language and do not

³⁴ STERN, supra note 12, at 44.

³⁵ *Id.*

³⁶ World Morning Star Association, *Igbo Nation: Its Origin and Significance*, MORNING STAR NEWS, at (6C), visited on Oct. 19,2009, 1: 09: 49PM, at file:///Users/James%20T.%20Womack/Desktop/Editorial.mht.

³⁷ *Id.*

³⁸ ANDREW J. CARLSON, AND DENNIS G. CARLSON, *HEALTH, WEALTH AND FAMILY IN RURAL ETHIOPIA : KOSOYE, NORTH GONDAR REGION, 1963-2007*(Addis Ababa University Press, 2008),at 145.

follow the religion for different reasons that will be discussed in later sections, they consider themselves as Kemant.³⁹

After the restoration of the ‘Solomonic Dynasty’ around 1270 till the end of it in 1974, the Kemant had passed through different phases of assimilation by the neighboring dominant Amhara. An exception can be the reign of Emperor Tewodros II. He had not only the support of the Kemant during his banditry, for he had spent a long time in Quara, Chilga and Lay Armachiho during that time⁴⁰, but also “the strongest contact of the Kemant people according to oral tradition was witnessed during the reign of Tewodros II. . . .”⁴¹ The Dergue Military regime, which replaced the monarchy, at least theoretically recognized the existence of the Kemant as distinct people. This fact is found from the official national census of 1984.

Some Kemant claim that Kemant would have been recognized and would have enjoyed self-determination, had they been in regions other than the Amhara which is dominated by the Amhara people, who had political, economic, cultural, linguistic and religious dominance over the entire country. They argue that this hegemony has continued exclusively on the Kemant people. This can be deduced from the fact that the Amhara Regional State was not willing to submit the Kemant among the lists of ethnic groups in the region to the Central Statistics Office in 2007 while the Southern Nations, Nationalities and Peoples Regional State had included ethnic groups in the region that are not represented in the House of Federation.⁴²

The Kemant are considered Amhara while they are actually distinct peoples. The Kemant have been ethnically, religiously and linguistically distinct people for a long time and because of this distinction they have been victims of stigma, exclusion and marginalization for the last seven centuries.⁴³ For instance, during the Haile Selassie I reign, it was not easy to get permission to

³⁹ Census 1994, *supra* note 9, at 89. Out of the total population of 172,327, only 1650 and 3181 speak Kemantney as mother tongue and second tongue, respectively.

⁴⁰ ZELALEM LEYEW, *supra* note 10, at 37.

⁴¹ *Id.* at 39.

⁴² An interview with Ato Gebeyehu Abelti, Vice Director, Population and Social Statistics, Central Statistics Agency, on 30 November 2009, at 11:30-6:30, Addis Ababa.

⁴³ Since their interaction with the Monarchy, they were supposed to withdraw from their religion and language in favor of Orthodox faith and Amharic language to be beneficiaries of the monarchy. In other words, speaking the Kemantney language and following their ‘Pagan –Hebraic’, to use Gamst’s term, would mean exclusion from the benefits of citizenship benefits. In addition, apart from the development of negative attitude toward to their religion

construct and run mission schools and clinics in Kemant areas such as, Lay Armachiho and Chilga, let alone such schools and clinics to be built and run by the government.⁴⁴

The reason given by the government was that the Kemant people, being firm followers of Christian faith (Orthodox), did not want such mission schools and clinics.⁴⁵ Paradoxically, mission schools and clinics were allowed and in operation at that time in Gondar Town and Amhara areas of Dembia, Dabat, Teda and Debretabor.⁴⁶ No doubt all these Amhara places and Gondar Town, unlike Kemant areas (with the exception of Gondar Town) were Orthodox-Faith strongholds during that time. The Chrischona Mission went to the Gurage region to construct those schools, and it was only after a decade through a relentless effort of Ato Endeshaw Bogale that the Mission was allowed by the government to construct the first schools in Kemant areas, which presently constitute many of the public schools.⁴⁷

4. Language

The Kemant have their own language, which makes them grouped under the category of the Agaw languages. Although in earlier times it was widely spoken in North Gondar region, presently, very few of the population speak the language called Kemantney. They do not have an alphabet yet. Among the reasons for the decrease of the number of the speakers of the Kemantney in favor of Amharic were: primary schools were (are) run only in Amharic, the association of Kemantney with the ‘stigmatized’ Kemant identity because of their traditional religion (*Hege-Lebona*), not only by the dominant Amhara but also by those convert Kemants and to find job and other opportunities in the government offices it was mandatory to avoid such stigma by speaking Amharic and following Christianity,⁴⁸ as the case was with other ethnic groups of the country “[f]or non-Amhara the learning of Amharic and the adoption of Amhara

and language by other ethnic groups, they were victims of forced conversion, particularly at the time of Yohannes IV and Haile Selassie I. See ZELALEM LEYEW, *supra* note 11, at 30-60.

⁴⁴ An interview with Ato Endeshaw Bogale, who has ever been struggling for the recognition and self-rule and other interests of the Kemant since the 1960s, on 22 November 2009 at 7:00- 9:00, Gondar.

⁴⁵ A letter written to Mr. W. Sidle, agent of the *Chrischona Mission*, which sought permission, by Imperial Ethiopian Government, Ministry of Education and Fine Arts No.16/35284/1529/9 ነሀሴ.15/1960 G.C.

⁴⁶ Interview with Ato Endeshaw Bogale, *supra* note 43.

⁴⁷ *Id.* I examined about 15-20 letters exchanged between Ato Endeshaw Bogale, Mr. Sidler and Government offices.

⁴⁸ ZELALEM LEYEW, *supra* note 11, at 42.

culture, tradition and religion were necessary steps to develop a career within the state administration.”⁴⁹

In other words, a negative attitude towards Hege-Lebona had a negative implication on the Kemant language (Kemantney).

5. Religion

Not only do their belief as being descended from common ancestor and their language what make Kemant distinct, but also their religion which is properly called by themselves as ‘Hege-Lebona’ and which, according to scholars, consists of ‘pagan’, Judaism and Christianity elements.⁵⁰ For Ato Nega Gete, the religion belongs to the one which was being practiced by Abraham and the Kemant inherited these religious practices because of their relationship with Abraham.⁵¹ Indeed, “Currently, they have only their near extinct language and religion that can in anyway place them as a separate group”.⁵²

According to the Kemant, they believe in “one God, the Sky God [Heavenly God], called as *Adara* or *Mezgana*” and “*Mezgana* is omnipresent, omnipotent and omniscient, and that everything was created by Him; therefore, he has the right to destroy everything. He is an anthropomorphic God; Qemant say, “*Mezgana* looks like man.”⁵³ However, according to my interview with the Wamber, it is the *Yeadera*, not *Mezgana*, who created all things and who, according to their religion, gives all responses upon praying to him.⁵⁴

⁴⁹ Christophe Van der Beken, *Ethiopian Constitutions and the Accommodation of Ethnic Diversity :The Limits of the Territorial Approach*, in, ISSUES OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Tsegay Regassa, ed, Faculty of Law, Addis Ababa University, 2009), at 237.

⁵⁰ Gamst, supra note 13, at 38.

⁵¹ Interview with Ato Nega Gete, supra note 30. According to him, religion can be passed to the next generation by virtue of genetic or by virtue of culture, and the Kemant adopted the religion by virtue of the former; the name of Abraham is frequently mentioned in the religious ceremonies of the Hege-Lebona. *Id.*

⁵² ZELALEM LEYEW, supra note 11, at 30.

⁵³ GAMST, supra note 13, at 35.

⁵⁴ Interview with wombar Muluneh Mersha, supra note 29.



Figure 1. Wambar Muluneh Mersha



Figure 2. The Wambar with his priests: from left to right, the first his son, the wombar himself at the middle between the second and the fourth.

Although Gamst has written, quoting the wombar, “Adam is ‘the first person created by *Mezgana* and the source of all people’,”⁵⁵ *Mezgana* is a monthly holyday dedicated to *Yeadera* (*Adara*).⁵⁶ The *Wamber* is the title of the head of the religion and below him are higher priests called *Kemazana*⁵⁷ and lower priests. Formerly, the Wamber was both the chief sociopolitical and religious leader of the Kemant.

The teachings of the *wambar* to the Kemant, in order that their souls reach heaven, have been summarized by Gamst as follows:

- (1) Do not steal.
- (2) Do not copulate or take the wife of another man.
- (3) Do not perform other evil deeds.
- (4) If a person has wronged you, relegate vengeance to God.
- (5) One woman should have one husband and one man should have one woman.
- (6) If you see someone doing wrong, do not inform the feudal officials.⁵⁸

⁵⁵ Gamst, supra note 13, at 38.

⁵⁶ Wamber Muluneh Mersha, supra note 29.

⁵⁷ It is not uncommon to hear the word *Kemazana* among the Christian Kemant to refer derogatively to a person who remarks silly things and whose judgment is poor. This indicates the negative attitude towards their former religion once they became convert Christians.

⁵⁸ GAMST, supra note 13, at 33-34.



Figure 3. A tree grown at a place believed by the believers of Hege-Lebona where the 'Horse of the Lord' trod and under which the Wombar and other priests, Kemazanas, hold religious ceremonies. It is located some five kilo meters Northwest from Aykel, an administrative city of Chilga woreda, at the highest top of the hill.

Worshiping and ceremonies take place in sacred groves, which cannot be cut down for any purposes, and they claim this tradition as coming down from Abraham, as mentioned earlier. In addition to the above religious proscriptions, believers are required to observe the Sabbath which begins from Friday dusk to Saturday dusk while other days of the week are working days, save to the monthly holidays of *Mezgana* and *Gabarhu*, which are observed on one Thursday for each of them. Because of this religious difference from the neighboring ethnic groups, the Kemant have since long time suffered a lot as evidenced by the following passage:

*[T]he hill we occupied, in a very few hours became the centre of attraction to Jews, Christians, and **Kamants**. The latter sect, who live almost exclusively in the province of **Tschelga** [Chilga], are, on account of their indifference to the religious prejudices which one superstitious system has copied from the other, very much despised and misrepresented.⁵⁹(Underlined emphasis added.)*

6. Current situations

Since 1991, there has been an effort by groups belonging to the ethnic group for recognition and self-governance in an intermittent way. In a renewed way, they lodged an application in 2007 with the Regional state but no response had been obtained, and as a result, they applied to the House of Federation last year. It is pending in the House, and the people seem to have started organizing themselves in unprecedented way.

⁵⁹ STERN, supra note 12, at 43.

Particularly, the declaration of the result of the 2007 Population and Housing Census accelerated the pace of the movement of the people. In May 2009, the movement established ‘Provisional Committee of Kemant Identity and Self-Governance Claims Council.’⁶⁰

⁶⁰ የቅማንት ህዝብ የማንነትና የራስ አስተዳደር ጥያቄ አስተባባሪ ጊዜያዊ ኮሚቴ (Translation into English mine) consists of 120 members, structured further into different subcommittees.

CHAPTER TWO

MINORITIES UNDER INTERNATIONAL HUMAN RIGHTS LAW AND ETHIOPIAN CONSTITUTION

2.1 Types of Minorities and their Rights under International Law

2.1.1 Definition and Types of Minorities

2.1.1.1 Definition of Minorities

Like many other legal concepts and terms, the term ‘minority’ is not subject to agreed definition. Many scholars and authorities tried to give a working and tentative definition to it. Before dealing with the rights of minorities, a clear understanding of the concept and definition of minorities is mandatory. However, lack of a universal, authoritative definition does not lead to denial of rights to minorities. Those international instruments dealing with minorities shy away in defining the term.

Even if an attempt to deal with issues of minority rights dates back to the time of the League of Nations, international law did not attempt to define minority. Nor did in the era of the United Nations international law give definition to it as the very concern of the minorities was left from the discourse of the international community relations, for general human rights was supposed to solve the problems of humanity. The 1948 Genocide Convention, which is claimed to be the first international instrument to protect the minorities’ existence after World War Two, did not define minority.

The first international binding instrument regarding minorities is the 1966 International Covenant on Civil and Political Rights. Article 27 gives protection to individuals belonging to ethnic, linguistic and religious minorities, not to minority groups, unlike the draft which gave status to the groups. Article 27 has its own limitations as noted in the following passage:

*[t]he Article finally adopted refers only to **persons belonging** to such minorities [ethnic, linguistic or religious]. The idea of collectivity, however, was not totally rejected, since Article 27 recognizes the rights mentioned may be enjoyed “in community with the other*

members of the group.” Nevertheless, the concept of group rights, as such, met with considerable opposition by many states.⁶¹

Furthermore, the Article failed to define as to which constitutes a minority. Even it is not defined in the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities, which is the first international instrument to deal with minorities concerns in a separate instrument. In other words, there has never been an official authoritative definition of minority.

However, this does not mean that there is no an attempt to define it. Different lawyers and academicians tried to define minority in different ways. The most known working definition is the one given by the Special Rapporteur Francesco Capotorti, which reads as:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, religion or language.⁶²

According to his definition, there are five criteria to be met by a group to be a minority. First, they should be group of persons whose distinctions are based on *ethnic, linguistic or religious* backgrounds in a state in which they constitute a minority. Secondly, the group should be in a position of *non-dominance*. Thirdly, their number should be *less than* the rest of the population of a state. Fourthly, they should be *nationals of a state*, as opposed to non-nationals, say immigrants and refugees. However, according to the Human Rights Committee General Committee No. 23, individuals under Article 27 ICCPR need not be citizens to be protected. Lastly, there should be *solidarity* among the group in preserving their distinction.

⁶¹ Hailbronner, *supra* note 6, at 124.

⁶² FRANCESCO CAPOTORTI, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES AT 96, U. N . Sales No. E. 91.XIV.2 (1991), as quoted by Jerome Wilson, *Ethnic Groups and Self-Determination*, 11 CONN. J. INT’LL. 465 (1995-1996).

Lack of definition of minority has not deterred the group concerned from claiming their rights, nor does the international community refrain from extending protection to minorities. Of course, lack of consensus on the definition of minority has its own negative impacts on the effective implementation of minority rights. It is logical to argue that before the thing to be owned should be discussed, the owner of it should be first known clearly-the holder of the rights should precede the rights. Even if there is no agreed definition of minority, there are identified minorities which are discussed in the next section.

2.1.1.2 Types of Minorities under International Human Rights Law

Minority rights have not obtained the will of the states at the international level for long time and this fact is said to have contributed to the exacerbation of internal and sometimes international conflicts. Following the First World War, there had been treaties between the Allied Powers and the vanquished states regarding the treatment of minorities in Europe. Following its establishment, “the League of Nations established a rather extensive and detailed system of minority protection, on the basis of peace treaties, minority treaties and unilateral declarations.”⁶³ Since then up to the Second World War, there was an attempt internationally to address the claims of minorities.

Unfortunately, the end of the War, which had heralded a new era for individual human rights, did not sustain the continuation of addressing minorities’ problems. The Universal Declaration of Human Rights of 1948 did not contain any provision regarding to the rights of minorities, nor did the subsequent international human rights instruments, with the exception of the Covenant on the Civil and Political Rights of 1966 (ICCPR).Indeed, it is argued that “Granting minorities a right to defend their special identity, their unique characteristics that distinguish them from other members of the human family is an important task for human rights.”⁶⁴

The often mentioned international legal provision concerning minorities is article 27 of ICCPR and “is the only expression of the right to identity in modern human rights conventions intended

⁶³ KRISTIN HENRARD, *DEVISING AN ADEQUATE SYSTEM OF MINORITY PROTECTION: INDIVIDUAL HUMAN RIGHTS, MINORITY RIGHTS AND THE RIGHT TO SELF- DETERMINATION* 219 (The Hague /Boston/London: Martinis Nijhoff Publishers, 2000).

⁶⁴ PATRICK THORNBERR, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* 141(Clarendon Press, Oxford, 1991).

for universal application.”⁶⁵ Under this article three types of minorities are listed: ethnic, linguistic and religious. National minorities are not included.

A) Linguistic

Like minority, linguistic minority does not have an agreed definition. However, it has ever been one of the groups which required special treatments from the state or international community. Language plays an important role in the life of an individual or a group. It has two aspects, namely, an instrumental value and intrinsic value. In either case, groups speaking the language are eligible to protection against discrimination and special treatment with a view to ensuring equality with the majority language to a certain extent.

In other words, language of a group may be the only distinction and because of this, the group may be in the position of non-dominance. Indeed, historically, most of the vulnerable groups belonged to linguistic ones. That’s why persons belonging to linguistic minority are given protection under Article 27 of the ICCPR and the 1992 Minority Declaration.⁶⁶ Under general individual human rights, no doubt language cannot be a ground for discrimination, meaning individuals can avail of the protection of the principle of non-discrimination.

Here, the issue is the collective right of a group that matters. On the instrumental value perspective, individual human rights is not capable of protecting the interests and rights of individuals belonging to the minority group. It has a birth defect; it treats equally those who are not actually equal. Members of the minority are not in equal footing with the members of the majority. There is a need to treat differently those belonging to the minority till they come near to equality with the members of the majority. Expressed in simple terms, the instrumental value of language is a means of implementing the individual rights of the members of the group.

On the other hand, the intrinsic value view is that language by itself is a manifestation of the dignity of the individual and it is impossible to separate language from the group. Protection of

⁶⁵ *Id.*, at 142.

⁶⁶ United Nations Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities, UN.GA. Res.47/135, 18 December 1992.[Hereinafter ‘ The Minority Declaration’].

the linguistic group is just protecting the dignity of the individuals belonging to such group. The following passage shows the values of language:

[L]anguage is not just a means of communication as some would like to reduce it to; its purpose goes beyond effective communication. The marginalization of minority languages and cultures in multinational societies stems predominantly from such myopic conception of languages, in purely instrumental terms. The fact, however, is that language is an embodiment of a way of life for the speakers of the language. . . . In sum, one's language is the language of one's heart, the only language that can make matters of the heart such as beauty, love and tenderness a reality.⁶⁷

To sum up, whatever the arguments of either perspective may be, linguistic minorities are recognized under international law and states' constitutions.

B) Religious

Religion is one of the fundamental values of a society since time immemorial. Ever since groups of a certain religion have been dominating or been dominated. It had been (and is) a source of conflict in many parts of the world. Historically, for the first time, the Treaty of Westphalia of 1648 recognized that a group had a right to be distinct in its religion, though it had its limitations. Such religious minorities' recognition and protection was:

The treaties that made up the peace of Westphalia, coming as they did at the end of the religious wars prevailed on states to ensure the right of all groups to follow the religion to which they belong. The imposition on state policy to protect minority rights extended

⁶⁷ Yared Legesse, *Linguistic Regimes in Multinational Federations: The Ethiopian Experience in a Comparative Perspective*, in, *ISSUE OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY*, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Regassa, Tsegay ed., Faculty of Law, Addis Ababa University, 2009), at 189-190.

*into the nineteenth century when the major European powers put pressure on the Ottoman Empire to protect Christian minorities...*⁶⁸

Although neither religion nor minority religion is defined under international law, the era of the UN has extended protection to those who desire to preserve their religious identities as opposed to the state or dominant religious group.

Apart from the guarantee against discrimination based on religion under general individual human rights, article 27 of the ICCPR and the Minority Declaration do recognize religious minorities.

C) Ethnic/National

Ethnic minority is a generic term encompassing various types of vulnerable groups. An ethnic minority may wish to preserve its peculiar characteristics which may be cultural, historical and common decent or biological origin. Language can be one of such distinction. Ethnicity is sometimes confused with 'race' and interchangeably used.

However, under article 27 of the ICCPR, it is ethnic minority rather than race that is protected. This does not mean that racial discrimination is permitted, but most of the time minority and majority relationship occurs within the same racial group. In addition, race can be included within ethnicity .In other words, ethnicity is wider than race, for “[w]hen an ethnic group is assumed to a biological basis, it is called a race.”⁶⁹ However, in other cases in which the groups’ difference is based on cultural differences, it is ethnicity proper.⁷⁰ For instance, take the case of Amhara and Tigre. Racially they are the same, but ethnically different, for they have different language and culture.

In addition, there is some confusion between ethnic minority and national minority. In many literatures and laws they are interchangeably used. However, it is not as such difficult to discern

⁶⁸ Gene .M . Lyons and James Mayal, *Stating the Problem of Group Rights*, in, INTERNATIONAL HUMAN RIGHTS IN THE 21ST CENTURY: PROTECTING THE RIGHTS OF GROUPS (Lyons, Gene .M and Mayal, James, eds., Rowman & Littlefield Publishers, Inc., Lanham, 2003),at 6.

⁶⁹ CONRAD PHILLIP KOTTAK, ANTHROPOLOGY: THE EXPLORATION OF HUMAN DIVERSITY 54 (McGraw-Hill: New York/London, 6th ed., 1994).

⁷⁰ *Id.* at 52.

the distinction between the two. While the peculiar characteristics exhibited and desired to be preserved by the minority group in both cases may be the same, the latter relates to those groups who have been already in their historic home land and nationals of the state. But ethnic minority may include both nationals and non-nationals.

Due to the modern and contemporary fast growing interaction because of economic, cultural and political reason, and due to the unabated civil wars and international conflicts, people cross their country of origin and come to another country of destination and form a minority group. They do not have historic attachment to the country of destination. In such cases, the appropriate term would be ethnic minority as opposed to national as they had not been nationals of that country.

D) Indigenous

Indigenous groups, although not stated under article 27 of the ICCPR, are widely known minorities. They are national minorities residing in their country of origin but overpowered and outnumbered by the new comers to their homeland. They desire to preserve their ancestral lands and socio-economic and cultural traditional institutions.

In national minority proper the groups are still within their land but are made minority due to their inferiority in number and dominance compared to other parts of the state within which they found. With respect to indigenous groups, even if they are in their original land, parts of their lands have been overtaken and their socio-political and cultural institutions are being threatened to disappear by the newcomers who have dominated and outnumbered them.

Although the word indigenous does not appear under article 27 of the ICCPR, it is argued that it is protected by the same article, for ethnic minority is broad enough to include it.

2.1.2 Types of Minority Rights and Their Protection Mechanisms

2.1.2.1 Types of Minority Rights

The concerns of minorities require sets of rights particularly designed to protect their interests. There is no exhaustive list of these rights. In other words, “[i]n determining what rights may reasonably be granted to specific population groups with their own culture, language, tradition

and religion , the special circumstances , and diverging legitimate interests , must be taken account.”⁷¹

Thus, under this section, some of these rights that are generally accepted will be discussed.

A) Recognition (existence)

The first thing that comes into the picture of discussion of minorities and their rights is official recognition. It is the recognition of ethnic groups that gives rise to other rights. Of course, “The linchpin of minorities['] protection is the right of minorities to be recognized as minorities.”⁷² Despite the importance of official recognition, states deny the existence of minorities within their territory a view to evading protection of their rights. Such trend is not an exception to even in the Western World and “The reluctance of the Member States of the European Union to recognize the rights of minorities or even their existence is also reflected in the international arena.”⁷³ At worst, some of them have preferred to ignore altogether the minority question in their national legislation.⁷⁴ States find “This refusal to acknowledge the presence of a minority group . . . an easy way to deny that group any claims of right.”⁷⁵

However, this does not mean that states are relieved from their obligations and minorities lose their rights under international laws. Henrard argues that “[d]espite the fact that the official recognition by states of population groups as ‘minorities’ does not influence the existence of minorities under international law, it is of course true that such recognition seriously improves the situation of the group concerned.”⁷⁶

At times, states were committed to destroy their physical existence. That’s why the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948 was

⁷¹Hailbronner, *supra* note 6, at 120.

⁷² Stephen J. Roth, *Toward A Minority Convention: Its Need and Content*, in *THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS* 92 (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinus Nijhoff Publishers, 1992).

⁷³ Maria Amore Martin Estebanez, *The Protection of National or Ethnic, Religious and Linguistic Minorities*, in *THE EUROPEAN UNION AND HUMAN RIGHTS* 42, 133 (NANETTE A. Neuwahl and Allan Rosas, eds, Martinus Nijhoff Publishers, The Hague, 1995).

⁷⁴ *Id.* at 157.

⁷⁵ JAY A. SIGLER, *MINORITY RIGHTS: A COMPARATIVE ANALYSIS* 3(1983).

⁷⁶ HENRARD, *supra* note 63, at 46.

adopted by the United Nations General Assembly to criminalize and punish such acts. In this regard, the Convention “is frequently cited as one of the major international instruments which recognizes a right of peoples –the right to physical existence.”⁷⁷ Although it gives emphasis to the punishment of the offenders than to the rights of the national, ethnical, racial or religious and peoples, it has positive impacts on the promotion and recognition of the rights of the groups.⁷⁸

Other UN human rights instruments prohibit discrimination based on differences in ethnicity or race, language or religion. In other words, a group is guaranteed to be different and this difference should be recognized. As far as the group exhibits those peculiarities which it desires to maintain, it should be recognized as such.⁷⁹

An issue that is related to the recognition of minority is what number is sufficient to grant such status. Neither article 27 of the ICCPR, nor other provisions of international human rights related to minority rights protection does specify. In this respect, it is noted “the presence of ‘sufficient elements to indicate that a minority exists’ should trigger the applicability of the relevant international law.”⁸⁰ As we saw in the working definition of ‘minority’ by Capotorti, what is required as element, inter alia, is *numerical inferiority*, which implies fixing floor number is not necessary. In other words, what matters is the existence of elements which distinguish a group from the majority.

B) Language

Language plays a vital role in the day to day activities of individual in a society. Without it life is unthinkable. That is the reason why every linguistic group strives to preserve its own language in both its instrumental and intrinsic values. The right to language can be applied in various.

A group has a right to speak and write in its own language, to get public services in its language, depending on size of the population. Primarily, it should be recognized as equal to other

⁷⁷ Philip Alston, *Peoples’ Rights: Their Rise and Falls*, in PEOPLES’ RIGHTS (Philip Alston, ed., Oxford University Press, 2002), at 261.

⁷⁸ *Id.* at 262.

⁷⁹ *Id.*

⁸⁰ HENRARD, *supra* note 63, at 45, quoting Capotorti.

languages of the state. Schools shall be run by the local languages at least at the primary level. Cultural and artistic activities of a society should be manifested through the local vernacular.

C) Religion

Freedom of religion is one of the fundamental rights of individuals. Manifestations of religion take place either individually or communally. Accordingly, minorities have a right to profess and practice a belief of their choice. Religions of a state should be protected equally. In other words, religious minorities should be protected against incursion from the dominant religion and the state.

D) Culture

Societies differ in their cultures from place to place. Culture is one of the ingredients of ethnicity. Although there is no agreed and universal definition of culture, it is a way of life of a society. The cultural life of individuals has been protected under the 1966 International Covenant on Social, Economic and Cultural Rights. However, what is protected directly is the individual aspect of the culture.

As a component of ethnicity, the collective aspect of cultural life is protected under article 27 of the ICCPR as included in ethnic minority. A minority's interest will be promoted and protected by respecting the value of its cultures. The state as it does respect the dominant culture should also respect the minority's culture. There should be equal recognition of all cultures, which does not violate the rights of others, principally the rights of individuals.

E) Political Participation and Representation

Rights of minorities are not restricted to religion and cultural life, but also extend to the right to participate in the administration of the state either at regional or national /central level. Political participation of minorities takes through different ways. Depending on the particular situations of each minority, it should be represented at different levels of the government to reflect its interest and concerns. Participation "relates to the exercise of political power, in particular the exercise of

legislative, executive and administrative powers . . . all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”⁸¹

Through this right that minorities share power in the administration of the state. On one hand, it protects their interests, and on the other, it strengthens their relations with the state.

F) Education

Education is one of the key areas which need serious policy considerations. Minorities have a right to establish educational centers whose instruction media is its language where its population is dominant. In other words, education is one of the means by which the minority language is preserved and respected, apart from the advantage that learning through ones language facilitates the teaching-learning process.

2.1.2.2 Minority Rights and Self-Determination

A) Application of Self-Determination to Minority Protection

Minority rights and minorities are closely related with self-determination. As minority rights are exercised by minorities to safeguard them from the domination of the dominant society, so is the right to self-determination exercised by holders of the right to safeguard them from the domination of the mainstream society or the state. In other words, both concepts imply protection of the dominated groups from the dominating society of the state. However, despite their similarity in purposes, the application of self-determination with respect to minorities’ rights is not specified under international law, nor is there general consensus among writers about the scope of the right to self-determination. This is due to the fact that the holders of the right to self-determination are not definitely identified.

Although self-determination as a principle and a right was enshrined under the United Nations Charter and the two Human Rights Covenants, the beneficiaries of self-determination have never

⁸¹Aberra Degefa, *The Scope Of Rights of National Minorities Under The Constitution Of Federal Democratic Republic Of Ethiopia*, in 2 SERIES ON ETHIOPIAN CONSTITUTIONAL LAW (Faculty of Law, Addis Ababa University, 2008), at 64-65, quoting the UN Committee on Human Rights, General Comment No. 25, 1996.

been conclusively determined by the international community and scholars. As regards to the texts of those instruments, the beneficiaries are 'peoples'. Again, ". . . there is no agreed definition of 'peoples' in international law nor among scholars . . ." ⁸² Of course, initially, it is argued, peoples who were under colonialism or any form of foreign domination were no doubt the beneficiaries. However, with the end of colonialism and foreign domination came issues of application of self –determination to sub-nation groups of sovereign states. If peoples refer to subsections of a state, and then ultimately self – determination right to such groups, then it will be applicable equally to the protection of minorities in a state.

As a result, self-determination and peoples have been interpreted by different writers differently. In this regard, Frederic Kirgis has summarized the different faces and degrees of self-determination and its beneficiaries as follows:

- (1) *The established right to be free from colonial domination*
- (2) *The converse of that-a right to remain dependent, if it represents the will of the dependent people who occupy a defined territory*
- (3) *The right to dissolve a state, at least if done peacefully, and to form new states on the territory of the former one*
- (4) *The disputed right to secede, as in the case of Bangladesh and Eritrea.*
- (5) *The right of divided states to be re-united, as in Germany.*
- (6) *The right of limited autonomy, short of secession, for groups defined territorially or by common ethnic, religious and linguistic bonds-as in autonomous areas in confederation.*
- (7) *The rights of minority groups within a large political entity , as recognized in Article 27 of the Covenant on Civil and Political Rights and in the General Assembly's 1992 Declaration on the Rights of Persons Belonging to Nation or Ethnic, Religious and Linguistic Minorities.*

⁸² Michael Freeman, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, 3 (Jul., 1999) at 356.

(8) *The internal self-determination freedom to choose one's form of government, or even more sharply, the right to a democratic form of government, as in Haiti.*⁸³

Among Kirgis' lists, (3), (4), (6) and (7) relate more to the protection of minorities directly, and are always opposed by states. Others benefit the whole people of the territory and it is indirectly that minorities may be benefited. For instance, with respect to list (8), both the majority and the minority may benefit from a democratic form of government, as the case is with the right to be free from colonial domination, list (1). However, in lists (3), (4), (6) and (7), it is a certain section of the populations of the existing state that will be *immediately* and *directly* benefited. That is why the mainstream society or the state denies the existence or exercise of those rights. They argue these affect state sovereignty and national integrity which are guaranteed under the United Nations Charter. In the same vein, it is argued "The right of peoples to self-determination seems to be consumed after they have overcome a situation that may be described in UN terminology as 'colonialism, *apartheid*, racial discrimination, neo-colonialism, and all forms of foreign aggression occupation or domination."⁸⁴

Since the United Nations is an association of sovereign states, their "primary purpose is to protect and promote the interests of their states and to maintain the existing states order," and consequently, "Commitments to the self-determination of peoples (whatever they are) and the rights of individuals are subordinate to these purposes."⁸⁵ In other words, states not only do not accept the right to self-determination to minorities, but also their practice supports little "to the concept of special rights of peoples to preserve their identity once territorial sovereignty has been achieved."⁸⁶ States do not oppose minority rights and self-determination without any reason; they consider recognizing different identities as threats to national unity and territorial integrity of the state.⁸⁷ Although states deny self-determination to minorities and international law gives

⁸³ Frederic Kirgis, *The Degree of Self- Determination in the United Nations Era*, 88 AM. J. INT'L. L. 304(1994), at 306.

⁸⁴ Hailbronner, *supra* note 6, at 117.

⁸⁵ Freeman, *supra* note 82, at 347.

⁸⁶ *Id.* at 118.

⁸⁷ Gudmundur Alfredsson, *Minority Rights and A New World Order*, in BROADENING THE FRONTIERS OF HUMAN RIGHTS: ESSAYS IN HONOR OF ASBJORN EIDE 57 (Donna Gomien, ed, 1993).

little support to them, minorities do not refrain from claiming it as applicable to them.⁸⁸ Indeed, their members cannot be effective beneficiaries of individual human rights, for “in the absence the achievement of self-determination, other human rights have little meaning.”⁸⁹ Moreover, recognition and accommodation of minority identities will avoid or at least help to alleviate the enmity between the minority groups and the majority, and in turn such peaceful relations will reduce dangers or threats to the national unity.⁹⁰ In this regard, we can take as examples the Indian and Pakistani cases with contrasting consequences.

India is one of democratic multinational states in the world. Before the country was restructured in 1956 on ethnicity basis, there was dissatisfaction among minorities and nationalist movements were in setting. Among such groups were the Tamils who demanded, as a distinct peoples, greater power and control over their affairs to the extent of secession from the mainland India during the 1950s and the 1960s.⁹¹ However, the response to these demands was not in their favor, for the then Prime Minister of India, Nehru, fearing that ethnicity line of federal structure would disintegrate India, refused to protect minority rights.⁹²

However, the Tamils continued to struggle for their rights and Nehru was forced to reconsider the dangers of not addressing the demands of ethnic minorities. As a result, the Indian federal structure was redesigned in 1956 on the basis of ethnic line, which enabled the Tamils to have their own state.⁹³ It is possible to note here how difficult it is to bring under control by force groups which fight for preserving their identities and values. Surprisingly, the Tamils lost most of their demands for self-determination⁹⁴ and consider themselves as fully part of Indian Union.⁹⁵

⁸⁸ Patrick Thornberry, *Self-Determination, Minorities, Human Rights: A Review Of International Instrument*, 38THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, 4 (Oct., 1989), at 888.

⁸⁹ Alston, *supra* note 77, at 261.

⁹⁰ Alfredsson, *supra* note 87, at 57.

⁹¹ Atul Kohli, *Federalism and Accommodation of Ethnic Nationalism*, *Federalism and Territorial Cleavages* 281-299 (Ugo M. Amoretti and Nancy Bermeo, The Johns Hopkins University Press, 2004), at 285

⁹² *Id.* at 286

⁹³ *Id.* at.286-87

⁹⁴ *Id.* at.287-88

⁹⁵ *Id.* at 285

In Pakistan too, there was ethnicity problems after her independence from India in 1947. Then Bangladesh (which was known as East Pakistan) was part of Pakistan. Although both West Pakistan and East Pakistan were Moslems, they were different ethnically, linguistically and culturally⁹⁶. The Bengalis demanded *autonomy* and *self-government*, which developed into secession in the name of self-determination after a negative response from the Pakistani elite leaders.⁹⁷ The Pakistani politicians' "inability to formulate an acceptable constitutional framework based upon regional autonomy, and the failure to grant genuine internal self-determination, ultimately led to the painful and tragic events of 1971."⁹⁸ That is, East Pakistan became in 1971 an independent state under the name of Bangladesh through force. The lesson that can be learned is that "states cannot, in the long –run, suppress minority sentiments by force and oppression breeds violence,"⁹⁹ which ultimately leads to secession.

However, after the end of the Cold War, attention to the concerns of the minorities seems to have been given by the international community by taking into consideration the pervasive internal conflict worldwide. The 1992 Declaration on the Rights of Persons Belonging to Ethnic, Linguistic and Religious Minorities can be one of the responses. Of course, "There would . . . arguably be a tendency to recognize a right to internal self-determination for minorities."¹⁰⁰ It has become now an issue among scholars whether self-determination is applicable to peoples or minorities within states.¹⁰¹ Even in the United Nations System, the Human Rights Committee "in its discussion of the periodical state reports relating to article 1 ICCPR regularly asks questions about minorities and minority protection."¹⁰² In other words, the Human Rights Committee is in effect interpreting self-determination under article 1 ICCPR as applicable to minorities.

Indeed, it is argued: "SELF-DETERMINATION and the rights of minorities are two sides of the same coin."¹⁰³

⁹⁶ JAVAID REHMAN, THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS 204(2000).

⁹⁷ *Id.* at.204-5

⁹⁸ *Id.* at 208

⁹⁹ Alfredsson, *supra* note 87, at.57-58

¹⁰⁰ Henrard and Smis, *supra* note 31, at 21.

¹⁰¹ Henrard and Smis, *supra* note 31, at 20.

¹⁰² *Id.*

¹⁰³ Thornberry, *supra* note 88, at 868.

B) Protection Mechanism of Minorities via Self-Determination

The existence of rights does not guarantee their implementations. The effectiveness of rights depends on their enforcement mechanisms. Minority rights are sometimes identified with self-determination short of secession, which is called internal self-determination, for these rights are to be exercised within the borders of the state.¹⁰⁴ In a same vein, Henrard and Smis argued: “whereas the external dimension of the right to self-determination would be mainly concerned with the international status of a people (one example of which is secession), the internal dimension would rather be related to the *internal state structure as well as to certain legal regulations to accommodate the population diversity of a state in a (more) optimal way.*”¹⁰⁵ (Emphasis added.) “Minority protection and minority rights are also regularly mentioned as forms of internal self-determination, which highlight once more the enormous diversity of possible implementations of the right to internal self-determination.”¹⁰⁶

Indeed, “The effective exercise of a people's right to self-determination . . . is an essential condition ... for the genuine existence of the other human rights and freedoms.”¹⁰⁷ Under this section, we will see enforcement mechanisms of minority rights at national levels.

I. Federalism

Although there is lack of universal definition of federalism, its function, as system of government is to devolve state power /sovereignty between the center and regions. It may be based on territorial or ethno-linguistic lines. Ethno-linguistic federalism is preferred to territorial or unitary form of government in order to accommodate differences of groups. Although international law does not provide for mechanisms of protection of minority rights, “[p]erhaps

¹⁰⁴ Allen Buchanan, *Federalism, Secession, and the Morality of Inclusion*, 37 ARIZ. L. REV. 54(1995).

¹⁰⁵ Henrard and Smis, *supra* note 31, at 22.

¹⁰⁶ *Id.* at 23.

¹⁰⁷ H. GROS-ESPIELL, THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS (New York: United Nations, 1980), para. 59, as cited by Michael Freeman, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, 3 (Jul., 1999) at 355.

the most familiar instance of internal self-determination are rights of federal units,” and the impact of federalism is “potentially less destructive alternative to secession.”¹⁰⁸ However, there should be a restriction in that “Federalism is likely to provide a viable alternative to secession only if the international community unambiguously rejects the principle that there is a presumption in favor of federal units having a right to secede if a majority within the unit favors secession.”¹⁰⁹ Thus, many states identified with ethnic, linguistic or religious diversity have adopted it.

While common values and interests are governed by the federal government, those which do not have nationwide significance will be left to member units to regulate depending on their particular realities. In their respective jurisdiction, they practice their own language, religion or culture.

II. Autonomy

In a state, all minority groups may not be given the status of membership unit of the federal government. They may be too small to attain and sustain such status. As a result, such minorities will be given a limited autonomy within the units of the federal state to self-administer based on their aspirations and peculiarities.

The scope and type of autonomy differs from state to state depending on the needs and size of the group concerned. In this regard, “State practice shows that international law on the rights of ethnic groups and minorities does not impose rigid solutions, but rather leaves a wide margin of possible solutions to meet the specific need of each individual society.”¹¹⁰ What matters is whether it addresses the questions of the minorities desiring to preserve and promote their culture, languages, religion and history.

III. Political Participation and Representation

Participation of the members of minorities in the administration of the state at both the regional and federal level is essential, particularly, in decisions affecting their interests and values.

¹⁰⁸ *Id.* at 55.

¹⁰⁹ *Id.* at 57

¹¹⁰ Hailbronner, *supra* note 6, at 120.

However, this participation may be difficult under the usual democratic processes if their numbers is so small that they cannot win regular elections. In such situations, there should be special procedures whereby they can properly be represented to reflect the interests of the group.

There are different procedures of representation of minorities in the various branches of government. Special seats are reserved for them in the parliament and they may have veto power in decisions affecting them. Proportional representations are also applied in the executive power sharing and in the appointments of judges in the judiciary.

IV. Affirmative Action Measures

Most of the time, the position of minorities is not the same as that of the majorities in many aspects. They are at different levels of development in the economic, social, cultural, and education spheres, and in natural resources enrichment. To come to the position of the majority in such areas, minorities need special treatment from the state. Indeed, it is argued:

*The recognition of the need for minority rights in itself implies that mere abstention from forced assimilation would not be sufficient for states to fulfill their international obligations regarding minority protection. Active state intervention would be required to make these rights effective for the people concerned.*¹¹¹

Thus, the mere existence of minority rights does not guarantee the realization of them; they need the necessary financial, material and institutional support. Although no agreed definition and content of it, such kind of assistance or special treatment of minorities is commonly known as affirmative action. Such special treatment of minorities is not a privilege but a means to ensure substantive equality of them with that of the majority. In other words, principles of non-discrimination and formal equality do not bring substantive equality and the state cannot discharge its obligations toward minority by simply observing these principles. It is argued that:

Minority rights imply more than non-discrimination. It is insufficient to say that the government does not make distinctions based on race, religion, language, or ethnicity. Minority rights begin with non-discrimination, but they must extend to protect activities

¹¹¹ Henrard, supra note 63, at 221.

*and promotional activities. [A] full-blown minority rights ideals include affirmative action programs and similar devices to advantage minorities. This is a hard lesson, but it seems to be part of the future course of minority rights development.*¹¹²

Once they attain such position, the action ceases. In other words, affirmative action is not by its nature permanent; it goes away with the inequality, for “[a]ffirmative action is now generally accepted as legitimate as long as its purpose and reach is merely to institute *factual equality* between members of a minority group and other individuals.”¹¹³ Were it permanent, the position of minority-majority would be reversed; that is, the original majority would become minority and the vice versa.

The problem with affirmative action is how to determine its content and scope. The demands of different minorities may not be the same, and as a result, it will be difficult to formulate common specific measures applicable to all of them. At worst, a problem lies whether international law, to be specific article 27 ICCPR, imposes duties on states. On its face, it requires states to refrain from discrimination. However, it is argued “Although the prohibition of assimilation appears to focus on a merely negative state obligation as regards minorities, it could also support a broader interpretation of article ICCPR as requiring more far reaching obligations for the contracting states.”¹¹⁴ Philip Alston agrees in the broader construction of article 27 in that “In so far as its interpretation has been progressive in nature it has largely consisted of an emphasis on the possible need for affirmative acts on the part of governments.”¹¹⁵

However, it is still possible to have common general standards designed to achieve their aspiration and desires.

2.2 Minority Rights Regime in Ethiopia?

In order to better understand the present situations of minorities in Ethiopia and their rights, consideration of the past a little bit is of help. Therefore, for the sake of convenience, minority rights situations in Ethiopia can be classified as pre-and post-1991.

¹¹² Sigler, *supra* note 73, at 199.

¹¹³ Roth, *supra* note 72, at 94-95.

¹¹⁴ Henrard, *supra* note 63, at 165.

¹¹⁵ Alston, *supra* note 77, at 274.

2.2.1 Pre-1991 Ethiopia

Ethiopia is an ancient state dating back to first millennium before Christ. It had been ruled by dynastical monarchal system until the 1974 popular revolution. It will be a naïve idea to think of protection of minorities rights under such system of government. The rulers favored one culture, one language, and one religion with unitary system of government.

However, it does not mean that different ethnic groups did not practice different religion, culture and language. It is to imply that their cultures, language and religion did not have equal status with that of the state favored Amhara culture, language and Orthodox faith. Of course, at times by mere fact their difference to the dominant culture, they had been victims of violations of their basic rights, to the extent of denial of land rights. In this regard mentioning of the Muslims and the Falashas, to which the Kemant religiously, ethnically and even linguistically have close relation, can be sufficient.

The extent and scope of the suffering and oppression of Ethiopian minorities differed from region to region and from time to time depending on the strength and will of the central monarchal regime. Ascending to the highest echelons of the government had been reserved to the Amhara and Tigre by ethnicity and orthodox by religion. Other ethnic groups would wear the Amhara-Tigre culture, language and faith to ascend to such government offices. In other words, equality before law and non-discrimination were alien to Ethiopia, let alone special rights and protection for minorities. Indeed, “the regime strived to erase the ethnic identity of the non-Amhara peoples and to replace it with an Amhara identity.”¹¹⁶

The denial of fundament rights to the general public and refusal of addressing nationality questions of ethnic groups led to the overthrow of the age-old absolute monarchy once and for all. Although there were some changes, such as separation of state and religion, land to the tiller, fundamental rights of individuals and demands of ethnic groups were not adequately responded to, for the monarchal regime was merely replaced by dictatorial military regime.¹¹⁷

¹¹⁶Van der Beken, supra note 49, at 236.

¹¹⁷Theoretically, the Dergue regime had accepted to a certain extent the rights of ethnic groups. There had been established an institution entrusted with the study of Ethiopian nationalities. See Proclamation No.236 /1984 to

As a result of failure to address the above questions, the struggle for democracy and for liberty from national oppression continued unabated. And it has been stated that “all the liberation movements represented ethnic loyalties and claimed to wage war to break the political, economic, social, cultural, and religious domination of the Amhara people over their own ethnic communities and consequently advocated their own self-determination.”¹¹⁸

This struggle was successful in getting rid of the military socialist regime in May 1991. Eritrea opted for complete independence and other forces formed the Transitional Government of Ethiopia (TGE) on democratic principles, as a precursor to the Constitution of the Federal Democratic Republic of Ethiopia 1995.

2.2.2 Post-1991 Ethiopia

2.2.2.1 The Transitional Government of Ethiopia

The TGE recognized ethnic, linguistic and religious minorities; depending on their size ethnic and linguistic groups were granted relatively autonomous regions to govern. These self-autonomous regions were drawn on the basis of territory dominated by the concerned ethno-linguistic group. Although some 65 ethnic groups were identified, as we have seen, by the TGE, thirteen autonomous regions coinciding with ethnic groups and region 14 were established. The governing law was Proclamation No.7/1992, which did not recognize all ethnic groups existing at the time.

These measures of the TGE were landmarks in the protection of the rights of different ethno-linguistic groups in the country. Religious groups were also granted the freedom to exercise their faith freely.

Provide for the Establishment of the Institute for the Study of Ethiopian Nationalities, *Negarit Gazeta*, 42nd Year, No. 7. Also, Census 1984, *supra* note 18, did recognize ethnic groups that existed in the country. Most importantly, the 1987 Peoples’ Democratic Republic of Ethiopia recognized the equality of languages and ethnic groups.

¹¹⁸ Henrard and Smis, *supra* note 31, at 40-41, referring to H. Assefa.

2.2.2.2 The FDRE Constitution of 1995

A) Formal Equality

As far as the system of government and rights of citizens concerned, the FDRE Constitution has embarked on a new era in the history of Ethiopia. As sovereign and the owner of the Constitution, each ‘nation, nationality and peoples’ is granted equality in culture, language and dignity. Federal form of government is formed on the basis of territory and language to enable them self-rule and self-determination.¹¹⁹

Unprecedented in the constitutional history of Ethiopia, one third of the Constitution is devoted to fundamental rights and freedoms in which article 39 is found. Article 39 is the most controversial: some argue that it is more inclined to the rights of the nations and nationalities in disregard of national integrity and unity while others claim that it is procedurally impracticable right particularly the unconditional right to secede.

Furthermore, according to the Preamble and article 8 of the Constitution, sovereignty resides in each ‘nation, nationality and people’. However, although the Constitutions seems to give such huge amount of rights to each ethnic groups, according to article 47, many of them are under the sovereignty of few dominant ethnic groups. This formulation of the Constitution led some to argue that each ethnic group is the beneficiary of the constitution by equating them with ‘nation, nationality or people’. In this respect, an example can be made of Beken who wrongly concluded that “Each ethnic group is entitled to at least one representative in the House of Federation”¹²⁰The Amhara, Oromo, Afar, Tigre, Harare, Somali, Gumuz and Berta are expressly recognized, and the regional states are designated under their name. And as a consequence, it is said of them:

[T]he fact that the states and other subunits of government are named after particular ethnic groups is bound to reinforce the feeling that these entities belong to the groups officially identified with them. Under this arrangement, therefore, the State of Tigray, for example belongs to the Tigreans, the State of Amhara to the Amharas, and so on, thereby

¹¹⁹ Federal Constitution, article 46.

¹²⁰ Van der Beken, *supra* note 49, at 282.

*giving legitimacy to the claims of a particular ethnic group to a particular territory, and providing it with the necessary framework in which its language, culture and political institutions may flourish.*¹²¹

Simply stated, those ethnic groups which do not have states or other subunits may not have favorable conditions to develop their language, culture, history and traditions. Thus, it can be argued, the constitution gave more benefits to the ethnic groups in whose name states are named, for “The Constitution does distinguish between two categories of beneficiaries: the normal and the privileged. The latter are the nine states collectively forming the Federal Democratic Republic.”¹²² Moreover, the former, apart from less beneficiaries of the constitution, they are subjected to the domination of the latter since “No referendums were conducted among the smaller groups in order to assess their opinions on whether they wanted to join any larger ethnic group to form a state.”¹²³ In short, Kymlicka’s assertion that “the conditions that enabled the voluntary adoption and successful operation of multination federalism in the West are not present in Ethiopia,” and which goes on to conclude “ethnic federalism in Ethiopia is likely to remain fragile experiment for some time to come,”¹²⁴ seems to reflect better the realities in Ethiopia. In other words, the Constitution has not yet addressed effectively the demands of all ethnic groups.

Those which are located in the South are lumped together under one state and others found within the above states shall have to prove their existence to avail themselves of the rights enshrined in the Constitution. In other words, they should show the fulfillment of article 39(5) before they are recognized as ‘nation, nationality or people.’ Although the Constitution should be flexible enough to entertain new minorities that would come after the adoption of it, it should have recognized those which were already in existence, at least as distinctly counted in the 1994

¹²¹ Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, 28 THE YALE JOURNAL OF INTERNATIONAL LAW (2003), at 66.

¹²² Henrard and Smis, *supra* note 31, at 47.

¹²³ Tronvoll, *supra* note 15, at 19.

¹²⁴ Will Kymlicka, *Emerging Western Models of Multination Federalism: Are They Relevant for Africa?*, in, ETHNIC FEDERALISM: THE ETHIOPIAN EXPERIENCE IN COMPARATIVE PERSPECTIVE (David Turton, (ed) Addis Ababa: Addis Ababa University, 2006), at 58.

National Population Census. In effect, the constitution has made two categories of ethnic groups: those the constitution *expressly recognized* and those which are not recognized, which may be dubbed as *second-class ethnic groups*, whose fate most likely depends on political commitments. Even *second-class ethnic groups* may further be divided into *politically-favored* and *non-politically-favored*. While the former are those which are expressly recognized as ‘nation, nationality or people’ by the respective regional constitutions, the latter are those ethnic groups which are not yet recognized as such.

This burden on these ethnic groups implies that they were not equally treated with the others from the very inception of the Constitution. Though those regional states within them such minorities reside do not have theoretically the final decision over issues of identity questions, they have practically enormous power on such issues. Depending on political commitment, regional constitutions may automatically recognize the existence and autonomy of a certain minority groups. For instance, as we saw in chapter one and we will see in a little bit detail in Chapter Three, the Amhara Regional Constitution gave recognition and self-administration to some ethnic groups while it did not to others in similar situations, such as the case of the Kemant.

Among the requirements under article 39(5) some are objective ones while others are subjective. Geographical contiguousness, language and common culture or similar customs belong to the former and are not difficult to determine. However, in case of ‘belief in common or related identities’ and ‘a common psychological make-up’, which are subjective ones, their determination is difficult. Apart from the difficulty in determining them, the Constitution does not specify as to who has such power. However, as such elements are something that the concerned ethnic group believes their existence, such power should be given to the group itself. No other body should prove (but may confirm) the existence or non-existence of such feeling for them. If the case is otherwise, this would be incompatible with the very concept of self-determination.

Indeed, such an issue was before the House of Federation in the *Silte Case*, where the group’s separate identity was contested and it was decided by the House. Accordingly, it was held that

the claimant community itself shall decide about its own identity.¹²⁵The ruling seems to be in line with the spirit of the constitution’s self-determination. As to who submits the complaint was one of the issues in *the Case* and it was also decided by the House that anyone can submit it.¹²⁶However, an important issue in a claim of identity was left undecided-how such a person or group of persons can lodge the complaint. The regional state to which the complaint is lodged may not trust the complainant(s); they may challenge the legitimacy of representation of the people. Depending on the circumstances, the regional state may complicate the procedure of representation of the people by such complaints. Of course, Proclamation No.251/2001 has procedures in presenting the claims or questions of self-determination.¹²⁷

However, with respect to objective requirements, the group’s claim can be contested as to their fulfillment, they are subject to proof.

B) Substantive Equality

The reason for existence of minority rights is that individual human right does not adequately guarantee the actual equality of minorities and majorities. Formal equality cannot bring substantive equality; thus, there arose a need to have special rights to minorities, at least temporarily. However, the FDRE Constitution deviates from this agreed principle due to lack of special rights to minorities. Under article 39(2) and (3) each ‘nation, nationality or people’ are guaranteed to develop and promote its culture, history and language, and to establish self-government.

It treats equally the mainstream ethnic group and minority groups. It does not provide for special measures or affirmative action in favor of minorities. Indeed, “within the new constitutional system, the TPLF/EPRDF denies the existence of any ‘minorities’ in Ethiopia, i.e., ethnic and religious groups which are politically oppressed or marginalized.”¹²⁸ It can be argued that the Constitution has taken the same position of the United Nations in its formative stage by which

¹²⁵ የኢ.ፌ.ዲ.ሪ የፌዴራል ሽን ምክር ቤት፡፡የህገ መንግሥታዊ ፍርዶች መጽሕፍት፡ ቅፅ 1 ፡ቁጥር 1 ሐምሌ 2000 ዓ.፳ም ገጽ 96።

¹²⁶ *Id.* at 97.

¹²⁷ Articles 20 and 21. However, article 21(2) requires also the individual or individuals who are delegated to produce reliable evidence. The problem is what kind of ‘reliable evidence’ and who determines it? This procedure of delegation may create difficulties to the delegates either before the House of Federation or the state governments.

¹²⁸ Tronvoll, *supra* note 15, at 19.

“Minorities and their members were postulated to be fully and satisfactorily protected by individual, universal human rights in combination with the non-discrimination principle.”¹²⁹In our case, for instance, how can the Kemant enjoy such rights in equal footing with the Amhara, being the mainstream state, who have already enjoyed those rights? In this respect also, the Constitution fails to adequately protect the rights of ethnic minorities.

¹²⁹ HENRARD, *supra* note 63, at 219.

CHAPTER THREE

THE AMHARA NATIONAL REGIONAL CONSTITUTION, MINORITY RIGHTS AND THE RIGHTS OF THE KEMANT

3.1 The Law and the Practice in the Region

The Amhara Regional State is one of the members of the federation, and it has adopted its own constitution. As any law, customary practice or a decision of an organ of a state or public official should conform to the Federal constitution,¹³⁰ a regional constitution shall not contravene the fundamental principles of the Federal Constitution.

As a result, in this chapter, an analysis will be made whether the Amhara Regional constitution confirms to the Federal Constitution with respect to the rights of minorities and how it protects them. The actual practice of these rights in the Region will also be assessed. Particularly, the reasons why the Kemant have not been recognized as ‘nation, nationality or people’, whether they can fulfill the requirements to be recognized as such, and their rights will be discussed.

3.1.1 Internal Self-determination

Self-determination can be explained as the parent of minority rights, for many known minority rights are included within it. Indeed, it is argued that “the right is framed as being the first human right without which other political, civil, economic, social and cultural rights would be meaningless.”¹³¹ In a similar vein, Bereket has written “The concept [self-determination] encompasses a spectrum of rights, including independent statehood, association with other groups in a federal state and other forms of autonomy short of independence.”¹³²

Under article 39, the Revised Amhara Regional Constitution provides for the unconditional right to self-determination up to secession as enshrined in article 39 of the Federal Constitution. A

¹³⁰ Federal Constitution, article 9(1).

¹³¹ Joshua Castellino and Jérémie Gilbert, *Self-Determination, Indigenous Peoples and Minorities*, 3 MACQUARIE LAW JOURNAL 8[2003], at 5; Alston, *supra* note 75, at 261.

¹³² Bereket Habtesellassie, *Self-Determination in Principle and In Practice: The Ethiopian – Eritrean Experience*, 29 COLUMBIA HUMAN RIGHTS LAW REVIEW, 91(1997), AT 92.

bundle of collective rights are included under the right to self-determination. Some of them will be dealt in the following subsections.

3.1.1.1 Recognition

Article 5 of Revised Constitution declares the equal recognition of all languages spoken on the part of the state. In addition, the people of the Region have a right to preserve and develop its national identity, culture and language.¹³³ Accordingly, the Awi, Himra, Oromo and Argoba nationalities have already enjoyed recognition. Others are not recognized, but they can be recognized if they can fulfill the requirements set under article 39 (7) of the Revised Constitution.

3.1.1.2 Language/ Education

The equality of languages spoken in the Region is declared under article 5 of the Revised Amhara Constitution and has been to some extent implemented. The Awigna, Xamtigna and Oromo languages have been used as medium of instruction at primary schools. Education is one of the mechanism through which the history and culture of a minority will be promoted and preserved. As a result, the curricula should be designed in such a way that to reflect diversity and treat different cultures and traditions in a fair and equitable way. In other words, the educational policy should not be just to promote and dignify the dominant and the mainstream ethnic group culture and history.

It is claimed that learning by one's mother tongue promotes the dignity of him/her. The learner feels sense of equality with others belonging to the mainstream. In this respect, there is a good beginning in the region; the nationality administrations have already started giving primary education through the mother tongue.¹³⁴ The equality of languages spoken in the Region has been to some extent implemented. The Awigna, Xamtigna and Oromo languages have been used as medium of instruction at primary schools.

¹³³ Revised Amhara Regional Constitution, article 39(1).

¹³⁴ Interview with Ato Habtamu Buzuneh, Social Sciences Curriculum Executor, Amhara Regional State Education Bureau, on 23 November 2009 at 4:30-5: 00 pm, Bahir Dar.

3.1.1.3 Religion

Separation of state and religion are guaranteed under article 11 of the Revised Amhara Constitution, and none of them interfere in the matters of the other. In addition, freedom of religion and belief is guaranteed, and believers have a right to establish institutions of religious education and administration.¹³⁵

3.1.1.4 Autonomy

Autonomy is a means through which ethnic groups administer itself within its territory. As a result, the ‘people’ of the Amhara Region has the right to establish self-government for the final determination of its own affairs within its territory.¹³⁶ To reiterate, the Argoba, Awi, Himra and Oromo have established their own self-government within their respective territories. Other ethnic groups, the Kemant and Woito, do not enjoy self-government, nor are they recognized as distinct people of the region.

Each nationality administration has the nationality council (legislative), the nationality administrative council (the executive) and the judiciary body.¹³⁷ The power to determine, inter alia, the working language of the nationality, the protection of the right to speak and write in its own language, to maintain and promote its own history is given to the nationality council,¹³⁸ while the administrative council formulates the specific economic and social development policies and strategies of the administration.¹³⁹ These powers of the nationality administration enable the nationality to develop its culture, language, history, and to protect its socio-economic rights.

3.1.1.5 Participation and Representation

In addition to its autonomy in its territory, each nation/ nationality needs to be represented in the regional and federal governments. This representation has two benefits: on the one hand, it helps the nation/ nationality to involve in decisions affecting its interests at the national or regional

¹³⁵ The Revised Amhara Regional Constitution article 27.

¹³⁶ *Id.* article 39(2).

¹³⁷ *Id.* article 73(2).

¹³⁸ *Id.* 74 (3).

¹³⁹ *Id.* 78 (2) (d).

level; and on the other hand, by participating in such decisions it feels sense of belongingness in the regional or national identity. In this respect, Van der Beken has written “The participation in federal and regional decisions on the one hand guarantees the rights of the ethnic groups (diversity) and on the hand it creates a feeling of solidarity with the other ethnic groups and thus with the federal and regional level(unity).”¹⁴⁰

In this respect, the Amhara Regional Constitution makes it a right to be represented both in the regional and federal governments. Accordingly, it provides that the ‘people’ of the region has a right to “enjoy an effective participation in the system of the federal government in a freer, nondiscriminatory, appropriate, fair and equitable representation.”¹⁴¹ At the regional level, nationalities and peoples residing in the region have a right of representation.¹⁴² However, the Constitution does not specify how such representation takes place, saving representation in the Regional Council. Actually, even in the Regional Council, only the Awi, Himra, Oromo and Argoba peoples are represented.

The Kemant, for instance, are not represented in the Regional Council; it represents, apart from the above nationalities, only the Amhara ethnic group. And the Kemant are different from the Amhara ethnic group. The Kemant are ruled by the state in which they do not have participation, for “The Amhara ethnic group . . . has been coupled to the Amhara regional state. In other words, the Amhara regional state has been created for the Amhara ethnic group.”¹⁴³ In other words, the regional constitution provides the right of self-determination and other identity rights only to aforementioned three ethnic groups apart from the Amhara.¹⁴⁴

3.1.1.6 Special Measures

Special measures in favor of minorities are suggested and even implemented by some states to bring them into substantive equality with the mainstream ethnic groups of a state. As there is debate over the very concept of affirmative action, there is no agreed theory as to the content of

¹⁴⁰Van der Beken, *supra* note 49, at 264.

¹⁴¹ Revised Amhara Constitution, article 39(2).

¹⁴² *Id.* articles 45(3)&74(1).

¹⁴³ Van der Beken, *supra* note 5, at 107.

¹⁴⁴ *Id.* at 114.

it. As the demands of each minority differ, so do the contents of special measures or affirmative action differ from state to state.

As stated in the previous chapter, the Federal Constitution does not have provisions of affirmative action in favor of minorities that can be claimed by them. Nor does the Amhara Regional Constitution have such provisions. The only relevant provision is article 110(3) which reads as “[t]he state shall provide special assistance to those nationalities and peoples left behind in terms of development.” However, this provision is found under the general economic objectives of the state, and as a result, cannot entitle those nationalities or peoples concerned to claim.

Expressed in simple terms, the Regional Constitution treats national minorities in the region and the mainstream Amhara people equally. This equal treatment of ‘unequals’ can be argued as a means of perpetuating the actual inequalities that exist between minorities and the mainstream groups. In this regard, the Regional Constitution might have its own impact in the failure of recognition of some nationalities in the region and to use other rights guaranteed in the constitution. The case in point is the Kemant, as we shall see in the next subsection.

3.2 Grounds of Failure of Recognition of the Kemant

Under this subtitle, an attempt is made to assess the efficacy of the constitution and the reasons for the failure of recognition of the Kemant as ‘nation, nationality and people’ of the region and the country.

3.2.1 Inadequacy of the Law (procedural)

The Kemant had been recognized in Ethiopia until the 1994 National Population and Housing Census as a distinct ethnic group. In other words, they were in existence when both the Federal and the first Regional Constitutions were adopted in 1995. As the Federal Constitution did not give recognition as ‘nations, nationalities and peoples’ to all ethnic groups that existed at the time of its adoption in the country, nor did the first Regional Constitution of 1995 and the 2001 Revised Amhara Constitution give recognition to nationalities and peoples that existed in the region at the time of their adoption.

Among such ethnic groups in the country and in the region are the Kemant. They have been denied their de jure existence while they have ever de facto existed. This does not mean that they do not have a right to recognition; both the federal and the regional constitutions give recognition as ‘nation, nationalities and peoples’ as far as the group satisfies the requirements of article 39(5) and article 39(7) of their respective constitution.

Here comes the crucial issue: the regional constitution presumed, as the federal constitution did, some ethnic groups are entitled to automatic recognition and the rights that follow it while others are required to prove their existence as such even if the government has, paradoxically, already recognized their existence through official acts, such as national census. At worst, those who are required to prove their existence are within the mainstream state, which may not, arguably, entertain the claims of minorities to exercise their right of self-determination in its various forms as easy as possible.

How can, therefore, the Kemant, a small minority compared to the mainstream dominant Amhara, exercise its rights of self-determination in situations where the constitution eschewed from recognizing them? Of course, it is still possible to exercise their right of self-determination, but with difficulty and significant costs, for the ultimate power of determining the identity of an ethnic group does not lie in the regional state. The question is whether the Kemant, for that matter any other smaller ethnic group in similar situations, can pass such procedural hurdles in the regional state before reaching the federal forum and can cover the attendant costs.

It is not difficult, therefore, to discern the impasse involved in the process. In our case, the Kemant have been struggling for self-determination since the adoption of the Federal and Regional constitutions.¹⁴⁵ Despite their continued longing for recognition and self-administration, they couldn’t be successful to date.

¹⁴⁵ Interview with Ato Nega Gete, supra note 30.

3.2.2 Practical Problems

The existence of good laws by itself does not guarantee, and is not adequate for, the enforcement of the rights contained therein. In addition to the legal framework, there shall be government officials inclined to act in accordance with it particularly and an open society conducive to tolerate differences in general. Therefore, under this subsection, an attempt is made to assess the possible practical problems in the protection of minority rights in the region, apart from gaps in the law.

3.2.2.1 Lack of Political Willingness

Sometimes it is difficult to discern the distinction between political considerations from legal issues. Particularly, in sensitive cases like minority issues, we cannot divorce political considerations and commitments from legal issues especially in the implementation processes. Thus, it is relevant to take into consideration the political commitments concerning minorities since the change of government in the country, for “it is appropriate to make the observation that the effective realization of the constitutional provisions is partly determined by the political context.”¹⁴⁶ This can better be appreciated by considering the situations of ethnic groups which have already recognized and those which are not still recognized in the region.

The Himra people had made a contribution, during the civil war, to the Ethiopian People’s Democratic Movement (the present Amhara National Democratic Movement), one of the Coalition which formed the Ethiopian Peoples’ Revolutionary Democratic Front, which has ruled the country since 1991. Indeed, it is reported “The Himra people have made bitter struggle in overthrowing the dictatorial Dergue regime and in its stead to prevail peace and democracy. Thus, these people had made great contribution for the realization of *Ginbot 20*.”¹⁴⁷ In this respect, it can be argued that it would be politically unacceptable for the regional state to deny recognition and self-determination to the people who made contribution for the struggle for such rights and democracy for which the ruling party itself struggled for.

¹⁴⁶ Van der Beken, *supra* note 5, at 105.

¹⁴⁷ ‘የአማራ ክልል ብሄረሰቦች’ ፣ በአማራ ክልል ማስታወቂያ ቢሮ ፣ ታህሳስ 2001 ዓ . ም የተዘጋጀ ገፅ 16(Translation into English mine).

In the case of the Awi people, it will also be politically unacceptable for the ruling party to deny this people recognition and autonomy for two possible reasons. On the one hand, both the Himra and the Awi are of the same category of people, the Agaw. On the other hand, the Awi people are numerically larger than the Himra people. Therefore, denying the Awi people such rights will be discrimination between people which are in similar situations.

The Oromo nationality in the Amhara region is the other constitutionally recognized and has nationality administration autonomy. The political consideration for granting this status can be seen from a different angle. Although the Oromo in Amhara region are a minority, the Oromo, the largest ethnic group in the country, are also the majority in Oromia region. In Oromia region, the Amhara are, among others, minorities. It cannot be implausible to argue that the political consideration of the Amhara region in granting the Oromo recognition and autonomy is the possible expectation of reciprocity treatment of the Amhara in the Oromia region.¹⁴⁸

On the other hand, it is possible to assess whether there were plausible political considerations regarding those ethnic groups in Amhara region which are not constitutionally recognized. These include the Kemant, Woito and Argoba. To the knowledge of the writer, they did not play significant contribution and role in favor of the ruling party.

However, with respect to the Kemant, there are no discernible political conditions in their favor. On the contrary, by using the peoples' fear and suspicion related to acts that had been committed by the Orthodox Church on the ethnic group for long, coupled with the propaganda that the origin of Kemant is sometimes from Canaan and sometimes from Egypt, now there are no Kemant and they are assimilated, 'chauvinistic' government officials in the region denied the Kemant recognition and self-governance that are enshrined in the constitution and enjoyed by other ethnic groups.¹⁴⁹

¹⁴⁸ Significant number of Amharas live in Oromia region. According to the 2007 Population and Housing Census, about two million (1,961,277) Amharas live in the region. See Census 2007, *supra* note 22, at 94.

¹⁴⁹ Interview with Ato Nega Gete, *supra* note 30.

Starting from the time of the Transitional Government of Ethiopia, there has been strong opposition from the government to the claim that there exist distinct people called Kemant.¹⁵⁰ Particularly, those officials in the lower hierarchies have exerted their effort to intimidate those groups who have tried to assert their identity and hindered the claim from being come to the attention of the higher hierarchies of the government.¹⁵¹

In a similar vein, as shown in the following table, the great majority of the respondents (85.65) replied governmental influence as a reason for Kemant’s failure to be represented in regional or/and federal governments while only 13.87 of the respondents stated non-recognition and the fact that it was not asked.

Question	Item	Number	Per cent
Reasons for non-representation	Unwillingness to be represented	1	0.48
	Governmental influence(negative)	179	85.65
	Other	29	13.87

Table 1

All the above three were distinct peoples when the constitution was adopted. Their vulnerability was not as such difficult to be appreciated by the drafters of the constitution. Take for instance the case of Argoba. Neither the 1995, nor the Revised Amhara Regional Constitution of 2001 recognized them. It was only through a law made by the Regional Council after the 2001 Revised Constitution that the Argoba were recognized and granted woreda nationality administration.¹⁵² The legal requirements to be recognized as ‘nation, nationality or people’ that existed in 1995 were not changed after 2001, at least the Federal Constitution is concerned. In other words, the Argoba would have been recognized as nationality in the 1995 constitution as far as the legal requirements are concerned.

¹⁵⁰ Interview with Ato Tesfahun Mulatu, Deputy Chairperson of Executive Committee, Provisional Committee of Kemant Identity and Self-Governance Claims Council, on 26 November 2009 at 6:00- 8:00, Gondar.

¹⁵¹ *Id.*

¹⁵² Argoba Nationality Proclamation, *supra* note 4. Under article 3(1), the Argoba Nationality Woreda is established as autonomous self-governance.

From the above assessment, it will not be unreasonable to conclude that minority rights protection is more of related to political commitments than of rights oriented. Had it not been for these reasons, others, like the Kemant, would have been recognized and would have enjoyed self-administration. This implies how much politics plays a central role in the protection of minorities. Of course, even in Europe, it is said, “[a]ction in favor of minority protection within the European Union has ceased to be an issue of legal legitimacy and become a question of political will.”¹⁵³

The 1995 Amhara Regional Constitution provided that the right to self-determination is given to the peoples of Amhara and the Himra, Awi and Oromo.¹⁵⁴ In other words, those who do not belong to the Himra, Awi and Oromo are considered Amhara. The Kemant, for instance, belong to none of the three ethnic groups. The intention of the drafter of the constitution was clear: the Kemant are Amhara. Stated otherwise, the Kemant who were in 1994 distinct now in 1995 became Amhara. This is simply an attempt to assimilation. This trend was repeated, as seen above, by the Revised Constitution and by the fact that the Kemant has been for the first time missing from the National Population and Housing Census of 2007.

The respondent’s ethnic identity information, among others, is required during a census.¹⁵⁵ However, more than half of the respondents (53.54%) were not asked their ethnic groups, as can be understood from the Table 2 below, during the 2007 Census. Even among those who were asked, the great majority of them (83.33%) replied Kemant as their ethnic group. On the one hand, not asking their basic identity information may be an indication of disregard of the respondents’ ethnic group. On the other, changing the information given relating to their ethnic group to another group is contrary to their right of self-determination.

¹⁵³ Martin Estebanez, *supra* note 73, at 162.

¹⁵⁴ Unlike the Revised Constitution, the right to self-determination is enshrined under article 14.

¹⁵⁵ Interview with Ato Gebeyehu Abelti, *supra* note 42.

Question	Item	Number	Per cent
Whether respondent's ethnic group was asked	Yes	105	46.46
	No	121	53.54
Reply of those respondents who were asked was asked	Kemant	88	83.81
	Amhara	14	13.33
	Other	3	2.86

Table 2

From these facts, it is not unreasonable to conclude how minority rights protection is politically motivated in the region. And this action of the Regional State will have the following effect regarding the Kemant:

The effort to assimilate minorities into society may be as effective in eliminating the group as attacks upon the lives of members; if successful, the result is the death of a culture: the carriers of cultures are spared, but they pass on a different culture to succeeding generations-not improbably, the culture of the oppressors.¹⁵⁶

In other words, the political commitment in the region is to assimilate the Kemant into the Amhara ethnicity and culture contrary to the desires of the members of the Kemant ethnic group.¹⁵⁷ And it should not be forgotten that politics plays a key role in the implementation of human rights in general and minority rights in particular. Respondents were asked about the responsibility of the government regarding the Kemant identity, culture, language and history.

¹⁵⁶ Thornberry, supra note 64, at 141.

¹⁵⁷ Interviews with Ato Nega Gete, supra note 30 and Ato Tesfahun Mulatu, supra note 150.

Question	Item	Number	Per cent
Responsibility of the government regarding the promotion and the development of Kemant identity, culture, language and history	Respect and implement art.39(Treat the Kemant equally with others)	156	69.03
	Special support	23	10.18
	People Struggle for their rights	10	4.42
	Media Coverage, Schools for Kemantney, printing and distributing the history and culture of the Kemant	29	12.83
	Inclusion in the Census	6	2.65
	Not Responding	2	0.88

Table 3

As shown from Table 3, the majority of the respondents (69.03 %) stated that the government respect and treat Kemant equally with other ethnic groups in accordance with article 39 (of the Federal Constitution). In effect, they are saying that the government bodies do not respect the Constitution, and the problem lies in its implementation. In this respect, it should be mentioned that a group of Kemant have been claiming their identity and requesting the Regional Government for recognition. But, there has never been any response to date, and the regional government did not deny this.¹⁵⁸ Regarding the responsibility of the Regional Council, “In the future, if it is found necessary, we may undertake studies regarding their claim.”¹⁵⁹ Here, an issue may be (should be) raised as to who determines whether a certain identity claim is ‘necessary or not’.

3.2.2.2 Lack of Affirmative Action

We have already seen earlier in Chapter Two how affirmative action is related to minority rights and their protection. Here, we will see how practically its absence affected the Kemant in their striving for rights enshrined both in the regional and federal constitutions.

¹⁵⁸ An interview with Ato Abebe Arega, Deputy Speaker of the Amhara Regional Council, on 24 November 2009 at 2:30-3: 00, pm, Bahir Dar and Dr. Misrak Mekonnen, Speaker of the Amhara Regional Council, on 25 November 2009 at 9:00-9: 30, Bahir Dar, the former remembers that they came to him in 2001 E. C. with such questions while the latter has learned that they have submitted their claims to the House of Federation. However, both did not know what response was given or at what stage it is in the Region.

¹⁵⁹ Dr. Misrak Mekonnen, *supra* note 158.

Ever since the adoption of the constitutions, there have been efforts to assert and claim their rights of recognition and self-administration. Such efforts were, however, most often, hindered due to lack of support by the government as it did to the ethnic groups in the region.¹⁶⁰ The media which play key role in the promotion of the cultures and history of minorities did nothing or little in relation to the Kemant.¹⁶¹ On the contrary, rather than promoting the culture and history of the Kemant, the commitment of some of the regional officials is releasing propaganda that the Kemant no more exists, that they do not have distinct characteristics that differentiate from the Amhara.¹⁶² Indeed, as shown under Table 13(*infra*, page 68), most of the respondents (88.05%) replied that they have never heard their Kemant identities in any mass media.

3.3 Rights of the Kemant

3.3.1 Recognition

Under chapter Two, we saw that ethnic, linguistic or religious groups have a right to existence and this existence should be recognized by the state within which they reside. Denial of such recognition implies denial of their existence and this is a clear violation of the international human rights.

As we saw, both the Regional and Federal Constitution hardly employ the term minority, but, they use instead ‘nation, nationality or people.’ Common article 39 defines as to which constitutes ‘nation, nationality or people.’

¹⁶⁰ Interview with Ato Negat Gete, *supra* note 30.

¹⁶¹ In the promotion of the culture, history, language, etc. of ethnic groups in the region, the Amhara Regional Information Bureau plays an essential role. In its ‘የ1997 ዓ.ም ዓመታዊ የመረጃ መጽሀፍ’ published in Sene 1998 E. C. , it included Kemant as one of the ethnic groups of the Region while in the ‘‘የ1999ና 2000 ዓ.ም ዓመታዊ የመረጃ መጽሀፍ’ published in Yekatit 2001 E. C. it did not mention Kemant as one of the ethnic groups. I asked the Depute Head of the Bureau, Ato Tamirat Dejenie why this variation occurred and he replied to me that in the former publication “it was unconsciously that the Kemant was included as ethnic group,” but in the latter publication, he continued, “considering the consequences and the fact that Kemant and others, such as Woito, are not constitutionally recognized, we did not include them as ethnic groups.” However, in its Tahisas 2001 E. C. publication entitled ‘የአገሪ ክልል ብሄረሰቦች’, the Bureau included as ethnic groups those which are not recognized by the regional constitution, such as the Woito, Argoba and Awra –Amba communities and their history and cultures (page 16). Regarding the Kemant, there is no mention of it and its cultures and history. It is surprising to see that a community with a lifespan of not more than 30 years as being considered distinct community while the Kemant, being in existence for several centuries, was not considered as distinct by Regional Government.

¹⁶² Interview with Ato Negat Gete, *supra* note 30.

3.3.1.1 Contiguosness

Among the elements is the group claiming such status should reside in contiguous geographical area. The Kemant live in areas almost uniformly populated by them with the exception of the City of Gondar in which case the Kemant reside with other ethnic groups. Although determination of such issue is a matter of objective reality, respondents were asked as to the settlement of the population of the Kemant in rural areas.

Question	Item	Number	Per cent
What the Settlement of the Kemant population /rural areas/ is	Contiguous	170	75.22
	Not contiguous	43	19.03
	Other	13	5.75

Table 4

As the above Table 4 shows, the majority of them (75.22%) replied ‘contiguous’ and 19.03% said ‘non-contiguous’. The rest (5.75%) stated that in some places there is mixed settlement with the Amhara. Of course, the article does not require absolutely contiguous but ‘predominately’ contiguous. Taking the first and the last figures together, it is possible to reach the conclusion that the settlement of the Kemant fulfills the legal requirements.

3.3.1.2 Language

The second element is an intelligible language among the group. The Kemant have a language which was once widely spoken in North Gondar region. Currently, although it is threatened to be extinct, it has speakers as mother and second tongues. Zelalem Leyew has observed the following:

As far as identity among the Kemant is concerned, language is not necessarily a defining factor. The best example[s] for this are those who claimed a Kemant identity without speaking the Kemantney These people say, ‘Kemantney is my language but I do not

*Speak it and yet I am a Kemant. Though the language is near extinct, it has not led to a loss of the ethnic identity of the Kemant*¹⁶³

Question	Variable	Number	Per cent
Whether s/he speaks Kemantney	No	209	92.48
	Yes	17	7.52

Table 5

Zelalem’s finding in this respect is similar to the respondents’ response. Although 92.48% of the 216 respondents do not speak Kemantney, as shown in Table 5, 99.12 % the 226 respondents claimed Kemant ethnicity while only 0.88 % replied Amhara as their ethnicity, as shown in Table 6, below.

Question	Item	Number	Percentage
Asked to which ethnicity he/she belongs	Kemant	224	99.12
	Amhara	2	0.88

Table 6

The figures in Tables 5 and 6 show that majority of the population do not actually speak the language. However, they still claim Kemant identity. Not only do those who do not yet speak Kemantney claim Kemant ethnicity, but also they are eager to learn Kemantney if they can find the opportunity. Respondents were also asked whether they would like to learn it and to be identified with Kemant identity, and 97.13% of them replied ‘yes’. As Table 7, below, indicates, only insignificant portion of the respondents (2.87%) showed dislike to the language.

Question	Item	Number	Per cent
Whether s/he would like to learn Kemantney and to be identified with Kemant identity	Yes	203	97.13
	No	6	2.87

Table 7

¹⁶³ZELALEM LEYEW, supra note 11, at 90.

Moreover, specific question with respect to language was forwarded to the respondents. The question relates to whether using Amharic language entails them an Amhara identity. Surprisingly, as the next, Table 8 indicates, most of the respondents (97.14%) answered negatively while 2.87 % replied affirmatively.

Question	Item	Number	Per cent
Whether using Amharic entails Amhara identity	No	203	97.13
	Yes	6	2.87

Table 8

3.3.1.3 ‘Belief in common or related identities’

The third requirement is that the group should have a ‘belief in common or related identities.’ As we saw in Chapter One, the Kemant believe they have common ancestors, Ayaner/Yaner/, the grandson of Canaan, and his wife, Entala. Among the respondents who said Amhara and Kemant are different, almost all (95.71%) claim Kemant has ancestors different from the neighboring ethnic Amhara, as it is shown Table 9.

Question	Item	Number	Per cent
Distinctions of Kemant from Amhara	Descent	27	12.86
	Religion	1	0.48
	Language	6	2.86
	All	164	78.09
	Other(descent and language)	10	4.76
	Not Responding	2	0.95

Table 9

In this regard, Zelalem Leyew has reached the same conclusion in that “On the question of the definition of Kemant, respondents highlighted religion, **descent**, and language as major factors that can easily help them identify someone as Kemant **today**.”¹⁶⁴(Emphasis added.)

Question	Item	Number	Per cent
Religion of the respondents	Orthodox	218	96.46
	Protestant	4	1.77
	<i>Hege-Lebona</i> /Kemant Religion/	3	1.33
	Catholic	0	0
	Islam	0	0
	Other	1	0.44
Whether religion of the respondents being other than Hege-Lebona does not affect their Kemant identity	Yes	187	83.86
	No	11	4.93
	Not Responding	25	11.21

Table 10

Although religion, descent and language are characteristics that differentiate Kemant as distinct, and even if 96.46 % of the respondents’ religion is Orthodox as that of the majority of the Amhara, the majority of the respondents (83.86 %) replied the fact that their religion is other than Hege-Lebona (Kemant religion) does not affect their Kemant identity, as is shown in Table 10. We have seen the same thing with respect to Kemantney language regarding respondents’ identity. In other words, Kemants give more emphasis to their common identity based on their descent or origin.

3.3.1.4 Common culture or similar customs

The fourth requirement to be met by the claimant is that the group should ‘have or share a large measure of a common culture or similar customs.’ Culture is in short a way of life of a group or a

¹⁶⁴ *Id.* at 93.

community as distinct from others. It includes, among others, eating habits, dressing style, religious rites, traditions, histories and the like.

What has prevented the Kemant from assimilation with the neighboring peoples has been their religion, which is different from both the dominant Orthodox religion, and Islam. Unlike churches and mosques in cases of Christianity and Islam, respectively, the Kemant religion rites take place in venerated groves as discussed under Chapter One. Unlike the Orthodox faith, the Kemant observe as holy day only Saturday which lasts from Friday dusk to Saturday dusk and work all the rest days of the week.

3.3.1.5 ‘Common psychological make-up’

The fifth, and the last, element that should be satisfied by the claimant group is that the group should exhibit ‘a common psychological makeup.’ This element is more of subjective one as that of the element three mentioned above. It relates to feelings and desires of the people, their reflections towards them and the other. As it was stated in Chapter One, even though the great majority of the population do not follow the Kemant religion/*Hege-Lebona*/ and speak Kemantney, they still consider they are one with those whose religion is Kemant and who speak the language, and moreover, they consider the language theirs and desire to learn it.

Moreover, the Kemant believe they are disadvantaged, marginalized and stigmatized for a long time. As a result, they want to have this corrected and want to promote their own culture, history, language, religion and traditions. They are conscious of their Kemant identity, and Zelalem Leyew agrees with this:

This implies many things: their regret for the near extinction of both their language and religion, their continuing concern for the loss of their Kemant identity in favor of Amhara and a sense of fostering a feeling and consciousness of some different identity by showing loyalty to their obsolete language and religion.¹⁶⁵

¹⁶⁵ *Id.* at 50.

Particularly, almost all the respondents (98.23%) have the same feeling with respect to the failure of the government to include the Kemant in the 2007 Population and Housing Census. As Table 11, below shows, the respondents felt that the act of the government not only deprives the identity, religion, culture, language and history from being promoted and respected, but also denies the existence of Kemant and discriminates them from other ethnic groups.

Question	Item	Number	Per cent
Implication of 2007 Census	Denial of the existence of Kemant	3	1.33
	Depriving of their identity, religion, culture, language & history	15	6.64
	Not treating equally with other ethnic groups	26	11.50
	All	178	78.76
	Other	4	1.77

Table 11

3.3.1.6 Requirements Combined

From the above facts, it is possible to conclude that the Kemant fulfils the requirements provided for recognition as ‘nation, nationality or people’ under the common article 39 of the Regional and Federal constitutions. Surely, they have a right to such status as other ethnic groups of the Region and the Country. Denying such recognition is denying their existence while actually they exist and satisfy the legal requirements. In short, it will be a violation of their constitutional right, taking into consideration the importance of official recognition as evidenced by the following paragraph:

[I]t has become necessary to establish the Nationality having self-governance authority, in order to recognize the identity of members of the nationality and to preserve culture, tradition and history of same [i.e., Argoba].¹⁶⁶

The fact that the state does not recognize the Kemant not only violates the Constitutional provisions, but also the country’s international duties with respect to minorities. In this regard, F.

¹⁶⁶ Argoba Nationality Proclamation, supra note 4, Preamble Paragraph 2.

Capotorti noted “. . . If the existence of a minority group within the state is objectively demonstrated, non-recognition of the minority does not dispense the State from the duty to comply with the principles of [international minorities['] protection provisions].”¹⁶⁷

3.3.2 Internal Self-determination

As a logical order, once a group is recognized as a distinct people (in our case, ‘nation, nationality or people’), what follows is to exercise the rights reserved to such status. The Kemant as ‘nation, nationality, or people’ or in short, as a minority, should have a right of self-determination. Self-determination is a bundle of rights of minorities. Self-determination is commonly classified as internal and external depending on the aspirations of the group. For the purpose of this paper, we are only interested in the internal aspect.

In the next subsections, some aspects of internal self-determination are dealt with.

3.3.2.1 Self-rule

Autonomy is a means by which minority rights are promoted and protected. The rationale of autonomy is that it gives the group to administer itself within its jurisdiction and is better suited to the promotion and protection of its peculiar cultures, language, religion, and history in line with its aspirations and desires. The extent and scope of autonomy varies from case to case as we saw in Chapter Two. What matters is that the group should be entitled to self-administer itself at the appropriate level by taking into consideration the size of the population, the availability of resources and others affecting the viability of the autonomy.

In Ethiopia, according to article 39(3) of the Federal Constitution, each ‘nation, nationality, or people’ has a ‘full measure of self-government.’ The same right is provided for under article 39(2) (3) of the Amhara Region constitution and such right is given to ‘the peoples’ of the Regional State. What self-government includes is stated in both constitutions in that it includes the right to establish institutions of government within the territory of the minority.

¹⁶⁷ F. Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic, UN Sales No. E. 78. XIV. 1 (1978), at para.570, as quoted by Roth, *supra* note 70, at 92.

Therefore, the Kemant have a right to establish self-administration institutions within their territory. The type of local government institutions to be established by the Kemant depends on their number, geographical coverage and resource feasibility.

The Amhara Regional State is constitutionally structured to comprise the Region, Woreda and Kebele administrative units.¹⁶⁸ However, by law another administrative unit called Zonal administration, between the Regional and Woreda units, is established.¹⁶⁹ There are seven administrative zones¹⁷⁰, and Bahir Dar Special zone.¹⁷¹ The Himra, Awi and Oromo peoples have their own nationality administrations constitutionally¹⁷² established, and correspond with the hierarchy of Zonal administration.

The Kemant geographically reside in more than two Woredas. Population wise, the Kemant have more or less the same as that of the Himra according to the 1994 Population Census, and the same as that of the Oromo and Awi according to the estimation of the Kemant themselves.

Question	Item	Number	Per cent
Respondents were asked whether they like if the Kemant have self-governance	Yes	222	98.23
	No	3	1.33
	Other	0	0
	Not Responding	1	0.44

Table 12

As Table 12 above shows, respondents were asked whether they support the establishment of self-administration by the Kemant and thereby develop and promote its identity, culture, history and language. Accordingly, almost all of them (98.23%) responded affirmatively while 1.33% of them said “no”.

¹⁶⁸ Article 45(10), the Revised Amhara Regional Constitution of 2001.

¹⁶⁹The Zonal Administrative Offices Establishment and Determination of their Powers and Duties of Council of Regional Government Regulations No. 1/2001.

¹⁷⁰ *Id.* article 3.

¹⁷¹ It was established by ‘Bahir Dar Special Zone Administration Regulations No.1/1995.’

¹⁷² Article 73, the Revised Amhara Regional Constitution.

Of course, taking into consideration the provisions of both the federal and regional constitution, there is no question in the importance of the establishment of local self-government by a distinct group in order to protect and promote its unique identities. Therefore, taking into account these facts the Kemant should have a nationality administration at Zonal level.

3.3.2.2 Cultural and Linguistic Rights

Culture, language and religion are, among others, identity features of the group and which the group desires to maintain and protect.¹⁷³ The Kemant, as we saw in chapter one, have their own distinct culture, language and religion which are at the verge of extinction due to negative influences from the dominant Amhara culture, language and Orthodox faith. They are in dire need of protection and preservation to pass to the next generation.

Religion, language and cultural life of members of minorities are not only protected under article 27 of the ICCPR, but also many provisions of the International Covenant on Economic, Social and Cultural Rights protect the collective aspect of them.

At the national level, article 39(3) of the Federal Constitution provides that “Every Nation, Nationality and People in Ethiopia has 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.” In the same vein, article 39(1) of the Amhara Region Constitution, which should conform in fundamental rights of individuals and minority rights to the Federal Constitution, states that the ‘people’ of the Region “Has the right to preserve its own National identity and strive towards its due respect, maintain, enrich and care for its legacy and history as well as utilize and enhance its own language, assert its own culture, develop and promote same.”

Therefore, the Kemant has a constitutional right to assert, develop and promote its own culture, religion, language and history as means of preserving its national identity. In other words, state acts, be it regional or federal, which take away this right is unconstitutional. The fact that the majority of the Kemant speak Amharic should not be taken as a ground for denying them

¹⁷³ HENRARD, *supra* note 63, at 243.

recognition and self-governance. Rather, it should be considered as a positive factor tying both the Amhara and the Kemant together while maintaining their distinctions.

This constitutional right may be violated by the state by not treating a certain ethnic group equally with the other. For instance, the state should give equitable coverage through its mass media regarding the promotion of each ethnic group’s history, culture, language and tradition as far as doing so does not violate the fundamental rights of individuals belonging to the concerned ethnic group or others.

Question	Item	Number	Per cent
Whether the respondents have heard Kemant identity, culture, history, etc. in government mass media	No	199	88.05
	Yes	24	10.62
	Not Responding	3	1.33

Table 13

As shown in the above Table, respondents were asked whether they have ever heard transmission of the Kemant identity, culture, history, etc. in either the Federal or Regional mass media, and 88.05 % of them replied “no” while 10.62% said “yes”. Even those who replied affirmatively stated that it was only once or very few days that they have heard.

3.3.2.3 Right to Political Participation and Representation

The interests of a minority group may be affected not only by what goes on in its territory ,but also by those decisions which take place at the regional or federal level. As a result, the group should be represented proportionally to reflect its interests and concerns.

Accordingly, in Ethiopia, each ‘nation, nationality and people’ has the right to equitable representation in state and federal governments.¹⁷⁴Likewise, the peoples of the Amhara Region have the right to “enjoy an effective participation in the system of the federal government in a freer, nondiscriminatory, appropriate, fair and equitable means of representation.”¹⁷⁵In addition,

¹⁷⁴ FDRE Constitution, article 39 (3).

¹⁷⁵ Revised Amhara Regional Constitution, article 39 (2).

at the regional level, “the representation of other nationalities and peoples [apart from the Oromo, Awi and Himra peoples] settling in the regional state shall be taken care of with special considerations.”¹⁷⁶

Question	Item	Number	Per cent
Respondents were asked whether they believe the Kemant are represented in the Federal or / and the Regional government offices	Yes	9	3.98
	No	209	92.48
	Other	3	1.33
	Not Responding	5	2.21

Table 14

However, as the figures in Table 14 show, the overwhelming majority (92.48%) of the respondents do not believe that the Kemant are represented in either of the government offices.

Participation does not merely mean representation in the parliament, either in the House of Peoples’ Representatives, or in the House of Federation. It should extend to in the other branches of government: the executive and the judiciary. For decisions by these organs may affect the interests of the minority groups, they shall be also represented.

The Kemant, as one of the ethnic groups of the country and of the Amhara Region, and fulfills the definition of ‘nation, nationality or peoples ’, shall have the above right of participation at both the regional and federal governments in accordance with the common article 39 of the Regional and Federal Constitution. Denying such right will have negative repercussions on the enjoyment of other rights of the group.

3.3.2.4 Affirmative Action

An affirmative action is a special measure attached with vulnerable groups in a state. It is an action to treat members of the minority differentially, a deviation from the equal treatment required by principles of individual human rights. It is indispensable in the implementation of minority rights, for minority rights enforcement requires positive actions on the part of the state.

¹⁷⁶ *Id.* article 45(2)

In this respect, neither the Regional, nor the Federal Constitution does provide for special treatment of minorities in the enjoyment of their rights. They treat each ‘nation, nationality and people’ equally as if they are all on equal footing. Even in some respects, they protect better those who may be considered dominant in that they are constitutionally recognized and institutions with their infrastructure are within their control.

The only constitutional provision is article 86(4) of the FDRE which reads ‘Government shall provide special assistance to Nations, Nationalities, and Peoples least advantaged in economic and social development.’ However, this is mere economic objectives and does not entitle minorities to claim as a right.

Accordingly, there is no support made with a view to protecting and promoting the Kemant identity, culture, language and history. Among the respondents, 87.61% said both the Federal and Regional governments have not yet made any action in favor of the Kemant; Only 4.42 replied they have made such efforts in favor of the Kemant, as can be understood from the following Table.

Question	Item	Number	Per cent
Whether the Federal/Regional Government has made any effort with respect to the promotion and protection of Kemant identity, culture, history, etc	Yes	10	4.42
	No	198	87.61
	Other	12	5.31
	Not Responding	6	2.65

Table 15

And the fact that the state does not make such actions in favor of the Kemant has an impact on members in using Kemantney language. Table 16 shows that 45.93 %, 0.48%, 36.84% and 16.27 % of the respondents replied lack of opportunity to learn, stigma and exclusion, lack of opportunity and stigma and exclusion, and all ,respectively, as a reasons to their inability to learn Kemantney.

Question	Item	Number	Per cent
Reasons for respondents' inability to use Kemantney	Lack of Opportunity to learn	96	45.93
	Ashamed of it	0	0
	Stigma & exclusion	1	0.48
	Lack of Opportunity and stigma & exclusion	77	36.84
	All	34	16.27

Table 16

From the respondents' responses, it is possible to discern the importance of the affirmative action in favor of minorities in using their rights and how lack of it affects their rights.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

A) Conclusion

Contemporarily, protection of minority rights has become a burning issue in many parts of the world. In developing countries, particularly “new states which emerged from the rubble of decolonization have had to face the tremendous task of building up a state comprising peoples of different ethnic, linguistic, cultural, religious and tribal affiliations.”¹⁷⁷ Minority rights and self-determination in favor of ethnic minority rights have become vogue in human rights discourse and among scholars and activists despite the fact that there is no a separate international convention on the rights of minorities. Some countries’ laws and practices in this regard are promising, among which is post-1991 Ethiopia. By incorporating self-determination as a constitutional right of sub-national groups or ‘nations, nationalities or peoples’, Ethiopia has gone far not only in Africa but also in the world. Not only is self-determination made a constitutional right, but also it is unconditional. Moreover, the beneficiaries are identified. These issues are not still determined in international law and there is no consensus among the international community. In other words, in this regard, Ethiopia is ahead of international law and the international community.

However, this unconditional right to self-determination is not granted to all minorities by international standards. The Constitution has recognized constitutionally only the Afar, Amhara, Harare Peoples, Oromo, Somali and Tigre, and collectively, the Gambela Peoples, Benishangul-Gumuz and Southern nations, nationalities and peoples by establishing their own state. The ethnic groups in the first category by default are beneficiaries of self-determination while other ethnic groups within them and within the other states are expected to fulfill the definitional requirements of nation, nationality or peoples. By so doing, the Constitution has made two classes of ethnic groups: the constitutionally recognized and the non-constitutionally recognized, which could be termed *second-class ethnic groups*. In other words, the Ethiopian Constitution

¹⁷⁷REHMAN, *supra* note 96, at 219.

has gone far in enshrining secession but less in providing special rights to ethnic minorities. Even the second-class ethnic groups may be grouped, practically speaking, into two: those *politically-favored* in that they enjoy the status of ‘nation, nationality or people’ as they are recognized in the regional constitutions and those which are *non-politically-favored* ethnic groups.

In turn, state constitutions followed the same procedures as the Federal Constitution. As we saw, the Amhara National Regional State constitution recognized some ethnic groups and denied others. The Kemant case shows that the second-class ethnic groups are, practically and politically, under the sovereignty of states in which they are found. At worst, the Kemant fall in the category of *non-politically-favored* ethnic groups. Although the ultimate power is vested with the House of Federation, the states determine those which deserve the status of nation, nationality or peoples among such second-class ethnic groups. Such determination depends, not on the legal requirements, but on political considerations of the mainstream ethnic group in whose name the state is designated.

Proclamation 251/2001 empowers the regional states to entertain any claims related to identities. To reiterate, even if the ultimate power resides in the House of Federation in deciding issues of identities, the House may not be a neutral body. This is due to the fact that the mainstream ethnic group (state) is represented while the claimant is not. For instance, in Kemant identity claim in the House of Federation, the Amhara ethnic group will be involved in its own case. There is no guarantee in the House that other major ethnic groups against allying with the state in which the identity claim is raised. Other ethnic groups may be motivated by their political considerations in allying than taking in to consideration the valid legal claims of the *non-politically-favored* ethnic groups.

The present research found that regional states, particularly which are dominated by one strong ethnic group, such as the Amhara, not only suffer from partiality and bias in considering identity claims, but also they may hinder them from using their rights under the Federal Constitution. For instance, the Kemant had been included in the National Population and Housing Census until 1994, which is a year before the establishment of regional states, but the Kemant were denied this right of recognition in the next Census of 2007. As the research finding indicated, the overwhelming majority of the Kemant populations are eager to see their distinct identity

recognized and protected. However, they could not either get the region's favor or pass the huddles posed by it in using their rights as enshrined in the Federal Constitution.

By definition, minority rights are claims against the dominant ethnic group or the majority, and causing these claims to be decided by such dominant group is not valid. The writer argues that Kemant's constitutional right to self-determination versus Amhara Regional State dominance can be analogized with Ethiopia's right on the Blue Nile water versus Egypt's power. This is equally applicable to other *second-class ethnic groups*, particularly those *non-politically-favored* ones. Indeed, Minasse Haile is correct in asserting "the Ethiopian ethnic federation would not be able to limit the powers of the state governments, thereby placing the fate of minorities in the subunits at the mercy of the tribal majorities without any protection by the central government."¹⁷⁸

To sum up, these *non-politically-favored* ethnic groups can be considered as aliens to the Federal Constitution, for the Constitution vests sovereignty¹⁷⁹ with each 'nation, nationality or peoples' and they have not yet attained such status. In effect, the Constitution has caused them to be forcedly assimilated with the dominant ethnic group in the states in which they are found.

B) Recommendations

It will not be an exaggeration to say number '80' in Ethiopia designates the number of ethnic groups although the actual number is greater than that.¹⁸⁰ The point to make is that there are many more ethnic groups than that are recognized as 'nations, nationality and peoples' and have representation in the House of Federation. Put simply, only sixty-five ethnic groups have representation in the House of Federation.¹⁸¹ It is such status that entitles to the group to enjoy the rights enshrined under sub-articles (1), (2) & (3) of 39, Federal Constitution. In other words, the Constitution does not have any other provision which can benefit ethnic groups which have not yet obtained such status; the only option left to them is to be assimilated with the mainstream

¹⁷⁸ Minasse Haile, *The New Ethiopian Constitution: Its Impact Upon Unity, Human Rights And Development*, 20 SUFFOLK TRANSNATIONAL LAW REVIEW (1996), at 51.

¹⁷⁹ According to article 8, 'All sovereign powers resides in the Nations, Nationalities and Peoples of Ethiopia.'

¹⁸⁰ There are 85 ethnic groups in the country according to Census 2007, *supra* note 9, at 86-88. Even this does not include all ethnic groups, like the Kemant.

¹⁸¹ Abera Degefa, *supra* note 81, at 134-135.

ethnic group. No doubt this option is against their rights and will affect the very existence of them. As a result, the writer suggests the following solutions:

Since the problems relate to the inherent defect of the constitution, they demand an amendment of the constitution. However, the very article which contained self-determination and the rights which relate to identities is found in Chapter Three of the Federal Constitution which requires a very rigid procedure of amendment.¹⁸² The viable alternative will be to recognize as ‘nation, nationality or people’ an ethnic group which uses its right of self-determination. To follow up such implementations, the House of Federation should take the responsibility as granted by the Constitution, rather than delegating its power to the Regional States within which the concerned ethnic groups found. As a result, Proclamation No. 251/2001, which empowers regional states to consider at first hand the claims of an ethnic group, should be repealed.

As stated earlier, the Constitution made two categories of ethnic groups, of which the second-class ethnic groups are of the kind that may be called by international standard as minorities. The Constitution, instead of making special rights to them, made discrimination against them. As this deviates arguably from article 27 of International Covenant on the Civil and Political Rights, which is interpreted as comprising affirmative action, the provisions of Constitution should be interpreted in line with such international document.¹⁸³ In this regard, the Federal Government should assist such ethnic groups in their efforts in using their right of self-determination as enshrined under article 39. With such support, they may come to the positions of the dominant ethnic groups, for “[n]either the Amharas and Tigrrians nor the Oromos have a monopoly to dominate Ethiopia’s political scene on the basis of dynastic credentials, traditional claims, demographic advantage or the advantage of being better endowed with resources.”¹⁸⁴

Lastly, the writer suggests to the Federal Government for an establishment of institution which will be entrusted with supervision of the implementation of rights of ethnic groups and should be

¹⁸² See articles 104 and 105 cum article 39.

¹⁸³ FDRE Constitution, article 13(2).

¹⁸⁴ KINFE ABRAHAM, ETHIOPIA FROM BULLETS TO THE BALLOT BOX: THE BUMPY ROAD TO DEMOCRACY AND THE POLITICAL ECONOMY OF TRANSITION 63(The Red Sea Press Inc., 1994).

neutral or involves both parties.¹⁸⁵ The House of Federation should not only see cases of identity laid before it by the parties. It should study and collect by its own relevant facts about each ethnic groups of the country.

¹⁸⁵ For instance, the Kemant identity claims were deliberated, among others, on 9 January 2010 by the Standing Committee of the House of Federation. *ETV Evening News, 9 January 2010*. Although I could not access to the deliberation of the Committee as it is not yet translated into script, an interview with anomalous persons from the House attending the session, delegates from the Amhara state were present while the Kemant was not represented. The delegates strongly opposed to not only the Kemant did originally submit a proper claim in the region but also the legitimacy of the 18,500 petitions lodged with the House of the Federation by the representatives of the Kemant for lack of 'official seal'. However, how can claimants get petitions authenticated by the government? After all article 21 of Proclamation No. 251/ 2001 does not necessarily require official seal, and if it is found necessary depending on the circumstances, it is applicable to those which have their own self-administration. Despite these kinds of predicaments by claimants, the decision of the Committee seems to be in favor of the state. Therefore, establishing a neutral body in which both parties will be involved will solve these problems by the minority ethnic groups.

BIBLIOGRAPHY

BOOKS

Alfredsson, Gudmundur, *Minority Rights and a New World Order*, in BROADENING THE FRONTIERS OF HUMAN RIGHTS: ESSAYS IN HONOR OF ASBJORN EIDE, 55-77(Donna Gomien, ed, 1993).

Alston, Philip, *Peoples' Rights: Their Rise and Falls*, in PEOPLES' RIGHTS (Philip Alston, ed., Oxford University Press, 2002).

CARLSON, ANDREW J. AND CARSON, DENNIS G., HEALTH, WEALTH AND FAMILY IN RURAL ETHIOPIA: KOSOYE, NORTH GONDAR REGION, 1963-2007(Addis Ababa University Press, 2008).

Crawford, James, *Right of Self determination in International Law*, in PEOPLES' RIGHTS (Philip Alston, ed. , Oxford University Press, 2002).

Dinstein, Yoram and Tobory, Mala, eds., THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS (Dordrecht/ Boston/London: Martinis Nijhoff Publishers, 1992).

FASIL NAHOM, A CONSTITUTION FOR A NATION OF NATIONS: THE ETHIOPIAN PROSPECTIVE (Red Sea Press, Inc., Asmara: 1997).

GAMST, FREDERICK C., THE QEMANT: PAGAN-HEBRAIC PEASANTRY OF ETHIOPIA (New York: Holt, Rinehart and Winston, 1969).

GHAI, YASH,(ED.), AUTONOMY AND ETHNICITY: NEGOTIATING COMPETING CLAIMS IN MULTIETHNIC STATES (Cambridge University Press,2000).

Hailbronner, Kay, *The Legal Status of Population Groups in a Multinational State under Public International Law*, in THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinis Nijhoff Publishers, 1992)

HANCOCK, GRAHAM, THE SIGN AND THE SEAL: A QUEST FOR THE LOST ARK OF THE COVENANT (William Heinemann LTD, 1992, Reprinted in 1997 by Alley Books).

HENRARD, KRISTIN, DEVisING AN ADEQUATE SYSTEM OF MINORITY PROTECTION: INDIVIDUAL HUMAN RIGHTS, MINORITY RIGHTS AND THE RIGHT TO SELF-DETERMINATION (The Hague/Boston/London: Martinus Nijhoff Publishers, 2000).

KINFE ABRAHAM, ETHIOPIA FROM BULLETS TO THE BALLOT BOX: THE BUMPY ROAD TO DEMOCRACY AND THE POLITICAL ECONOMY OF TRANSITION (The Red Sea Press Inc., 1994).

Kohli, Atul, *Federalism and the Accommodation of Ethnic Nationalism*, in FEDERALISM AND TERRITORIAL CLEAVAGES 251-299 (Ugo M. Amoretti and Nancy Bermeo eds., 2004). Kottak , KOTTACK, CONRAD PHILLIP, ANTHROPOLOGY: THE EXPLORATION OF HUMAN DIVERSITY 54 (McGraw-Hill: New York/London 6th ed., 1994).

KYMLICKA, WILL, POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM AND CITIZENSHIP(Oxford University Press, 2001).

Kymlicka, Will, *Emerging Western Models of Multination Federalism:Are They Relevant for Africa?*, in, ETHNIC FEDERALISM: THE ETHIOPIAN EXPERIENCE IN COMPARATIVE PERSPECTIVE(David Turton, (ed) Addis Ababa: Addis Ababa University, 2006).

Kymlicka, Will , *Federalism, Nationalism and Multiculturalism*, in THEORIES OF FEDERALISM : A READER (Dimitrios Karmis and Wayne Normal ,eds. , PalgraveMacmillan, New York , 2005).

LYONS, GENE .M AND MAYAL, JAMES (EDS.), INTERNATIONAL HUMAN RIGHTS IN THE 21ST CENTURY: PROTECTING THE RIGHTS OF GROUPS (Rowman & Littlefield Publishers, Inc., Lanham, 2003).

Martin Estebanez, Maria Amore, *The Protection of National or Ethnic, Religious and Linguistic Minorities*, in THE EUROPEAN UNION AND HUMAN RIGHTS 42, 133-163 (Nanette A. Neuwahl and Allan Rosas, eds, Martinus Nijhoff Publishers, The Hague,1995).

REHMAN, JAVAID, THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS (Kluwer Law International: The Hague/London/Boston, 2000).

SIGLER, JAY A., MINORITY RIGHTS: A COMPARATIVE ANALYSIS (1983).

STERN, HENRY A., WANDERINGS AMONG THE FALASHAS IN ABYSSINIA: TOGETHER WITH A

DESCRIPTION OF THE COUNTRY AND ITS VARIOUS INHABITANTS 43(London: Wertheim, Macintosh, and Hunt, 1862).

THORNBERRY, PATRICK, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES (Clarendon Press, Oxford, 1991).

Tronvol, Kjetil, Minority Rights Group International, ETHIOPIA: A NEW START? (2000).

ZELALEM LEYEW, THE KEMANTNEY LANGUAGE: A SOCIOLINGUISTIC AND GRAMMATICAL STUDY OF LANGUAGE REPLACEMENT (Unpublished PhD Dissertation, Addis Ababa University, 2000).

Journals and other Documents

Aberra Degefa , *The Scope Of Rights of National Minorities Under The Constitution Of Federal Democratic Republic Of Ethiopia*, in 2 SERIES ON ETHIOPIAN CONSTITUTIONAL LAW (Faculty of Law ,2008).

Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, 28 THE YALE JOURNAL OF INTERNATIONAL LAW (2003).

Bereket Habteselassie, *Self- Determination in Principle and In Practice: The Ethiopian – Eritrean Experience*, 29 COLUMBIA HUMAN RIGHTS LAW REVIEW 91(1997).

Buchanan, Allen, *Federalism, Secession, and the Morality of Inclusion*, 37 ARIZ. L. REV. 54(1995).

CAPOTORTI, FRANCESCO, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES AT 96, U. N . Sales No. E. 91.XIV.2 (1991), as quoted by Jerome Wilson, *Ethnic Groups and Self-Determination*, 11 CONN. J. INT’L L. (1995-1996).

Castellino, Joshua and Gilbert, Jérémie, *Self-Determination, Indigenous Peoples and Minorities*, 3 MACQUARIE LAW JOURNAL 8[2003].

Freeman, Michael, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, (Jul., 1999).

GROS-ESPIELL ,H., THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS (New York: United Nations, 1980), para. 59, as cited by Michael Freeman, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, (Jul., 1999).

Kirgis, Frederic, *The Degree of Self- Determination in the United Nations Era*, 88 AM. J. INT'L. L. (1994).

Henrard, Kristin and Smis, Stefaan, *Recent Experiences In South Africa And Ethiopia To Accommodate Cultural Diversity: A Regained Interest In The Right Of Self-Determination*, 44 JOURNAL OF AFRICAN LAW1 (2000).

Minasse Haile, *The New Ethiopian Constitution: Its Impact Upon Unity, Human Rights And Development*, 20 SUFFOLK TRANSNATIONAL LAW REVIEW (1996).

Quirin, James, *Caste and Class in Historical North-West Ethiopia: The Beta Israel (Falasha) and Kemant, 1300-1900*, 39 JOURNAL OF AFRICAN HISTORY (Cambridge University Press, 1998).

Roth, Stephen J., *Toward A Minority Convention: Its Need And Content*, in THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinis Nijhoff Publishers, 1992).

Thornberry, Patrick, *Self-Determination, Minorities, Human Rights: A Review of International Instrument*, 38 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, (Oct., 1989).

Van der Beken, Christophe, *Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level*, 20AFRICA FOCUS 105 (2007).

Van der Beken , Christophe, *Ethiopian Constitutions and the Accommodation of Ethnic Diversity :The Limits of the Territorial Approach*, in, ISSUES OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Tsegay Regassa, ed, Faculty of Law, Addis Ababa University, 2009).

Wilson, Jerome, *Ethnic Groups and Self-Determination*, 11 CONN. J. INT'L L. 465 (1995-1996).

World Morning Star Association, *Igbo Nation: Its Origin and Significance*, MORNING STAR NEWS, visited on Oct. 19,2009, 1: 09: 49PM at <file:///Users/James%20T.%20Womack/Desktop/Editorial.mht>.

Yared Legesse, *Linguistic Regimes in Multinational Federations: The Ethiopian Experience in a Comparative Perspective*, in, *ISSUE OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY*, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Regassa, Tsegay ed., Faculty of Law, Addis Ababa University, 2009).

The UN Human Rights Committee, General Comment No. 23, Article 27 ICCPR, U.N.Doc.HRI/GEN/1/Rev.1. at 38(1994).

LAWS

INTERNATIONAL

The Convention On The Prevention and Punishment of the Crime of Genocide, General Assembly Resolution, UNGAR 260 A(III) (1948).

International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, entered into force 23 Mar. 1976, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966).

United Nations Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities, UN.GA. Res.47/135, 18 December 1992.

NATIONAL

Argoba Nationality Woreda Establishment and Determination of Its Powers and Duties Proclamation No.130/2006, Amhara National Regional State Zikre Hig-No.15 April 18, 2006.

The Zonal Administrative Offices Establishment and Determination of their Powers and Duties of Council of Regional Government Regulations No. 1/2001.

Bahir Dar Special Zone Administration Regulations No.1/1995.

Proclamation No.236 /1983 to Provide for the Establishment of the Institute for the Study of Ethiopian Nationalities, Negarit Gazeta, 42nd Year, No. 7.

A Proclamation to Provide For Consolidation of the House of Federation and Definition of Its Powers and Responsibilities Proclamation No.251/2001, Federal Negarit Gazeta, 7th Year No.41, Addis Ababa -6th July,2001.

The Federal Democratic Republic Of Ethiopia Constitution of 1995 Federal Negarit Gazeta, 1st Year No. 1 Addis Ababa-21st 1995.

The Revised Amhara National Regional Constitution Approval Proclamation No. 59/ 2001 Amhara National Regional State Zikre Hig-No.15 November 5/ 2001.

Office of the Population and Housing Census Commission , Transitional Government of Ethiopia, The 1984 Population and Housing Census Analytical Report at National Level, Addis Ababa, December 1991.

Office of Population and Housing Census Commission, Central Statistical Agency, Federal Democratic Republic of Ethiopia, The 1994 Population and Housing Census, Results at the National Level, Volume 1 Statistical Report, Addis Ababa, June 1998.

Proclamation No.7/1992 to provide for the Establishment of National/Regional Self-governments, Negarit Gazeta-51th Year, No. 2.

Population Census Commission, Federal Democratic Republic of Ethiopia, Summary and Statistical Report of the 2007 Population and Housing Census, Addis Ababa, December 2008.

Interviews made with:

1) Ato Gebeyu Abelti, Vice Director, Population and Social Statistics, Central Statistics Agency, on 30 November 2009, at 11:30-6:30, Addis Ababa.

2)Ato Tamirat Dejene, Deputy Head, Government Information and Media Relations Work Process Owner, Amhara Regional State Information Bureau , on 25November 2009 at 11:00-11:20 am, Bahir Dar.

- 3) Womber Muluneh Mersha, the highest religious leader of the Kemant religion(Hege-Lebona) at Aykel (on 17 November 2009) and at Gondar (on 18 November 2009).
- 4)Ato Nega Gete, who wrote a book about the Kemant and who has struggled for their recognition and self-governance since the 1991, on 18 November 2009 at 4:00- 6:00 pm , Gondar.
- 5) Ato Endeshaw Bogale, who has ever been struggling for the recognition and self-rule and other interests of the Kemant since the 1960s and currently Chairperson of Executive Committee, Provisional Committee of Kemant Identity and Self-Governance Claims Council, on 22 November 2009 at 7:00- 9:00 , Gondar.
- 6) Ato Challachew Gelaw, Amharic Language Education Affairs Executor, Amhara Regional State Education Bureau, on 23 November 2009 at 4: 00-4: 30 pm, Bahir Dar.
- 7) Ato Habtamu Buzuneh, Social Sciences Curriculum Executor, Amhara Regional State Education Bureau, on 23 November 2009 at 4:30-5: 00 pm, Bahir Dar.
- 8) Ato Abebe Arega, Deputy Speaker of the Amhara Regional Council, on 24 November 2009 at 2:30-3: 00, pm, Bahir D
- 9)Dr. Misrak Mekonnen, Speaker of the Amhara Regional Council, on 25 November 2009 at 9:00-9: 30, Bahir Dar.
- 10)Ato Tesfahun Mulatu, Deputy Chairperson of Executive Committee, Provisional Committee of Kemant Identity and Self-Governance Claims Council, on 26 November 2009 at 6:00- 8:00, Gondar.

INTRODUCTION

1.1 Background

Ethiopia is one of the oldest states of the world and was the only country in Africa to escape from the yoke of European Colonialism. For a long time, it was ruled by successive monarchies and very recently by a military dictator for about a decade and half. However, both systems of government were not better than colonial rule for the enjoyment of fundamental rights by its citizens in general and minority ethnic groups in particular. After the fall of the military regime in 1991, the Transitional Government of Ethiopia came up with promises for the respect and promotion of human rights and ethnic rights which were later included in the 1995 Federal Constitution.

The Federal Constitution, apart from enshrining fundamental rights of individuals in an extensive way, declared self-determination up to and including secession an unconditional, fundamental right of every 'nation, nationality and people' of Ethiopia. Moreover, unprecedented in the history of the country, the constitution declared federal form of government in accordance with ethnic-based territories. Although it is believed that there are more than eighty ethnic and linguistic groups in the country, the Federal Constitution formed only nine regional states.¹ In other words, there are some ethnic groups within the mainstream groups in whose names the regional states are designated.

While federation is one of the mechanisms whereby differences are tolerated and minority rights are protected, there is fear that, in the present Ethiopian federal context, minorities in each state may fall under the dictate of the mainstream ethnic group. As a member of the federation, each

¹ Of course, the right to form a state is provided for under article 47 of the Federal Constitution by the other ethnic groups which fulfill the requirements provided under article 39(5). However, an ethnic group may undergo a long process to attain the status of 'nation, nationality and people', let alone to form a state as easy as it appears to be.

regional state has its own constitution in which minority ethnic groups may or may not be recognized.

Among the members of the federation is the Amhara National Regional State, which is the second largest in population and area among the members of the Federal Democratic Republic of Ethiopia. It shares a common border in the north with Tigray, in the east with Afar, in the south with Oromia and in the west with Benishangul/Gumuz, and the Republic of Sudan.² According to the 2007 Population and Housing Census, the region has a population of above 17 million. Different nationalities live in the region. It is divided into seven administrative zones and three Nationality Administration Zones, in addition to Bahir Dar Special Zone Administration. In the Region the Oromo, Awi and Wag Himra nationalities are granted zonal administration,³ the Argoba has a special nationality woreda administration.⁴

However, although the Amhara Region is claimed by some to be an exemplary in the protection of minority rights in the country,⁵ there are nationalities such as, the Kemant, the Woito, which are not given self-administration, nor recognized as a nationality either by the 1994 Amhara Constitution or by the Revised Amhara Constitution of 2001.

1.2 Statement of the Problem

Among scholars there is a wide acceptance that general human rights cannot give adequate protections to minorities. In other words, it has been found necessary to have special rights to protect their interests. Hailbronner has written that “Although the League of Nations Minorities System became obsolete after World War II, its basic idea of special rights and public action in

² The Revised Amhara National Regional Constitution of 2001, article 2.

³ According to article 45(2) of the Revised Amhara National Regional Constitution, they shall have their own councils. As per sub article 1 of the same the constitutionally constituted state hierarchies are the Regional, Woreda and Kebele administrative units, the Regional Council is entitled to establish by law other administrative units and as a result, Zonal Administrations have been established, *see infra* footnote 169 on page 66.

⁴ Argoba Nationality Woreda Establishment and Determination of Its Powers and Duties Proclamation No.130/2006, Amhara National Regional State Zikre Hig-No.15 April 18, 2006.[Hereinafter ‘Argoba Nationality Proclamation’]. Under article 3(1), the Argoba Nationality Woreda is established as autonomous self-governance.

⁵ It is not uncommon to hear in some public forums and deliberations that there is effective and full protection of minorities in the Region. This assertion may have emanated from the mere observance of protection of those ethnic groups which have already been recognized and have enjoyed their rights as enshrined both in the regional and federal constitutions. However, concluding from the particular, the case of the three or the four ethnic groups, to the general may lead to erroneous conclusion. *See generally*, Christophe Van der Beken, *Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level*, 20AFRICA FOCUS 105 (2007).

ethnic, linguistic or religious groups gained wide acceptance.”⁶ The silence of the UN Charter or/and the Universal Declaration of Human Rights regarding minorities did not silence the claimants. Not accommodating differences became a source of conflict both within states and beyond, particularly after the Cold War. For Kymlicka “the question of minority rights has moved to the forefront of political theory.”⁷ Hence, the importance of minority rights, in countries which have diversified societies, is unquestionable.

As a ‘nation of nations,’⁸ different ethnic groups live in Ethiopia in different regional states which constitute the federation. Amhara Regional State is not an exception to this; some ethnic groups exist in the region. Some of them were recognized by the 1995 Regional Constitution and by 2001 Revised Constitution of the same and have enjoyed minority rights enshrined both in the Regional and Federal constitution.

Both the Regional and the Federal constitutions give equal rights to the majority and the minority, just as general human rights does treat equally the ‘unequals’. To put it in simple terms, the constitutions do not provide for minority rights. On the contrary, practically and legally speaking, they give more protection to the majorities, particularly in regional context. According to article 47(1) of the Federal Constitution the Tigre, Amhara, Afar, Oromo, Somali and Harare are expressly recognized as ‘nation or nationality’. Others are yet to prove their existence as per article 39(5), though they were in existence before the Constitution was adopted.⁹ Questions of self determination are to be first considered by the states within which they reside before finally decided by the House of Federation.¹⁰

⁶ Kay Hailbronner, *The Legal Status of Population Groups in a Multinational State under Public International Law*, in *THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS* 123 (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinus Nijhoff Publishers, 1992).

⁷ KYMLICKA, WILL, *POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM AND CITIZENSHIP* (Oxford University Press, 2001), at 17.

⁸ FASIL NAHOM, *A CONSTITUTION FOR A NATION OF NATIONS: THE ETHIOPIAN PROSPECTIVE* (Red Sea Press Inc., Asmara: 1997.)

⁹ See for instance Office of Population and Housing Census Commission, Central Statistical Agency, Federal Democratic Republic of Ethiopia, *The 1994 Population and Housing Census, Results at the National Level, Volume 1 Statistical Report*, Addis Ababa, June 1998, at 66. [Hereinafter ‘Census 1994’].

¹⁰ A Proclamation to Provide for Consolidation of the House of Federation and Definition of its Powers and Responsibilities Proclamation No. 251/2001, article 20 cum article 19.

In the same vein, both the 1995 and 2001 Revised Amhara Regional constitutions did give equal rights for both the majority and the minorities. As we saw above, the Awi, Himra and Oromo, including, of course, the Amhara, were recognized.

However, some others, like the Kemant, have not been recognized. At a time when their language and religion, and as a result their sheer identity, are at the verge of extinction,¹¹ the Kemant are not given due attention by the Federal and the Regional state. This is reflected partly by the fact that they are not officially recognized and are not exercising their right of self administration.

1.3 Research Questions

As a matter of fact, the right of self-determination of a minority emanates from its status as such. In other words, in the absence of recognition, it cannot claim a right to self-determination. The same holds true political representation at the regional and federal level. The Kemant, who had ever recognized officially before 1995, have failed to make use of such rights. Where do the problems lie? The researcher assumes that the problems may be due to the insufficiency of the law to protect minorities and practical enforcement constraints.

In the discourse of minorities and their rights that may come first is their recognition. In legal terms, it is the recognition that gives personality to a group to avail minority rights protection. Unfortunately, many states deny recognition to a certain ethnic, linguistic or religious group with a view to deny their existence. By such denial, states assume they are relieved of enforcing and protecting minority rights in their jurisdiction.

It is *prima facie* evident that giving states power to determine such recognition contradicts the *raison d'être* of minority rights, for the former decline to recognize the latter thereby free themselves from enforcing them.

¹¹ ZELALEM LEYEW, THE KEMANTNEY LANGUAGE: A SOCIOLINGUISTIC AND GRAMMATICAL STUDY OF LANGUAGE REPLACEMENT 30 (Unpublished PhD Dissertation, Addis Ababa University, 2000).

- 1) So, who should have or does have such right? Is it the concerned group or other neutral body? In our case, is it the Amhara Regional State or the neutral Federal Government or the Kemant who have the power to determine whether the Kemant are distinct people or not?

Whoever may be the holder of such right to determine recognition, there should be set criteria to be met as prerequisites for recognition. Such requirements are provided under article 39(5) of the Federal Constitution.

- 2) The issue is: who determines whether such objective and subjective elements exist or not? Is it sufficient that the claimants, in our case, the Kemant, demand irrespective of the interest of the state in which they are found? Or shall there be the involvement of third party, i.e., the Federal State? Can the Kemant, legally speaking, fulfill these requirements?

In this regard, the sufficiency of both the Federal and Amhara Region constitutions will be evaluated.

- 3) Do they give better protection of minorities? In other words, do they give special procedures to minorities? The paper raises and discusses such issues with a view to finding gaps in the law which affected the Kemant to use their right of recognition, self-administration and representation.

1.4 Objectives

The Kemant, like many other ethnic groups of the country, had been denied of their right of using and developing their culture, language, religion and history. What makes them unique is that they have been victims for a very long time, i.e., seven centuries, and the fact that they are not beneficiaries of minority rights as enshrined in the 1995 Federal Constitution of Ethiopia and Regional Constitution.

One of the objectives of this research is, therefore, to identify factors which have hindered the Kemant from being recognized as distinct people since the adoption of the Federal and Regional constitutions. A related objective the research tries to address is to determine whether the Kemant fulfill the definition of 'nation, nationality or people' as per article 39 of the Federal Constitution.

One of the rights which accompany the recognition of a group as distinct ethnic group is the right to self-administration. Therefore, this paper, once comes to the conclusion that the Kemant should be recognized, assesses whether they have a right to self-administration at the appropriate level-woreda or zonal administration.

In addition, the research attempts to figure out the right of the Kemant to be represented at both Regional and Federal government bodies. This right can be an extension of right to self-administration and makes a nexus between the local, i.e. nationality administration, with that of the Regional and Federal Governments.

Finally, in determining the above points, there would be an evaluation of the sufficiency of the Federal and the Regional Constitution regarding minority rights protection.

1.5 Scope of the Research

Minority rights include a set of rights reserved to only a minority group. This paper does not deal with each type of these rights .It discusses only the three rights, namely, right to recognition, self-administration and political representation of minorities in the Amhara Region with main focus on the Kemant people. It does not, however, mean that other rights will not be dealt with; they will be discussed as found necessary to elaborate the aforementioned rights.

In the discourse on these rights, factors which have affected the Kemant in making use of them are within the scope of the paper. However, it is out of the scope of this paper to address the consequences of lack of self-determination and representation. Again, as exception, and if they are found necessary, some consequences will be covered.

1.6 Significance of the Study

The Kemant have been outcast and excluded people in the country,¹² probably next to the Falashas who were their neighbors and who have been caused to flee to the state of Israel. As a

¹² HENRY A. STERN, WANDERINGS AMONG THE FALASHAS IN ABYSSINIA: TOGETHER WITH A DESCRIPTION OF THE COUNTRY AND ITS VARIOUS INHABITANTS 43(London: Wertheim, Macintosh, and Hunt, 1862).

result, no Ethiopian has tried to write about the history, culture and language of these people, let alone about their rights under international and national laws. It is only foreigners who have attempted to uncover their culture and history.

This paper will be the first to address the rights and the problems of these people. The finding of the research will enable the Kemant know their rights both in the regional and federal constitutions and how to use them. Secondly, the research tries to come up with practical problems related to implementation of provisions of laws relevant to minorities.

Thirdly, by finding gaps in the existing laws governing ethnic minorities' protection, it proposes amendments.

The research, therefore, tries to come up with the reasons for failure of recognition of the Kemant as distinct people and to use the rights guaranteed in the Federal constitution, particularly article 39 of the Federal Constitution and Regional Constitution and thereby suggest solutions to the concerned regional and federal bodies to take appropriate measures before violation of minority rights gets worse and leads to instability.

1.7 Methodology

The Kemant are not recognized as nationality and do not have self-administration. Nor are they recognized. The reasons may be practical or legal ones .So, in order to find out the reasons, analysis of laws and fieldworks has been carried out. Informants from the Kemant people and from regional and federal officials concerned with the issues were interviewed.

Questionnaire was one of the methods I used to get the relevant data. Questionnaires were distributed randomly among the members of the Kemant ethnic groups in Gondar city, Lay Armachiho and Chilga woredas. I chose questionnaire to get appropriate and relevant information from members of the ethnic group who are literate and those who have cross-ethnic relationships. Respondents represent different age groups, occupations, and education backgrounds, the majority being ages 18-30, government employees, and graduates (degree) and secondary high schools levels, respectively.

Of course, review of literature to update the jurisprudence of minority rights and self-determination has been made.

1.8 Organization of the Chapters

This Study is divided into four chapters. As the Study focuses on the minority rights of the Kemant people, Chapter One introduces the people, their location, history, origin, language, religion and their current situations with a brief description. This description helps better understand their positions versus other ethnic groups and helps determine their rights.

Under Chapter Two, minorities and their rights in international human rights will be discussed in a brief way. Definition of minorities, types of minorities and some lists of their rights but with special emphasis on self-determination will be explored. This gives a reader a clue about minorities and their rights in international law against which to evaluate Ethiopian laws regarding minorities. Also included in this chapter is the protection of minorities in Ethiopia in a very general and historical perspective, including the present situations.

Chapter Three deals with the protection of minorities in the Amhara National Regional State. Analysis of the Regional Constitution will be made with reference to the actual practice. The findings why the Kemant failed to be treated as ‘nation, nationality or people’ will be in detail explored. The rights of the Kemant to self-determination, particularly recognition, self-administration and representation, will be assessed against the distinct characteristics the Kemant have as described in Chapter One, the provisions of Article 39 of both the Federal and Regional constitutions and the international law standards as discussed in Chapter Two.

Lastly, Chapter Four is devoted to Conclusion and Recommendations. Under this chapter, the finding of the research will be made, and based of this some suggestions will be forwarded.

CHAPTER ONE

THE KEMANT: A DESCRIPTIVE SKETCH

1. The People

The Kemant are an ethnic group (or to use Gamst's term 'Caucasoid people') residing in the North Gondar Zone of Amhara Region; they speak a dialect of Cushitic language and practice a religion of 'Pagan-Hebraic'.¹³ According to the anthropologist Gamst, the Kemant belong to the branch of the Agaw:

*Today there are eight Agaw groups, remnants of a former much wider distribution of Agaw throughout northern and central Ethiopia. Seven groups- the Kemant , Awiya, Kumfal, Hamir ,Bilan, Damot ,and Hamta –are found enclaves and the eighth –the Falasha – is found dispersed among the Amhara .*¹⁴

Physically, they are mainly indistinguishable from the neighboring peoples, the Amhara. Most of them are peasant farmers and only very few reside in towns; occupationally, unlike the Falasha, they are not distinct from their neighbors. In this regard, "Both Agew and **Kemant** peoples conduct plough agriculture and are difficult to distinguish from their Amhara neighbors in their everyday life."¹⁵ During the second half of the 19th century, Stern described the Kemant: "They are, as a body, an industrious, energetic, and active race, residing in districts where they have fine pasture for their cattle, and fertile soil to reward their field labor."¹⁶

2. Kemant Land and Demography

Located in North Gondar Administrative Zone, Northwest of Amhara National Regional State, the Kemant contiguously reside in Chilga woreda, Lay Armachiho Woreda and the Town of Gondar, and some kebeles of the neighboring woredas of Gondar Zuria, Dembia, Wogera,

¹³ FREDERICK C. GAMST, *THE QEMANT: A PAGAN-HEBRAIC PEASANTRY OF ETHIOPIA* (New York: Holt, Rinehart and Winston, Inc., 1969), at Vii.

¹⁴ *Id.* at 6-7. Today almost of all the Falashas are in Israel while the Awi and Himra are granted autonomous administration as nationality zones in Amhara Region, the Bilen being in the state of Eritrea.

¹⁵ Kjetil Tronvoll, *Minority Rights Group International, Ethiopian: a new start?* 7 (2000).

¹⁶ STERN, *supra* note 12, at 44.

Metema and Quara.¹⁷ The land, as part of the western escarpment of Ethiopia, is very rugged and mountainous and much of it is not suitable to cultivation. Climatically, however, it is conducive as most of it is either *woina dega* or *kola* and has enough rain for cultivation and animal husbandry. As a result, their livelihood depends much on subsistence production.

The population of the Kemant, according to the 1984 Population and Housing Census, was 169,169.¹⁸ According to the 1994 Census, it rose to 172,327.¹⁹ However, at that time this number may not have reflected the exact size of the population, for the time was not yet convenient for the people to identify themselves. In both Censuses, the Kemant were eighteenth in rank among ethnic groups of Ethiopia.²⁰ Despite the fact that there might have been discrepancies between the Censuses and the exact population size, the Kemant had ever been recognized as distinct people.

Paradoxically, the Transitional Government of Ethiopia did not include the Kemant among the ethnic groups eligible to establish national/regional self-government.²¹ This law was essential during the transitional period and was a prelude to the Federal Constitution.

Unfortunately, and to the disadvantage of the Kemant, by the 2007 Population and Housing Census, they were not counted as a separate ethnic group while it did count eighty five ethnic groups.²² Although there is lack of official census concerning the Kemant at present, according to the group of Kemant struggling for its recognition and self-determination, the population is estimated to be well over 900,000.²³ This makes them rank 12th in population size among Ethiopian ethnic groups.

¹⁷ GAMST, supra note 13, map of the Kemant of Ethiopia.

¹⁸ Office of the Population and Housing Census Commission, Transitional Government of Ethiopia, The 1984 Population and Housing Census Analytical Report at National Level, Addis Ababa, December 1991, at 46. [Hereinafter 'Census 1984'].

¹⁹ Census 1994, supra note 9, at 66.

²⁰ Census 1984, supra note 18, at 44-47; Census 1994, supra note 9, at 66-67.

²¹ See Proclamation No.7/1992 to provide for the Establishment of National/Regional Self-governments -51th Year, No. 2.

²² Population Census Commission, Federal Democratic Republic of Ethiopia, Summary and Statistical Report of the 2007 Population and Housing Census, Addis Ababa, December 2008, [Hereinafter 'Census 2007'], at 86-87.

²³ Two years ago, a group of people belonging to the ethnic group applied to the Amhara National Regional State for recognition and self-administration and the population was estimated to be well above 900, 000. The estimation, according to an interview with Ato Nega Gete, see infra note 30, is made based on statistics on Kebeles and woredas

3. The History of the Kemant

Due to lack of written evidences, for some scholars, the origin of the Kemant, as that of the Beta Israel (Falasha), is obscure.²⁴ However, according to the Kemant myth, they are descended from Yaner (also called Ayaner). He is “...the grandson of Canaan, the fourth son of Ham, son of Noah. According to some legends, Canaan’s son, Arwadi, came to Ethiopia from the land of Canaan to found the Qemant group, whereas in other legends it is Arwadi’s son, Yaner did so.”²⁵

However, all agree that Yaner had a wife called Entala²⁶ and the spouses came to Ethiopia during the seven year of drought and formed the different groups of the Agaw, including the Kemant.²⁷ And the place where they came from is Canaan Land²⁸, that is, supposedly, the present day territories of Israel and Palestine. However, the Wamber does not seem to maintain this myth. In my interview with him, he denied that the Kemant came from somewhere and he is not comfortable to hear that they came from other place of origin.²⁹ In the same vein, other members of the Kemant claim that Kemant’s place of origin is nowhere but in Ethiopia.³⁰

This view seems to be influenced by the current legal and political situations of the country. In other words, even if the Kemant is not still recognized, there may be a sense of belongingness to Ethiopia among members of the ethnic group since the change of government and particularly by the inclusion of article 39 in the Constitution in favor of diversity, which may be some time implemented in favor of them. In this regard, it has been argued that “by allowing and ensuring

in relation to development works of the government. However, in Census 2007, supra note 9, ethnic groups as small as 298 (Qewama) and 320 (She) were recognized and counted.

²⁴ James Quirin, *Caste And Class In Historical North-West Ethiopia: The Beta Israel (Falasha) And The Kemant, 1300-1900*, 39 JOURNAL OF AFRICAN HISTORY, 195 (Cambridge University Press, 1998), at 197.

²⁵ *Id.* at 35-37.

²⁶ There is a sacred grove called Entela about 5 km Northeast of Tikle Dingay, an administrative town of Lay Armachiho Woreda. Through it passes a long way to and fro the town and any one that passes through this road is expect to seat (rest) at the grove and not respecting this is believed that something bad will happen to him/her. This is observed not only by Kemants who follow the traditional religion and by Christian Kemants but also by Amharas. This is to venerate Entela, the wife of Yaner, for her body is believed to have been buried there.

²⁷ Quirin, supra note 24, at 37.

²⁸ The Kemant religious leader, Wamber Muluneh Mersha, as cited by Graham Hancock, *The Sign and the Seal: A Quest for the Lost Ark of the Covenant* (William Heinemann LTD, 1992, Reprinted in 1997 by Alley Books), at 245.

²⁹ Interview with Wamber Muluneh Mersha, the highest religious leader of the Kemant religion (Hege-Lebona) at Aykel (on 17 November 2009) and at Gondar (on 18 November 2009).

³⁰ Interview with Ato Nega Gete, who wrote a book about the Kemant and who has struggled for their recognition and self-governance since the 1991, on 18 November 2009 at 4: 00- 6: 00 pm, Gondar.

the various groups a certain right to identity, they will feel more disposed to integrate and identify with the state in which they live.”³¹

Or else, claiming the origin of the ethnic group abroad might have imprinted an impression that can affect their right of self determination. This fear can be substantiated by two facts: firstly, those who have relatively reliable evidence that their origin is other than Ethiopia, the Falasha, fled to Israel, rather than enjoying self-determination, and secondly, the Kemant, whose myth claims the same origin with the Falashas, did not enjoy recognition or self-determination since the change of government.

In other words, there might be attachment of the origin of the ethnic group with the territory they inhabit and ultimately with self-determination. Because of these reasons, the Wombar might be influenced by those groups of Kemants striving for Kemant’s recognition and self-governance.³²Some of these groups believe that the Kemant did not come from other places; rather, they claim the same origin with that of the Amhara and Tigre. For instance, Ato Nega Gete argues that “the present Amhara and Tigre are convert Kemant; both were Kemant before the introduction of Christianity into Ethiopia.”³³

In one tradition, the origin of the Kemant is the same as that of their neighbor ethnic groups. Henry Aaron Stern wrote the following during his visit of the area:

*According to Abyssinian tradition, the Kind of **Tigre**, soon after his conversion to Christianity, crossed the **Taccazy**, and invaded **Semien** and **Amhara**. Here he met a people who were neither Pagans nor Christians, a marvel which aroused the monarch’s curiosity , and he inquired what they believed ; to which , in a larconic style, they replied*

³¹ Kristin Henrard and Stefaan Smis, Recent Experiences In South Africa And Ethiopia To Accommodate Cultural Diversity: A Regained Interest In The Right Of Self-Determination, 44 JOURNAL OF AFRICAN LAW1, 18 (2000).

³²In my interview with him, he was hesitant to respond to questions relating to the origin of the Kemant and suggested it would be better for him to answer such questions in the presence of those groups of persons. Accordingly, in the presence of one of them, the Wombar reluctantly replied that the Kemant did not come somewhere and required even confirmation from such person.

³³ Ato Nega Gete, supra note 30.

*in their own dialect **Kamant**, or **Kam Ante**, i.e, as thou, from whence they obtained their present appellation.*³⁴

However, despite such tradition, Stern held a different view regarding their origin in that “. . . among themselves they speak in the Falasha tongue; and the striking Jewish features of many a man and woman amongst them inclined us to credit the report which assigns to them a Jewish origin.”³⁵ Surprisingly, this view goes in tandem with the Kemant myth. Even presently, the view is supported as follows:

*The land [of Israel] is the Hebrews’ to share with the **Qemants** of Ethiopia, who were the original residents of the Land of Canaan. . . . Citizen Makeda, widely known as the Queen of Sheba, an erudite and sophisticated Nubian lady, was a Queen of the Qemant Nation living in Ethiopia. The Qemants still live in Ethiopia, where they adopted the language of their hosts, the **Agaw** Nation.*³⁶ (Original color changed).

The view, in addition, gives a reason why there is no everlasting peace between the modern state of Israel and Palestinians in that “both countries are fighting over land that is not theirs.” It goes on to argue “Whoever chooses to live on the Nubian land known as the **Land of Israel** must be either a Hebrew [Ethiopian Jews or Falashas] or a Qemant; otherwise, he or she must pay equitable rent to the true owners of the land.”³⁷ (Original color changed).

Although language and religion are main elements of ethnicity, the Kemant give more emphasis to their common ancestor. Because of their ancestry, they are distinct from others, for “Traditional Kemant believed they had ‘pure blood’ and that their ancestors had been ‘white’ or ‘pure’ (*chewa*).”³⁸ That’s why, even if most of the population do not use the language and do not

³⁴ STERN, supra note 12, at 44.

³⁵ *Id.*

³⁶ World Morning Star Association, *Igbo Nation: Its Origin and Significance*, MORNING STAR NEWS, at (6C), visited on Oct. 19,2009, 1: 09: 49PM, at file:///Users/James%20T.%20Womack/Desktop/Editorial.mht.

³⁷ *Id.*

³⁸ ANDREW J. CARLSON, AND DENNIS G. CARLSON, *HEALTH, WEALTH AND FAMILY IN RURAL ETHIOPIA : KOSOYE, NORTH GONDAR REGION, 1963-2007*(Addis Ababa University Press, 2008),at 145.

follow the religion for different reasons that will be discussed in later sections, they consider themselves as Kemant.³⁹

After the restoration of the ‘Solomonic Dynasty’ around 1270 till the end of it in 1974, the Kemant had passed through different phases of assimilation by the neighboring dominant Amhara. An exception can be the reign of Emperor Tewodros II. He had not only the support of the Kemant during his banditry, for he had spent a long time in Quara, Chilga and Lay Armachiho during that time⁴⁰, but also “the strongest contact of the Kemant people according to oral tradition was witnessed during the reign of Tewodros II. . . .”⁴¹ The Dergue Military regime, which replaced the monarchy, at least theoretically recognized the existence of the Kemant as distinct people. This fact is found from the official national census of 1984.

Some Kemant claim that Kemant would have been recognized and would have enjoyed self-determination, had they been in regions other than the Amhara which is dominated by the Amhara people, who had political, economic, cultural, linguistic and religious dominance over the entire country. They argue that this hegemony has continued exclusively on the Kemant people. This can be deduced from the fact that the Amhara Regional State was not willing to submit the Kemant among the lists of ethnic groups in the region to the Central Statistics Office in 2007 while the Southern Nations, Nationalities and Peoples Regional State had included ethnic groups in the region that are not represented in the House of Federation.⁴²

The Kemant are considered Amhara while they are actually distinct peoples. The Kemant have been ethnically, religiously and linguistically distinct people for a long time and because of this distinction they have been victims of stigma, exclusion and marginalization for the last seven centuries.⁴³ For instance, during the Haile Selassie I reign, it was not easy to get permission to

³⁹ Census 1994, *supra* note 9, at 89. Out of the total population of 172,327, only 1650 and 3181 speak Kemantney as mother tongue and second tongue, respectively.

⁴⁰ ZELALEM LEYEW, *supra* note 10, at 37.

⁴¹ *Id.* at 39.

⁴² An interview with Ato Gebeyehu Abelti, Vice Director, Population and Social Statistics, Central Statistics Agency, on 30 November 2009, at 11:30-6:30, Addis Ababa.

⁴³ Since their interaction with the Monarchy, they were supposed to withdraw from their religion and language in favor of Orthodox faith and Amharic language to be beneficiaries of the monarchy. In other words, speaking the Kemantney language and following their ‘Pagan –Hebraic’, to use Gamst’s term, would mean exclusion from the benefits of citizenship benefits. In addition, apart from the development of negative attitude toward to their religion

construct and run mission schools and clinics in Kemant areas such as, Lay Armachiho and Chilga, let alone such schools and clinics to be built and run by the government.⁴⁴

The reason given by the government was that the Kemant people, being firm followers of Christian faith (Orthodox), did not want such mission schools and clinics.⁴⁵ Paradoxically, mission schools and clinics were allowed and in operation at that time in Gondar Town and Amhara areas of Dembia, Dabat, Teda and Debretabor.⁴⁶ No doubt all these Amhara places and Gondar Town, unlike Kemant areas (with the exception of Gondar Town) were Orthodox-Faith strongholds during that time. The Chrischona Mission went to the Gurage region to construct those schools, and it was only after a decade through a relentless effort of Ato Endeshaw Bogale that the Mission was allowed by the government to construct the first schools in Kemant areas, which presently constitute many of the public schools.⁴⁷

4. Language

The Kemant have their own language, which makes them grouped under the category of the Agaw languages. Although in earlier times it was widely spoken in North Gondar region, presently, very few of the population speak the language called Kemantney. They do not have an alphabet yet. Among the reasons for the decrease of the number of the speakers of the Kemantney in favor of Amharic were: primary schools were (are) run only in Amharic, the association of Kemantney with the ‘stigmatized’ Kemant identity because of their traditional religion (*Hege-Lebona*), not only by the dominant Amhara but also by those convert Kemants and to find job and other opportunities in the government offices it was mandatory to avoid such stigma by speaking Amharic and following Christianity,⁴⁸ as the case was with other ethnic groups of the country “[f]or non-Amhara the learning of Amharic and the adoption of Amhara

and language by other ethnic groups, they were victims of forced conversion, particularly at the time of Yohannes IV and Haile Selassie I. See ZELALEM LEYEW, *supra* note 11, at 30-60.

⁴⁴ An interview with Ato Endeshaw Bogale, who has ever been struggling for the recognition and self-rule and other interests of the Kemant since the 1960s, on 22 November 2009 at 7:00- 9:00, Gondar.

⁴⁵ A letter written to Mr. W. Sidle, agent of the *Chrischona Mission*, which sought permission, by Imperial Ethiopian Government, Ministry of Education and Fine Arts No.16/35284/1529/9 ነሀሴ.15/1960 G.C.

⁴⁶ Interview with Ato Endeshaw Bogale, *supra* note 43.

⁴⁷ *Id.* I examined about 15-20 letters exchanged between Ato Endeshaw Bogale, Mr. Sidler and Government offices.

⁴⁸ ZELALEM LEYEW, *supra* note 11, at 42.

culture, tradition and religion were necessary steps to develop a career within the state administration.”⁴⁹

In other words, a negative attitude towards Hege-Lebona had a negative implication on the Kemant language (Kemantney).

5. Religion

Not only do their belief as being descended from common ancestor and their language what make Kemant distinct, but also their religion which is properly called by themselves as ‘Hege-Lebona’ and which, according to scholars, consists of ‘pagan’, Judaism and Christianity elements.⁵⁰ For Ato Nega Gete, the religion belongs to the one which was being practiced by Abraham and the Kemant inherited these religious practices because of their relationship with Abraham.⁵¹ Indeed, “Currently, they have only their near extinct language and religion that can in anyway place them as a separate group”.⁵²

According to the Kemant, they believe in “one God, the Sky God [Heavenly God], called as *Adara* or *Mezgana*” and “*Mezgana* is omnipresent, omnipotent and omniscient, and that everything was created by Him; therefore, he has the right to destroy everything. He is an anthropomorphic God; Qemant say, “*Mezgana* looks like man.”⁵³ However, according to my interview with the Wamber, it is the *Yeadera*, not *Mezgana*, who created all things and who, according to their religion, gives all responses upon praying to him.⁵⁴

⁴⁹ Christophe Van der Beken, *Ethiopian Constitutions and the Accommodation of Ethnic Diversity :The Limits of the Territorial Approach*, in, ISSUES OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Tsegay Regassa, ed, Faculty of Law, Addis Ababa University, 2009), at 237.

⁵⁰ Gamst, supra note 13, at 38.

⁵¹ Interview with Ato Nega Gete, supra note 30. According to him, religion can be passed to the next generation by virtue of genetic or by virtue of culture, and the Kemant adopted the religion by virtue of the former; the name of Abraham is frequently mentioned in the religious ceremonies of the Hege-Lebona. *Id.*

⁵² ZELALEM LEYEW, supra note 11, at 30.

⁵³ GAMST, supra note 13, at 35.

⁵⁴ Interview with wombar Muluneh Mersha, supra note 29.



Figure 1. Wambar Muluneh Mersha



Figure 2. The Wambar with his priests: from left to right, the first his son, the wombar himself at the middle between the second and the fourth.

Although Gamst has written, quoting the wombar, “Adam is ‘the first person created by *Mezgana* and the source of all people’,”⁵⁵ *Mezgana* is a monthly holyday dedicated to *Yeadera* (*Adara*).⁵⁶ The *Wamber* is the title of the head of the religion and below him are higher priests called *Kemazana*⁵⁷ and lower priests. Formerly, the Wamber was both the chief sociopolitical and religious leader of the Kemant.

The teachings of the *wambar* to the Kemant, in order that their souls reach heaven, have been summarized by Gamst as follows:

- (1) *Do not steal.* (2) *Do not copulate or take the wife of another man.* (3) *Do not perform other evil deeds.* (4) *If a person has wronged you, relegate vengeance to God.* (5) *One woman should have one husband and one man should have one woman.* (6) *If you see someone doing wrong, do not inform the feudal officials.*⁵⁸

⁵⁵ Gamst, supra note 13, at 38.

⁵⁶ Wamber Muluneh Mersha, supra note 29.

⁵⁷ It is not uncommon to hear the word *Kemazana* among the Christian Kemant to refer derogatively to a person who remarks silly things and whose judgment is poor. This indicates the negative attitude towards their former religion once they became convert Christians.

⁵⁸ GAMST, supra note 13, at 33-34.



Figure 3. A tree grown at a place believed by the believers of Hege-Lebona where the 'Horse of the Lord' trod and under which the Wombar and other priests, Kemazanas, hold religious ceremonies. It is located some five kilo meters Northwest from Aykel, an administrative city of Chilga woreda, at the highest top of the hill.

Worshipping and ceremonies take place in sacred groves, which cannot be cut down for any purposes, and they claim this tradition as coming down from Abraham, as mentioned earlier. In addition to the above religious proscriptions, believers are required to observe the Sabbath which begins from Friday dusk to Saturday dusk while other days of the week are working days, save to the monthly holidays of *Mezgana* and *Gabarhu*, which are observed on one Thursday for each of them. Because of this religious difference from the neighboring ethnic groups, the Kemant have since long time suffered a lot as evidenced by the following passage:

*[T]he hill we occupied, in a very few hours became the centre of attraction to Jews, Christians, and **Kamants**. The latter sect, who live almost exclusively in the province of **Tschelga** [Chilga], are, on account of their indifference to the religious prejudices which one superstitious system has copied from the other, very much despised and misrepresented.⁵⁹(Underlined emphasis added.)*

6. Current situations

Since 1991, there has been an effort by groups belonging to the ethnic group for recognition and self-governance in an intermittent way. In a renewed way, they lodged an application in 2007 with the Regional state but no response had been obtained, and as a result, they applied to the House of Federation last year. It is pending in the House, and the people seem to have started organizing themselves in unprecedented way.

⁵⁹ STERN, *supra* note 12, at 43.

Particularly, the declaration of the result of the 2007 Population and Housing Census accelerated the pace of the movement of the people. In May 2009, the movement established ‘Provisional Committee of Kemant Identity and Self-Governance Claims Council.’⁶⁰

⁶⁰ የቅማንት ህዝብ የማንነትና የራስ አስተዳደር ጥያቄ አስተባባሪ ጊዜያዊ ኮሚቴ (Translation into English mine) consists of 120 members, structured further into different subcommittees.

CHAPTER TWO

MINORITIES UNDER INTERNATIONAL HUMAN RIGHTS LAW AND ETHIOPIAN CONSTITUTION

2.1 Types of Minorities and their Rights under International Law

2.1.1 Definition and Types of Minorities

2.1.1.1 Definition of Minorities

Like many other legal concepts and terms, the term ‘minority’ is not subject to agreed definition. Many scholars and authorities tried to give a working and tentative definition to it. Before dealing with the rights of minorities, a clear understanding of the concept and definition of minorities is mandatory. However, lack of a universal, authoritative definition does not lead to denial of rights to minorities. Those international instruments dealing with minorities shy away in defining the term.

Even if an attempt to deal with issues of minority rights dates back to the time of the League of Nations, international law did not attempt to define minority. Nor did in the era of the United Nations international law give definition to it as the very concern of the minorities was left from the discourse of the international community relations, for general human rights was supposed to solve the problems of humanity. The 1948 Genocide Convention, which is claimed to be the first international instrument to protect the minorities’ existence after World War Two, did not define minority.

The first international binding instrument regarding minorities is the 1966 International Covenant on Civil and Political Rights. Article 27 gives protection to individuals belonging to ethnic, linguistic and religious minorities, not to minority groups, unlike the draft which gave status to the groups. Article 27 has its own limitations as noted in the following passage:

*[t]he Article finally adopted refers only to **persons belonging** to such minorities [ethnic, linguistic or religious]. The idea of collectivity, however, was not totally rejected, since Article 27 recognizes the rights mentioned may be enjoyed “in community with the other*

members of the group.” Nevertheless, the concept of group rights, as such, met with considerable opposition by many states.⁶¹

Furthermore, the Article failed to define as to which constitutes a minority. Even it is not defined in the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities, which is the first international instrument to deal with minorities concerns in a separate instrument. In other words, there has never been an official authoritative definition of minority.

However, this does not mean that there is no an attempt to define it. Different lawyers and academicians tried to define minority in different ways. The most known working definition is the one given by the Special Rapporteur Francesco Capotorti, which reads as:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, religion or language.⁶²

According to his definition, there are five criteria to be met by a group to be a minority. First, they should be group of persons whose distinctions are based on *ethnic, linguistic or religious* backgrounds in a state in which they constitute a minority. Secondly, the group should be in a position of *non-dominance*. Thirdly, their number should be *less than* the rest of the population of a state. Fourthly, they should be *nationals of a state*, as opposed to non-nationals, say immigrants and refugees. However, according to the Human Rights Committee General Committee No. 23, individuals under Article 27 ICCPR need not be citizens to be protected. Lastly, there should be *solidarity* among the group in preserving their distinction.

⁶¹ Hailbronner, *supra* note 6, at 124.

⁶² FRANCESCO CAPOTORTI, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES AT 96, U. N . Sales No. E. 91.XIV.2 (1991), as quoted by Jerome Wilson, *Ethnic Groups and Self-Determination*, 11 CONN. J. INT’LL. 465 (1995-1996).

Lack of definition of minority has not deterred the group concerned from claiming their rights, nor does the international community refrain from extending protection to minorities. Of course, lack of consensus on the definition of minority has its own negative impacts on the effective implementation of minority rights. It is logical to argue that before the thing to be owned should be discussed, the owner of it should be first known clearly-the holder of the rights should precede the rights. Even if there is no agreed definition of minority, there are identified minorities which are discussed in the next section.

2.1.1.2 Types of Minorities under International Human Rights Law

Minority rights have not obtained the will of the states at the international level for long time and this fact is said to have contributed to the exacerbation of internal and sometimes international conflicts. Following the First World War, there had been treaties between the Allied Powers and the vanquished states regarding the treatment of minorities in Europe. Following its establishment, “the League of Nations established a rather extensive and detailed system of minority protection, on the basis of peace treaties, minority treaties and unilateral declarations.”⁶³ Since then up to the Second World War, there was an attempt internationally to address the claims of minorities.

Unfortunately, the end of the War, which had heralded a new era for individual human rights, did not sustain the continuation of addressing minorities’ problems. The Universal Declaration of Human Rights of 1948 did not contain any provision regarding to the rights of minorities, nor did the subsequent international human rights instruments, with the exception of the Covenant on the Civil and Political Rights of 1966 (ICCPR).Indeed, it is argued that “Granting minorities a right to defend their special identity, their unique characteristics that distinguish them from other members of the human family is an important task for human rights.”⁶⁴

The often mentioned international legal provision concerning minorities is article 27 of ICCPR and “is the only expression of the right to identity in modern human rights conventions intended

⁶³ KRISTIN HENRARD, *DEVISING AN ADEQUATE SYSTEM OF MINORITY PROTECTION: INDIVIDUAL HUMAN RIGHTS, MINORITY RIGHTS AND THE RIGHT TO SELF- DETERMINATION* 219 (The Hague /Boston/London: Martinis Nijhoff Publishers, 2000).

⁶⁴ PATRICK THORNBERR, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* 141(Clarendon Press, Oxford, 1991).

for universal application.”⁶⁵ Under this article three types of minorities are listed: ethnic, linguistic and religious. National minorities are not included.

A) Linguistic

Like minority, linguistic minority does not have an agreed definition. However, it has ever been one of the groups which required special treatments from the state or international community. Language plays an important role in the life of an individual or a group. It has two aspects, namely, an instrumental value and intrinsic value. In either case, groups speaking the language are eligible to protection against discrimination and special treatment with a view to ensuring equality with the majority language to a certain extent.

In other words, language of a group may be the only distinction and because of this, the group may be in the position of non-dominance. Indeed, historically, most of the vulnerable groups belonged to linguistic ones. That’s why persons belonging to linguistic minority are given protection under Article 27 of the ICCPR and the 1992 Minority Declaration.⁶⁶ Under general individual human rights, no doubt language cannot be a ground for discrimination, meaning individuals can avail of the protection of the principle of non-discrimination.

Here, the issue is the collective right of a group that matters. On the instrumental value perspective, individual human rights is not capable of protecting the interests and rights of individuals belonging to the minority group. It has a birth defect; it treats equally those who are not actually equal. Members of the minority are not in equal footing with the members of the majority. There is a need to treat differently those belonging to the minority till they come near to equality with the members of the majority. Expressed in simple terms, the instrumental value of language is a means of implementing the individual rights of the members of the group.

On the other hand, the intrinsic value view is that language by itself is a manifestation of the dignity of the individual and it is impossible to separate language from the group. Protection of

⁶⁵ *Id.*, at 142.

⁶⁶ United Nations Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities, UN.GA. Res.47/135, 18 December 1992.[Hereinafter ‘ The Minority Declaration’].

the linguistic group is just protecting the dignity of the individuals belonging to such group. The following passage shows the values of language:

[L]anguage is not just a means of communication as some would like to reduce it to; its purpose goes beyond effective communication. The marginalization of minority languages and cultures in multinational societies stems predominantly from such myopic conception of languages, in purely instrumental terms. The fact, however, is that language is an embodiment of a way of life for the speakers of the language. . . . In sum, one's language is the language of one's heart, the only language that can make matters of the heart such as beauty, love and tenderness a reality.⁶⁷

To sum up, whatever the arguments of either perspective may be, linguistic minorities are recognized under international law and states' constitutions.

B) Religious

Religion is one of the fundamental values of a society since time immemorial. Ever since groups of a certain religion have been dominating or been dominated. It had been (and is) a source of conflict in many parts of the world. Historically, for the first time, the Treaty of Westphalia of 1648 recognized that a group had a right to be distinct in its religion, though it had its limitations. Such religious minorities' recognition and protection was:

The treaties that made up the peace of Westphalia, coming as they did at the end of the religious wars prevailed on states to ensure the right of all groups to follow the religion to which they belong. The imposition on state policy to protect minority rights extended

⁶⁷ Yared Legesse, *Linguistic Regimes in Multinational Federations: The Ethiopian Experience in a Comparative Perspective*, in, *ISSUE OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY*, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Regassa, Tsegay ed., Faculty of Law, Addis Ababa University, 2009), at 189-190.

*into the nineteenth century when the major European powers put pressure on the Ottoman Empire to protect Christian minorities...*⁶⁸

Although neither religion nor minority religion is defined under international law, the era of the UN has extended protection to those who desire to preserve their religious identities as opposed to the state or dominant religious group.

Apart from the guarantee against discrimination based on religion under general individual human rights, article 27 of the ICCPR and the Minority Declaration do recognize religious minorities.

C) Ethnic/National

Ethnic minority is a generic term encompassing various types of vulnerable groups. An ethnic minority may wish to preserve its peculiar characteristics which may be cultural, historical and common decent or biological origin. Language can be one of such distinction. Ethnicity is sometimes confused with 'race' and interchangeably used.

However, under article 27 of the ICCPR, it is ethnic minority rather than race that is protected. This does not mean that racial discrimination is permitted, but most of the time minority and majority relationship occurs within the same racial group. In addition, race can be included within ethnicity .In other words, ethnicity is wider than race, for “[w]hen an ethnic group is assumed to a biological basis, it is called a race.”⁶⁹ However, in other cases in which the groups’ difference is based on cultural differences, it is ethnicity proper.⁷⁰ For instance, take the case of Amhara and Tigre. Racially they are the same, but ethnically different, for they have different language and culture.

In addition, there is some confusion between ethnic minority and national minority. In many literatures and laws they are interchangeably used. However, it is not as such difficult to discern

⁶⁸ Gene .M . Lyons and James Mayal, *Stating the Problem of Group Rights*, in, INTERNATIONAL HUMAN RIGHTS IN THE 21ST CENTURY: PROTECTING THE RIGHTS OF GROUPS (Lyons, Gene .M and Mayal, James, eds., Rowman & Littlefield Publishers, Inc., Lanham, 2003),at 6.

⁶⁹ CONRAD PHILLIP KOTTAK, ANTHROPOLOGY: THE EXPLORATION OF HUMAN DIVERSITY 54 (McGraw-Hill: New York/London, 6th ed., 1994).

⁷⁰ *Id.* at 52.

the distinction between the two. While the peculiar characteristics exhibited and desired to be preserved by the minority group in both cases may be the same, the latter relates to those groups who have been already in their historic home land and nationals of the state. But ethnic minority may include both nationals and non-nationals.

Due to the modern and contemporary fast growing interaction because of economic, cultural and political reason, and due to the unabated civil wars and international conflicts, people cross their country of origin and come to another country of destination and form a minority group. They do not have historic attachment to the country of destination. In such cases, the appropriate term would be ethnic minority as opposed to national as they had not been nationals of that country.

D) Indigenous

Indigenous groups, although not stated under article 27 of the ICCPR, are widely known minorities. They are national minorities residing in their country of origin but overpowered and outnumbered by the new comers to their homeland. They desire to preserve their ancestral lands and socio-economic and cultural traditional institutions.

In national minority proper the groups are still within their land but are made minority due to their inferiority in number and dominance compared to other parts of the state within which they found. With respect to indigenous groups, even if they are in their original land, parts of their lands have been overtaken and their socio-political and cultural institutions are being threatened to disappear by the newcomers who have dominated and outnumbered them.

Although the word indigenous does not appear under article 27 of the ICCPR, it is argued that it is protected by the same article, for ethnic minority is broad enough to include it.

2.1.2 Types of Minority Rights and Their Protection Mechanisms

2.1.2.1 Types of Minority Rights

The concerns of minorities require sets of rights particularly designed to protect their interests. There is no exhaustive list of these rights. In other words, “[i]n determining what rights may reasonably be granted to specific population groups with their own culture, language, tradition

and religion , the special circumstances , and diverging legitimate interests , must be taken account.”⁷¹

Thus, under this section, some of these rights that are generally accepted will be discussed.

A) Recognition (existence)

The first thing that comes into the picture of discussion of minorities and their rights is official recognition. It is the recognition of ethnic groups that gives rise to other rights. Of course, “The linchpin of minorities['] protection is the right of minorities to be recognized as minorities.”⁷² Despite the importance of official recognition, states deny the existence of minorities within their territory a view to evading protection of their rights. Such trend is not an exception to even in the Western World and “The reluctance of the Member States of the European Union to recognize the rights of minorities or even their existence is also reflected in the international arena.”⁷³ At worst, some of them have preferred to ignore altogether the minority question in their national legislation.⁷⁴ States find “This refusal to acknowledge the presence of a minority group . . . an easy way to deny that group any claims of right.”⁷⁵

However, this does not mean that states are relieved from their obligations and minorities lose their rights under international laws. Henrard argues that “[d]espite the fact that the official recognition by states of population groups as ‘minorities’ does not influence the existence of minorities under international law, it is of course true that such recognition seriously improves the situation of the group concerned.”⁷⁶

At times, states were committed to destroy their physical existence. That’s why the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948 was

⁷¹Hailbronner, *supra* note 6, at 120.

⁷² Stephen J. Roth, *Toward A Minority Convention: Its Need and Content*, in *THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS* 92 (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinus Nijhoff Publishers, 1992).

⁷³ Maria Amore Martin Estebanez, *The Protection of National or Ethnic, Religious and Linguistic Minorities*, in *THE EUROPEAN UNION AND HUMAN RIGHTS* 42, 133 (NANETTE A. Neuwahl and Allan Rosas, eds, Martinus Nijhoff Publishers, The Hague, 1995).

⁷⁴ *Id.* at 157.

⁷⁵ JAY A. SIGLER, *MINORITY RIGHTS: A COMPARATIVE ANALYSIS* 3(1983).

⁷⁶ HENRARD, *supra* note 63, at 46.

adopted by the United Nations General Assembly to criminalize and punish such acts. In this regard, the Convention “is frequently cited as one of the major international instruments which recognizes a right of peoples –the right to physical existence.”⁷⁷ Although it gives emphasis to the punishment of the offenders than to the rights of the national, ethnical, racial or religious and peoples, it has positive impacts on the promotion and recognition of the rights of the groups.⁷⁸

Other UN human rights instruments prohibit discrimination based on differences in ethnicity or race, language or religion. In other words, a group is guaranteed to be different and this difference should be recognized. As far as the group exhibits those peculiarities which it desires to maintain, it should be recognized as such.⁷⁹

An issue that is related to the recognition of minority is what number is sufficient to grant such status. Neither article 27 of the ICCPR, nor other provisions of international human rights related to minority rights protection does specify. In this respect, it is noted “the presence of ‘sufficient elements to indicate that a minority exists’ should trigger the applicability of the relevant international law.”⁸⁰ As we saw in the working definition of ‘minority’ by Capotorti, what is required as element, inter alia, is *numerical inferiority*, which implies fixing floor number is not necessary. In other words, what matters is the existence of elements which distinguish a group from the majority.

B) Language

Language plays a vital role in the day to day activities of individual in a society. Without it life is unthinkable. That is the reason why every linguistic group strives to preserve its own language in both its instrumental and intrinsic values. The right to language can be applied in various.

A group has a right to speak and write in its own language, to get public services in its language, depending on size of the population. Primarily, it should be recognized as equal to other

⁷⁷ Philip Alston, *Peoples’ Rights: Their Rise and Falls*, in PEOPLES’ RIGHTS (Philip Alston, ed., Oxford University Press, 2002), at 261.

⁷⁸ *Id.* at 262.

⁷⁹ *Id.*

⁸⁰ HENRARD, *supra* note 63, at 45, quoting Capotorti.

languages of the state. Schools shall be run by the local languages at least at the primary level. Cultural and artistic activities of a society should be manifested through the local vernacular.

C) Religion

Freedom of religion is one of the fundamental rights of individuals. Manifestations of religion take place either in individually or communally. Accordingly, minorities have a right to profess and practice a belief of their choice. Religions of a state should be protected equally. In other words, religious minorities should be protected against incursion from the dominant religion and the state.

D) Culture

Societies differ in their cultures from place to place. Culture is one of the ingredients of ethnicity. Although there is no agreed and universal definition of culture, it is a way of life of a society. The cultural life of individuals has been protected under the 1966 International Covenant on Social, Economic and Cultural Rights. However, what is protected directly is the individual aspect of the culture.

As a component of ethnicity, the collective aspect of cultural life is protected under article 27 of the ICCPR as included in ethnic minority. A minority's interest will be promoted and protected by respecting the value of its cultures. The state as it does respect the dominant culture should also respect the minority's culture. There should be equal recognition of all cultures, which does not violate the rights of others, principally the rights of individuals.

E) Political Participation and Representation

Rights of minorities are not restricted to religion and cultural life, but also extend to the right to participate in the administration of the state either at regional or national /central level. Political participation of minorities takes through different ways. Depending on the particular situations of each minority, it should be represented at different levels of the government to reflect its interest and concerns. Participation "relates to the exercise of political power, in particular the exercise of

legislative, executive and administrative powers . . . all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”⁸¹

Through this right that minorities share power in the administration of the state. On one hand, it protects their interests, and on the other, it strengthens their relations with the state.

F) Education

Education is one of the key areas which need serious policy considerations. Minorities have a right to establish educational centers whose instruction media is its language where its population is dominant. In other words, education is one of the means by which the minority language is preserved and respected, apart from the advantage that learning through ones language facilitates the teaching-learning process.

2.1.2.2 Minority Rights and Self-Determination

A) Application of Self-Determination to Minority Protection

Minority rights and minorities are closely related with self-determination. As minority rights are exercised by minorities to safeguard them from the domination of the dominant society, so is the right to self-determination exercised by holders of the right to safeguard them from the domination of the mainstream society or the state. In other words, both concepts imply protection of the dominated groups from the dominating society of the state. However, despite their similarity in purposes, the application of self-determination with respect to minorities’ rights is not specified under international law, nor is there general consensus among writers about the scope of the right to self-determination. This is due to the fact that the holders of the right to self-determination are not definitely identified.

Although self-determination as a principle and a right was enshrined under the United Nations Charter and the two Human Rights Covenants, the beneficiaries of self-determination have never

⁸¹Aberra Degefa, *The Scope Of Rights of National Minorities Under The Constitution Of Federal Democratic Republic Of Ethiopia*, in 2 SERIES ON ETHIOPIAN CONSTITUTIONAL LAW (Faculty of Law, Addis Ababa University, 2008), at 64-65, quoting the UN Committee on Human Rights, General Comment No. 25, 1996.

been conclusively determined by the international community and scholars. As regards to the texts of those instruments, the beneficiaries are 'peoples'. Again, ". . . there is no agreed definition of 'peoples' in international law nor among scholars" ⁸² Of course, initially, it is argued, peoples who were under colonialism or any form of foreign domination were no doubt the beneficiaries. However, with the end of colonialism and foreign domination came issues of application of self –determination to sub-nation groups of sovereign states. If peoples refer to subsections of a state, and then ultimately self – determination right to such groups, then it will be applicable equally to the protection of minorities in a state.

As a result, self-determination and peoples have been interpreted by different writers differently. In this regard, Frederic Kirgis has summarized the different faces and degrees of self-determination and its beneficiaries as follows:

- (1) *The established right to be free from colonial domination*
- (2) *The converse of that-a right to remain dependent, if it represents the will of the dependent people who occupy a defined territory*
- (3) *The right to dissolve a state, at least if done peacefully, and to form new states on the territory of the former one*
- (4) *The disputed right to secede, as in the case of Bangladesh and Eritrea.*
- (5) *The right of divided states to be re-united, as in Germany.*
- (6) *The right of limited autonomy, short of secession, for groups defined territorially or by common ethnic, religious and linguistic bonds-as in autonomous areas in confederation.*
- (7) *The rights of minority groups within a large political entity , as recognized in Article 27 of the Covenant on Civil and Political Rights and in the General Assembly's 1992 Declaration on the Rights of Persons Belonging to Nation or Ethnic, Religious and Linguistic Minorities.*

⁸² Michael Freeman, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, 3 (Jul., 1999) at 356.

(8) *The internal self-determination freedom to choose one's form of government, or even more sharply, the right to a democratic form of government, as in Haiti.*⁸³

Among Kirgis' lists, (3), (4), (6) and (7) relate more to the protection of minorities directly, and are always opposed by states. Others benefit the whole people of the territory and it is indirectly that minorities may be benefited. For instance, with respect to list (8), both the majority and the minority may benefit from a democratic form of government, as the case is with the right to be free from colonial domination, list (1). However, in lists (3), (4), (6) and (7), it is a certain section of the populations of the existing state that will be *immediately* and *directly* benefited. That is why the mainstream society or the state denies the existence or exercise of those rights. They argue these affect state sovereignty and national integrity which are guaranteed under the United Nations Charter. In the same vein, it is argued "The right of peoples to self-determination seems to be consumed after they have overcome a situation that may be described in UN terminology as 'colonialism, *apartheid*, racial discrimination, neo-colonialism, and all forms of foreign aggression occupation or domination."⁸⁴

Since the United Nations is an association of sovereign states, their "primary purpose is to protect and promote the interests of their states and to maintain the existing states order," and consequently, "Commitments to the self-determination of peoples (whatever they are) and the rights of individuals are subordinate to these purposes."⁸⁵ In other words, states not only do not accept the right to self-determination to minorities, but also their practice supports little "to the concept of special rights of peoples to preserve their identity once territorial sovereignty has been achieved."⁸⁶ States do not oppose minority rights and self-determination without any reason; they consider recognizing different identities as threats to national unity and territorial integrity of the state.⁸⁷ Although states deny self-determination to minorities and international law gives

⁸³ Frederic Kirgis, *The Degree of Self- Determination in the United Nations Era*, 88 AM. J. INT'L. L. 304(1994), at 306.

⁸⁴ Hailbronner, *supra* note 6, at 117.

⁸⁵ Freeman, *supra* note 82, at 347.

⁸⁶ *Id.* at 118.

⁸⁷ Gudmundur Alfredsson, *Minority Rights and A New World Order*, in BROADENING THE FRONTIERS OF HUMAN RIGHTS: ESSAYS IN HONOR OF ASBJORN EIDE 57 (Donna Gomien, ed, 1993).

little support to them, minorities do not refrain from claiming it as applicable to them.⁸⁸ Indeed, their members cannot be effective beneficiaries of individual human rights, for “in the absence the achievement of self-determination, other human rights have little meaning.”⁸⁹ Moreover, recognition and accommodation of minority identities will avoid or at least help to alleviate the enmity between the minority groups and the majority, and in turn such peaceful relations will reduce dangers or threats to the national unity.⁹⁰ In this regard, we can take as examples the Indian and Pakistani cases with contrasting consequences.

India is one of democratic multinational states in the world. Before the country was restructured in 1956 on ethnicity basis, there was dissatisfaction among minorities and nationalist movements were in setting. Among such groups were the Tamils who demanded, as a distinct peoples, greater power and control over their affairs to the extent of secession from the mainland India during the 1950s and the 1960s.⁹¹ However, the response to these demands was not in their favor, for the then Prime Minister of India, Nehru, fearing that ethnicity line of federal structure would disintegrate India, refused to protect minority rights.⁹²

However, the Tamils continued to struggle for their rights and Nehru was forced to reconsider the dangers of not addressing the demands of ethnic minorities. As a result, the Indian federal structure was redesigned in 1956 on the basis of ethnic line, which enabled the Tamils to have their own state.⁹³ It is possible to note here how difficult it is to bring under control by force groups which fight for preserving their identities and values. Surprisingly, the Tamils lost most of their demands for self-determination⁹⁴ and consider themselves as fully part of Indian Union.⁹⁵

⁸⁸ Patrick Thornberry, *Self-Determination, Minorities, Human Rights: A Review Of International Instrument*, 38 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, 4 (Oct., 1989), at 888.

⁸⁹ Alston, *supra* note 77, at 261.

⁹⁰ Alfredsson, *supra* note 87, at 57.

⁹¹ Atul Kohli, *Federalism and Accommodation of Ethnic Nationalism*, *Federalism and Territorial Cleavages* 281-299 (Ugo M. Amoretti and Nancy Bermeo, The Johns Hopkins University Press, 2004), at 285

⁹² *Id.* at 286

⁹³ *Id.* at 286-87

⁹⁴ *Id.* at 287-88

⁹⁵ *Id.* at 285

In Pakistan too, there was ethnicity problems after her independence from India in 1947. Then Bangladesh (which was known as East Pakistan) was part of Pakistan. Although both West Pakistan and East Pakistan were Moslems, they were different ethnically, linguistically and culturally⁹⁶. The Bengalis demanded *autonomy* and *self-government*, which developed into secession in the name of self-determination after a negative response from the Pakistani elite leaders.⁹⁷ The Pakistani politicians' "inability to formulate an acceptable constitutional framework based upon regional autonomy, and the failure to grant genuine internal self-determination, ultimately led to the painful and tragic events of 1971."⁹⁸ That is, East Pakistan became in 1971 an independent state under the name of Bangladesh through force. The lesson that can be learned is that "states cannot, in the long –run, suppress minority sentiments by force and oppression breeds violence,"⁹⁹ which ultimately leads to secession.

However, after the end of the Cold War, attention to the concerns of the minorities seems to have been given by the international community by taking into consideration the pervasive internal conflict worldwide. The 1992 Declaration on the Rights of Persons Belonging to Ethnic, Linguistic and Religious Minorities can be one of the responses. Of course, "There would . . . arguably be a tendency to recognize a right to internal self-determination for minorities."¹⁰⁰ It has become now an issue among scholars whether self-determination is applicable to peoples or minorities within states.¹⁰¹ Even in the United Nations System, the Human Rights Committee "in its discussion of the periodical state reports relating to article 1 ICCPR regularly asks questions about minorities and minority protection."¹⁰² In other words, the Human Rights Committee is in effect interpreting self-determination under article 1 ICCPR as applicable to minorities.

Indeed, it is argued: "SELF-DETERMINATION and the rights of minorities are two sides of the same coin."¹⁰³

⁹⁶ JAVAID REHMAN, THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS 204(2000).

⁹⁷ *Id.* at.204-5

⁹⁸ *Id.* at 208

⁹⁹ Alfredsson, *supra* note 87, at.57-58

¹⁰⁰ Henrard and Smis, *supra* note 31, at 21.

¹⁰¹ Henrard and Smis, *supra* note 31, at 20.

¹⁰² *Id.*

¹⁰³ Thornberry, *supra* note 88, at 868.

B) Protection Mechanism of Minorities via Self-Determination

The existence of rights does not guarantee their implementations. The effectiveness of rights depends on their enforcement mechanisms. Minority rights are sometimes identified with self-determination short of secession, which is called internal self-determination, for these rights are to be exercised within the borders of the state.¹⁰⁴ In a same vein, Henrard and Smis argued: “whereas the external dimension of the right to self-determination would be mainly concerned with the international status of a people (one example of which is secession), the internal dimension would rather be related to the *internal state structure as well as to certain legal regulations to accommodate the population diversity of a state in a (more) optimal way.*”¹⁰⁵ (Emphasis added.) “Minority protection and minority rights are also regularly mentioned as forms of internal self-determination, which highlight once more the enormous diversity of possible implementations of the right to internal self-determination.”¹⁰⁶

Indeed, “The effective exercise of a people's right to self-determination . . . is an essential condition ... for the genuine existence of the other human rights and freedoms.”¹⁰⁷ Under this section, we will see enforcement mechanisms of minority rights at national levels.

I. Federalism

Although there is lack of universal definition of federalism, its function, as system of government is to devolve state power /sovereignty between the center and regions. It may be based on territorial or ethno-linguistic lines. Ethno-linguistic federalism is preferred to territorial or unitary form of government in order to accommodate differences of groups. Although international law does not provide for mechanisms of protection of minority rights, “[p]erhaps

¹⁰⁴ Allen Buchanan, *Federalism, Secession, and the Morality of Inclusion*, 37 ARIZ. L. REV. 54(1995).

¹⁰⁵ Henrard and Smis, *supra* note 31, at 22.

¹⁰⁶ *Id.* at 23.

¹⁰⁷ H. GROS-ESPIELL, *THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS* (New York: United Nations, 1980), para. 59, as cited by Michael Freeman, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, 3 (Jul., 1999) at 355.

the most familiar instance of internal self-determination are rights of federal units,” and the impact of federalism is “potentially less destructive alternative to secession.”¹⁰⁸ However, there should be a restriction in that “Federalism is likely to provide a viable alternative to secession only if the international community unambiguously rejects the principle that there is a presumption in favor of federal units having a right to secede if a majority within the unit favors secession.”¹⁰⁹ Thus, many states identified with ethnic, linguistic or religious diversity have adopted it.

While common values and interests are governed by the federal government, those which do not have nationwide significance will be left to member units to regulate depending on their particular realities. In their respective jurisdiction, they practice their own language, religion or culture.

II. Autonomy

In a state, all minority groups may not be given the status of membership unit of the federal government. They may be too small to attain and sustain such status. As a result, such minorities will be given a limited autonomy within the units of the federal state to self-administer based on their aspirations and peculiarities.

The scope and type of autonomy differs from state to state depending on the needs and size of the group concerned. In this regard, “State practice shows that international law on the rights of ethnic groups and minorities does not impose rigid solutions, but rather leaves a wide margin of possible solutions to meet the specific need of each individual society.”¹¹⁰ What matters is whether it addresses the questions of the minorities desiring to preserve and promote their culture, languages, religion and history.

III. Political Participation and Representation

Participation of the members of minorities in the administration of the state at both the regional and federal level is essential, particularly, in decisions affecting their interests and values.

¹⁰⁸ *Id.* at 55.

¹⁰⁹ *Id.* at 57

¹¹⁰ Hailbronner, *supra* note 6, at 120.

However, this participation may be difficult under the usual democratic processes if their numbers is so small that they cannot win regular elections. In such situations, there should be special procedures whereby they can properly be represented to reflect the interests of the group.

There are different procedures of representation of minorities in the various branches of government. Special seats are reserved for them in the parliament and they may have veto power in decisions affecting them. Proportional representations are also applied in the executive power sharing and in the appointments of judges in the judiciary.

IV. Affirmative Action Measures

Most of the time, the position of minorities is not the same as that of the majorities in many aspects. They are at different levels of development in the economic, social, cultural, and education spheres, and in natural resources enrichment. To come to the position of the majority in such areas, minorities need special treatment from the state. Indeed, it is argued:

The recognition of the need for minority rights in itself implies that mere abstention from forced assimilation would not be sufficient for states to fulfill their international obligations regarding minority protection. Active state intervention would be required to make these rights effective for the people concerned.¹¹¹

Thus, the mere existence of minority rights does not guarantee the realization of them; they need the necessary financial, material and institutional support. Although no agreed definition and content of it, such kind of assistance or special treatment of minorities is commonly known as affirmative action. Such special treatment of minorities is not a privilege but a means to ensure substantive equality of them with that of the majority. In other words, principles of non-discrimination and formal equality do not bring substantive equality and the state cannot discharge its obligations toward minority by simply observing these principles. It is argued that:

Minority rights imply more than non-discrimination. It is insufficient to say that the government does not make distinctions based on race, religion, language, or ethnicity. Minority rights begin with non-discrimination, but they must extend to protect activities

¹¹¹ Henrard, supra note 63, at 221.

*and promotional activities. [A] full-blown minority rights ideals include affirmative action programs and similar devices to advantage minorities. This is a hard lesson, but it seems to be part of the future course of minority rights development.*¹¹²

Once they attain such position, the action ceases. In other words, affirmative action is not by its nature permanent; it goes away with the inequality, for “[a]ffirmative action is now generally accepted as legitimate as long as its purpose and reach is merely to institute *factual equality* between members of a minority group and other individuals.”¹¹³ Were it permanent, the position of minority-majority would be reversed; that is, the original majority would become minority and the vice versa.

The problem with affirmative action is how to determine its content and scope. The demands of different minorities may not be the same, and as a result, it will be difficult to formulate common specific measures applicable to all of them. At worst, a problem lies whether international law, to be specific article 27 ICCPR, imposes duties on states. On its face, it requires states to refrain from discrimination. However, it is argued “Although the prohibition of assimilation appears to focus on a merely negative state obligation as regards minorities, it could also support a broader interpretation of article ICCPR as requiring more far reaching obligations for the contracting states.”¹¹⁴ Philip Alston agrees in the broader construction of article 27 in that “In so far as its interpretation has been progressive in nature it has largely consisted of an emphasis on the possible need for affirmative acts on the part of governments.”¹¹⁵

However, it is still possible to have common general standards designed to achieve their aspiration and desires.

2.2 Minority Rights Regime in Ethiopia?

In order to better understand the present situations of minorities in Ethiopia and their rights, consideration of the past a little bit is of help. Therefore, for the sake of convenience, minority rights situations in Ethiopia can be classified as pre-and post-1991.

¹¹² Sigler, *supra* note 73, at 199.

¹¹³ Roth, *supra* note 72, at 94-95.

¹¹⁴ Henrard, *supra* note 63, at 165.

¹¹⁵ Alston, *supra* note 77, at 274.

2.2.1 Pre-1991 Ethiopia

Ethiopia is an ancient state dating back to first millennium before Christ. It had been ruled by dynastical monarchal system until the 1974 popular revolution. It will be a naïve idea to think of protection of minorities rights under such system of government. The rulers favored one culture, one language, and one religion with unitary system of government.

However, it does not mean that different ethnic groups did not practice different religion, culture and language. It is to imply that their cultures, language and religion did not have equal status with that of the state favored Amhara culture, language and Orthodox faith. Of course, at times by mere fact their difference to the dominant culture, they had been victims of violations of their basic rights, to the extent of denial of land rights. In this regard mentioning of the Muslims and the Falashas, to which the Kemant religiously, ethnically and even linguistically have close relation, can be sufficient.

The extent and scope of the suffering and oppression of Ethiopian minorities differed from region to region and from time to time depending on the strength and will of the central monarchal regime. Ascending to the highest echelons of the government had been reserved to the Amhara and Tigre by ethnicity and orthodox by religion. Other ethnic groups would wear the Amhara-Tigre culture, language and faith to ascend to such government offices. In other words, equality before law and non-discrimination were alien to Ethiopia, let alone special rights and protection for minorities. Indeed, “the regime strived to erase the ethnic identity of the non-Amhara peoples and to replace it with an Amhara identity.”¹¹⁶

The denial of fundament rights to the general public and refusal of addressing nationality questions of ethnic groups led to the overthrow of the age-old absolute monarchy once and for all. Although there were some changes, such as separation of state and religion, land to the tiller, fundamental rights of individuals and demands of ethnic groups were not adequately responded to, for the monarchal regime was merely replaced by dictatorial military regime.¹¹⁷

¹¹⁶Van der Beken, supra note 49, at 236.

¹¹⁷Theoretically, the Dergue regime had accepted to a certain extent the rights of ethnic groups. There had been established an institution entrusted with the study of Ethiopian nationalities. See Proclamation No.236 /1984 to

As a result of failure to address the above questions, the struggle for democracy and for liberty from national oppression continued unabated. And it has been stated that “all the liberation movements represented ethnic loyalties and claimed to wage war to break the political, economic, social, cultural, and religious domination of the Amhara people over their own ethnic communities and consequently advocated their own self-determination.”¹¹⁸

This struggle was successful in getting rid of the military socialist regime in May 1991. Eritrea opted for complete independence and other forces formed the Transitional Government of Ethiopia (TGE) on democratic principles, as a precursor to the Constitution of the Federal Democratic Republic of Ethiopia 1995.

2.2.2 Post-1991 Ethiopia

2.2.2.1 The Transitional Government of Ethiopia

The TGE recognized ethnic, linguistic and religious minorities; depending on their size ethnic and linguistic groups were granted relatively autonomous regions to govern. These self-autonomous regions were drawn on the basis of territory dominated by the concerned ethno-linguistic group. Although some 65 ethnic groups were identified, as we have seen, by the TGE, thirteen autonomous regions coinciding with ethnic groups and region 14 were established. The governing law was Proclamation No.7/1992, which did not recognize all ethnic groups existing at the time.

These measures of the TGE were landmarks in the protection of the rights of different ethno-linguistic groups in the country. Religious groups were also granted the freedom to exercise their faith freely.

Provide for the Establishment of the Institute for the Study of Ethiopian Nationalities, *Negarit Gazeta*, 42nd Year, No. 7. Also, Census 1984, *supra* note 18, did recognize ethnic groups that existed in the country. Most importantly, the 1987 Peoples’ Democratic Republic of Ethiopia recognized the equality of languages and ethnic groups.

¹¹⁸ Henrard and Smis, *supra* note 31, at 40-41, referring to H. Assefa.

2.2.2.2 The FDRE Constitution of 1995

A) Formal Equality

As far as the system of government and rights of citizens concerned, the FDRE Constitution has embarked on a new era in the history of Ethiopia. As sovereign and the owner of the Constitution, each ‘nation, nationality and peoples’ is granted equality in culture, language and dignity. Federal form of government is formed on the basis of territory and language to enable them self-rule and self-determination.¹¹⁹

Unprecedented in the constitutional history of Ethiopia, one third of the Constitution is devoted to fundamental rights and freedoms in which article 39 is found. Article 39 is the most controversial: some argue that it is more inclined to the rights of the nations and nationalities in disregard of national integrity and unity while others claim that it is procedurally impracticable right particularly the unconditional right to secede.

Furthermore, according to the Preamble and article 8 of the Constitution, sovereignty resides in each ‘nation, nationality and people’. However, although the Constitutions seems to give such huge amount of rights to each ethnic groups, according to article 47, many of them are under the sovereignty of few dominant ethnic groups. This formulation of the Constitution led some to argue that each ethnic group is the beneficiary of the constitution by equating them with ‘nation, nationality or people’. In this respect, an example can be made of Beken who wrongly concluded that “Each ethnic group is entitled to at least one representative in the House of Federation”¹²⁰The Amhara, Oromo, Afar, Tigre, Harare, Somali, Gumuz and Berta are expressly recognized, and the regional states are designated under their name. And as a consequence, it is said of them:

[T]he fact that the states and other subunits of government are named after particular ethnic groups is bound to reinforce the feeling that these entities belong to the groups officially identified with them. Under this arrangement, therefore, the State of Tigray, for example belongs to the Tigreans, the State of Amhara to the Amharas, and so on, thereby

¹¹⁹ Federal Constitution, article 46.

¹²⁰ Van der Beken, *supra* note 49, at 282.

*giving legitimacy to the claims of a particular ethnic group to a particular territory, and providing it with the necessary framework in which its language, culture and political institutions may flourish.*¹²¹

Simply stated, those ethnic groups which do not have states or other subunits may not have favorable conditions to develop their language, culture, history and traditions. Thus, it can be argued, the constitution gave more benefits to the ethnic groups in whose name states are named, for “The Constitution does distinguish between two categories of beneficiaries: the normal and the privileged. The latter are the nine states collectively forming the Federal Democratic Republic.”¹²² Moreover, the former, apart from less beneficiaries of the constitution, they are subjected to the domination of the latter since “No referendums were conducted among the smaller groups in order to assess their opinions on whether they wanted to join any larger ethnic group to form a state.”¹²³ In short, Kymlicka’s assertion that “the conditions that enabled the voluntary adoption and successful operation of multination federalism in the West are not present in Ethiopia,” and which goes on to conclude “ethnic federalism in Ethiopia is likely to remain fragile experiment for some time to come,”¹²⁴ seems to reflect better the realities in Ethiopia. In other words, the Constitution has not yet addressed effectively the demands of all ethnic groups.

Those which are located in the South are lumped together under one state and others found within the above states shall have to prove their existence to avail themselves of the rights enshrined in the Constitution. In other words, they should show the fulfillment of article 39(5) before they are recognized as ‘nation, nationality or people.’ Although the Constitution should be flexible enough to entertain new minorities that would come after the adoption of it, it should have recognized those which were already in existence, at least as distinctly counted in the 1994

¹²¹ Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, 28 THE YALE JOURNAL OF INTERNATIONAL LAW (2003), at 66.

¹²² Henrard and Smis, *supra* note 31, at 47.

¹²³ Tronvoll, *supra* note 15, at 19.

¹²⁴ Will Kymlicka, *Emerging Western Models of Multination Federalism: Are They Relevant for Africa?*, in, ETHNIC FEDERALISM: THE ETHIOPIAN EXPERIENCE IN COMPARATIVE PERSPECTIVE (David Turton, (ed) Addis Ababa: Addis Ababa University, 2006), at 58.

National Population Census. In effect, the constitution has made two categories of ethnic groups: those the constitution *expressly recognized* and those which are not recognized, which may be dubbed as *second-class ethnic groups*, whose fate most likely depends on political commitments. Even *second-class ethnic groups* may further be divided into *politically-favored* and *non-politically-favored*. While the former are those which are expressly recognized as ‘nation, nationality or people’ by the respective regional constitutions, the latter are those ethnic groups which are not yet recognized as such.

This burden on these ethnic groups implies that they were not equally treated with the others from the very inception of the Constitution. Though those regional states within them such minorities reside do not have theoretically the final decision over issues of identity questions, they have practically enormous power on such issues. Depending on political commitment, regional constitutions may automatically recognize the existence and autonomy of a certain minority groups. For instance, as we saw in chapter one and we will see in a little bit detail in Chapter Three, the Amhara Regional Constitution gave recognition and self-administration to some ethnic groups while it did not to others in similar situations, such as the case of the Kemant.

Among the requirements under article 39(5) some are objective ones while others are subjective. Geographical contiguousness, language and common culture or similar customs belong to the former and are not difficult to determine. However, in case of ‘belief in common or related identities’ and ‘a common psychological make-up’, which are subjective ones, their determination is difficult. Apart from the difficulty in determining them, the Constitution does not specify as to who has such power. However, as such elements are something that the concerned ethnic group believes their existence, such power should be given to the group itself. No other body should prove (but may confirm) the existence or non-existence of such feeling for them. If the case is otherwise, this would be incompatible with the very concept of self-determination.

Indeed, such an issue was before the House of Federation in the *Silte Case*, where the group’s separate identity was contested and it was decided by the House. Accordingly, it was held that

the claimant community itself shall decide about its own identity.¹²⁵The ruling seems to be in line with the spirit of the constitution’s self-determination. As to who submits the complaint was one of the issues in *the Case* and it was also decided by the House that anyone can submit it.¹²⁶However, an important issue in a claim of identity was left undecided-how such a person or group of persons can lodge the complaint. The regional state to which the complaint is lodged may not trust the complainant(s); they may challenge the legitimacy of representation of the people. Depending on the circumstances, the regional state may complicate the procedure of representation of the people by such complaints. Of course, Proclamation No.251/2001 has procedures in presenting the claims or questions of self-determination.¹²⁷

However, with respect to objective requirements, the group’s claim can be contested as to their fulfillment, they are subject to proof.

B) Substantive Equality

The reason for existence of minority rights is that individual human right does not adequately guarantee the actual equality of minorities and majorities. Formal equality cannot bring substantive equality; thus, there arose a need to have special rights to minorities, at least temporarily. However, the FDRE Constitution deviates from this agreed principle due to lack of special rights to minorities. Under article 39(2) and (3) each ‘nation, nationality or people’ are guaranteed to develop and promote its culture, history and language, and to establish self-government.

It treats equally the mainstream ethnic group and minority groups. It does not provide for special measures or affirmative action in favor of minorities. Indeed, “within the new constitutional system, the TPLF/EPRDF denies the existence of any ‘minorities’ in Ethiopia, i.e., ethnic and religious groups which are politically oppressed or marginalized.”¹²⁸ It can be argued that the Constitution has taken the same position of the United Nations in its formative stage by which

¹²⁵ የኢ.ፌ.ዲ.ሪ የፌዴራል ሽን ምክር ቤት፡፡የህገ መንግሥታዊ ፍርዶች መጽሕፍት፡ ቅፅ 1 ፡ቁጥር 1 ሐምሌ 2000 ዓ.፳ም ገጽ 96።

¹²⁶ *Id.* at 97.

¹²⁷ Articles 20 and 21. However, article 21(2) requires also the individual or individuals who are delegated to produce reliable evidence. The problem is what kind of ‘reliable evidence’ and who determines it? This procedure of delegation may create difficulties to the delegates either before the House of Federation or the state governments.

¹²⁸ Tronvoll, *supra* note 15, at 19.

“Minorities and their members were postulated to be fully and satisfactorily protected by individual, universal human rights in combination with the non-discrimination principle.”¹²⁹In our case, for instance, how can the Kemant enjoy such rights in equal footing with the Amhara, being the mainstream state, who have already enjoyed those rights? In this respect also, the Constitution fails to adequately protect the rights of ethnic minorities.

¹²⁹ HENRARD, *supra* note 63, at 219.

CHAPTER THREE

THE AMHARA NATIONAL REGIONAL CONSTITUTION, MINORITY RIGHTS AND THE RIGHTS OF THE KEMANT

3.1 The Law and the Practice in the Region

The Amhara Regional State is one of the members of the federation, and it has adopted its own constitution. As any law, customary practice or a decision of an organ of a state or public official should conform to the Federal constitution,¹³⁰ a regional constitution shall not contravene the fundamental principles of the Federal Constitution.

As a result, in this chapter, an analysis will be made whether the Amhara Regional constitution confirms to the Federal Constitution with respect to the rights of minorities and how it protects them. The actual practice of these rights in the Region will also be assessed. Particularly, the reasons why the Kemant have not been recognized as ‘nation, nationality or people’, whether they can fulfill the requirements to be recognized as such, and their rights will be discussed.

3.1.1 Internal Self-determination

Self-determination can be explained as the parent of minority rights, for many known minority rights are included within it. Indeed, it is argued that “the right is framed as being the first human right without which other political, civil, economic, social and cultural rights would be meaningless.”¹³¹ In a similar vein, Bereket has written “The concept [self-determination] encompasses a spectrum of rights, including independent statehood, association with other groups in a federal state and other forms of autonomy short of independence.”¹³²

Under article 39, the Revised Amhara Regional Constitution provides for the unconditional right to self-determination up to secession as enshrined in article 39 of the Federal Constitution. A

¹³⁰ Federal Constitution, article 9(1).

¹³¹ Joshua Castellino and Jérémie Gilbert, *Self-Determination, Indigenous Peoples and Minorities*, 3 MACQUARIE LAW JOURNAL 8[2003], at 5; Alston, *supra* note 75, at 261.

¹³² Bereket Habteselassie, *Self-Determination in Principle and In Practice: The Ethiopian – Eritrean Experience*, 29 COLUMBIA HUMAN RIGHTS LAW REVIEW, 91(1997), AT 92.

bundle of collective rights are included under the right to self-determination. Some of them will be dealt in the following subsections.

3.1.1.1 Recognition

Article 5 of Revised Constitution declares the equal recognition of all languages spoken on the part of the state. In addition, the people of the Region have a right to preserve and develop its national identity, culture and language.¹³³ Accordingly, the Awi, Himra, Oromo and Argoba nationalities have already enjoyed recognition. Others are not recognized, but they can be recognized if they can fulfill the requirements set under article 39 (7) of the Revised Constitution.

3.1.1.2 Language/ Education

The equality of languages spoken in the Region is declared under article 5 of the Revised Amhara Constitution and has been to some extent implemented. The Awigna, Xamtigna and Oromo languages have been used as medium of instruction at primary schools. Education is one of the mechanism through which the history and culture of a minority will be promoted and preserved. As a result, the curricula should be designed in such a way that to reflect diversity and treat different cultures and traditions in a fair and equitable way. In other words, the educational policy should not be just to promote and dignify the dominant and the mainstream ethnic group culture and history.

It is claimed that learning by one's mother tongue promotes the dignity of him/her. The learner feels sense of equality with others belonging to the mainstream. In this respect, there is a good beginning in the region; the nationality administrations have already started giving primary education through the mother tongue.¹³⁴ The equality of languages spoken in the Region has been to some extent implemented. The Awigna, Xamtigna and Oromo languages have been used as medium of instruction at primary schools.

¹³³ Revised Amhara Regional Constitution, article 39(1).

¹³⁴ Interview with Ato Habtamu Buzuneh, Social Sciences Curriculum Executor, Amhara Regional State Education Bureau, on 23 November 2009 at 4:30-5: 00 pm, Bahir Dar.

3.1.1.3 Religion

Separation of state and religion are guaranteed under article 11 of the Revised Amhara Constitution, and none of them interfere in the matters of the other. In addition, freedom of religion and belief is guaranteed, and believers have a right to establish institutions of religious education and administration.¹³⁵

3.1.1.4 Autonomy

Autonomy is a means through which ethnic groups administer itself within its territory. As a result, the ‘people’ of the Amhara Region has the right to establish self-government for the final determination of its own affairs within its territory.¹³⁶ To reiterate, the Argoba, Awi, Himra and Oromo have established their own self-government within their respective territories. Other ethnic groups, the Kemant and Woito, do not enjoy self-government, nor are they recognized as distinct people of the region.

Each nationality administration has the nationality council (legislative), the nationality administrative council (the executive) and the judiciary body.¹³⁷ The power to determine, inter alia, the working language of the nationality, the protection of the right to speak and write in its own language, to maintain and promote its own history is given to the nationality council,¹³⁸ while the administrative council formulates the specific economic and social development policies and strategies of the administration.¹³⁹ These powers of the nationality administration enable the nationality to develop its culture, language, history, and to protect its socio-economic rights.

3.1.1.5 Participation and Representation

In addition to its autonomy in its territory, each nation/ nationality needs to be represented in the regional and federal governments. This representation has two benefits: on the one hand, it helps the nation/ nationality to involve in decisions affecting its interests at the national or regional

¹³⁵ The Revised Amhara Regional Constitution article 27.

¹³⁶ *Id.* article 39(2).

¹³⁷ *Id.* article 73(2).

¹³⁸ *Id.* 74 (3).

¹³⁹ *Id.* 78 (2) (d).

level; and on the other hand, by participating in such decisions it feels sense of belongingness in the regional or national identity. In this respect, Van der Beken has written “The participation in federal and regional decisions on the one hand guarantees the rights of the ethnic groups (diversity) and on the hand it creates a feeling of solidarity with the other ethnic groups and thus with the federal and regional level(unity).”¹⁴⁰

In this respect, the Amhara Regional Constitution makes it a right to be represented both in the regional and federal governments. Accordingly, it provides that the ‘people’ of the region has a right to “enjoy an effective participation in the system of the federal government in a freer, nondiscriminatory, appropriate, fair and equitable representation.”¹⁴¹ At the regional level, nationalities and peoples residing in the region have a right of representation.¹⁴² However, the Constitution does not specify how such representation takes place, saving representation in the Regional Council. Actually, even in the Regional Council, only the Awi, Himra, Oromo and Argoba peoples are represented.

The Kemant, for instance, are not represented in the Regional Council; it represents, apart from the above nationalities, only the Amhara ethnic group. And the Kemant are different from the Amhara ethnic group. The Kemant are ruled by the state in which they do not have participation, for “The Amhara ethnic group . . . has been coupled to the Amhara regional state. In other words, the Amhara regional state has been created for the Amhara ethnic group.”¹⁴³ In other words, the regional constitution provides the right of self-determination and other identity rights only to aforementioned three ethnic groups apart from the Amhara.¹⁴⁴

3.1.1.6 Special Measures

Special measures in favor of minorities are suggested and even implemented by some states to bring them into substantive equality with the mainstream ethnic groups of a state. As there is debate over the very concept of affirmative action, there is no agreed theory as to the content of

¹⁴⁰Van der Beken, *supra* note 49, at 264.

¹⁴¹ Revised Amhara Constitution, article 39(2).

¹⁴² *Id.* articles 45(3)&74(1).

¹⁴³ Van der Beken, *supra* note 5, at 107.

¹⁴⁴ *Id.* at 114.

it. As the demands of each minority differ, so do the contents of special measures or affirmative action differ from state to state.

As stated in the previous chapter, the Federal Constitution does not have provisions of affirmative action in favor of minorities that can be claimed by them. Nor does the Amhara Regional Constitution have such provisions. The only relevant provision is article 110(3) which reads as “[t]he state shall provide special assistance to those nationalities and peoples left behind in terms of development.” However, this provision is found under the general economic objectives of the state, and as a result, cannot entitle those nationalities or peoples concerned to claim.

Expressed in simple terms, the Regional Constitution treats national minorities in the region and the mainstream Amhara people equally. This equal treatment of ‘unequals’ can be argued as a means of perpetuating the actual inequalities that exist between minorities and the mainstream groups. In this regard, the Regional Constitution might have its own impact in the failure of recognition of some nationalities in the region and to use other rights guaranteed in the constitution. The case in point is the Kemant, as we shall see in the next subsection.

3.2 Grounds of Failure of Recognition of the Kemant

Under this subtitle, an attempt is made to assess the efficacy of the constitution and the reasons for the failure of recognition of the Kemant as ‘nation, nationality and people’ of the region and the country.

3.2.1 Inadequacy of the Law (procedural)

The Kemant had been recognized in Ethiopia until the 1994 National Population and Housing Census as a distinct ethnic group. In other words, they were in existence when both the Federal and the first Regional Constitutions were adopted in 1995. As the Federal Constitution did not give recognition as ‘nations, nationalities and peoples’ to all ethnic groups that existed at the time of its adoption in the country, nor did the first Regional Constitution of 1995 and the 2001 Revised Amhara Constitution give recognition to nationalities and peoples that existed in the region at the time of their adoption.

Among such ethnic groups in the country and in the region are the Kemant. They have been denied their de jure existence while they have ever de facto existed. This does not mean that they do not have a right to recognition; both the federal and the regional constitutions give recognition as ‘nation, nationalities and peoples’ as far as the group satisfies the requirements of article 39(5) and article 39(7) of their respective constitution.

Here comes the crucial issue: the regional constitution presumed, as the federal constitution did, some ethnic groups are entitled to automatic recognition and the rights that follow it while others are required to prove their existence as such even if the government has, paradoxically, already recognized their existence through official acts, such as national census. At worst, those who are required to prove their existence are within the mainstream state, which may not, arguably, entertain the claims of minorities to exercise their right of self-determination in its various forms as easy as possible.

How can, therefore, the Kemant, a small minority compared to the mainstream dominant Amhara, exercise its rights of self-determination in situations where the constitution eschewed from recognizing them? Of course, it is still possible to exercise their right of self-determination, but with difficulty and significant costs, for the ultimate power of determining the identity of an ethnic group does not lie in the regional state. The question is whether the Kemant, for that matter any other smaller ethnic group in similar situations, can pass such procedural hurdles in the regional state before reaching the federal forum and can cover the attendant costs.

It is not difficult, therefore, to discern the impasse involved in the process. In our case, the Kemant have been struggling for self-determination since the adoption of the Federal and Regional constitutions.¹⁴⁵ Despite their continued longing for recognition and self-administration, they couldn’t be successful to date.

¹⁴⁵ Interview with Ato Nega Gete, supra note 30.

3.2.2 Practical Problems

The existence of good laws by itself does not guarantee, and is not adequate for, the enforcement of the rights contained therein. In addition to the legal framework, there shall be government officials inclined to act in accordance with it particularly and an open society conducive to tolerate differences in general. Therefore, under this subsection, an attempt is made to assess the possible practical problems in the protection of minority rights in the region, apart from gaps in the law.

3.2.2.1 Lack of Political Willingness

Sometimes it is difficult to discern the distinction between political considerations from legal issues. Particularly, in sensitive cases like minority issues, we cannot divorce political considerations and commitments from legal issues especially in the implementation processes. Thus, it is relevant to take into consideration the political commitments concerning minorities since the change of government in the country, for “it is appropriate to make the observation that the effective realization of the constitutional provisions is partly determined by the political context.”¹⁴⁶ This can better be appreciated by considering the situations of ethnic groups which have already recognized and those which are not still recognized in the region.

The Himra people had made a contribution, during the civil war, to the Ethiopian People’s Democratic Movement (the present Amhara National Democratic Movement), one of the Coalition which formed the Ethiopian Peoples’ Revolutionary Democratic Front, which has ruled the country since 1991. Indeed, it is reported “The Himra people have made bitter struggle in overthrowing the dictatorial Dergue regime and in its stead to prevail peace and democracy. Thus, these people had made great contribution for the realization of *Ginbot 20*.”¹⁴⁷ In this respect, it can be argued that it would be politically unacceptable for the regional state to deny recognition and self-determination to the people who made contribution for the struggle for such rights and democracy for which the ruling party itself struggled for.

¹⁴⁶ Van der Beken, supra note 5, at 105.

¹⁴⁷ ‘የአማራ ክልል ብሄረሰቦች’ ፣ በአማራ ክልል ማስታወቂያ ቢሮ ፣ ታህሳስ 2001 ዓ . ም የተዘጋጀ ገፅ 16(Translation into English mine).

In the case of the Awi people, it will also be politically unacceptable for the ruling party to deny this people recognition and autonomy for two possible reasons. On the one hand, both the Himra and the Awi are of the same category of people, the Agaw. On the other hand, the Awi people are numerically larger than the Himra people. Therefore, denying the Awi people such rights will be discrimination between people which are in similar situations.

The Oromo nationality in the Amhara region is the other constitutionally recognized and has nationality administration autonomy. The political consideration for granting this status can be seen from a different angle. Although the Oromo in Amhara region are a minority, the Oromo, the largest ethnic group in the country, are also the majority in Oromia region. In Oromia region, the Amhara are, among others, minorities. It cannot be implausible to argue that the political consideration of the Amhara region in granting the Oromo recognition and autonomy is the possible expectation of reciprocity treatment of the Amhara in the Oromia region.¹⁴⁸

On the other hand, it is possible to assess whether there were plausible political considerations regarding those ethnic groups in Amhara region which are not constitutionally recognized. These include the Kemant, Woito and Argoba. To the knowledge of the writer, they did not play significant contribution and role in favor of the ruling party.

However, with respect to the Kemant, there are no discernible political conditions in their favor. On the contrary, by using the peoples' fear and suspicion related to acts that had been committed by the Orthodox Church on the ethnic group for long, coupled with the propaganda that the origin of Kemant is sometimes from Canaan and sometimes from Egypt, now there are no Kemant and they are assimilated, 'chauvinistic' government officials in the region denied the Kemant recognition and self-governance that are enshrined in the constitution and enjoyed by other ethnic groups.¹⁴⁹

¹⁴⁸ Significant number of Amharas live in Oromia region. According to the 2007 Population and Housing Census, about two million (1,961,277) Amharas live in the region. See Census 2007, supra note 22, at 94.

¹⁴⁹ Interview with Ato Nega Gete, supra note 30.

Starting from the time of the Transitional Government of Ethiopia, there has been strong opposition from the government to the claim that there exist distinct people called Kemant.¹⁵⁰ Particularly, those officials in the lower hierarchies have exerted their effort to intimidate those groups who have tried to assert their identity and hindered the claim from being come to the attention of the higher hierarchies of the government.¹⁵¹

In a similar vein, as shown in the following table, the great majority of the respondents (85.65) replied governmental influence as a reason for Kemant’s failure to be represented in regional or/and federal governments while only 13.87 of the respondents stated non-recognition and the fact that it was not asked.

Question	Item	Number	Per cent
Reasons for non-representation	Unwillingness to be represented	1	0.48
	Governmental influence(negative)	179	85.65
	Other	29	13.87

Table 1

All the above three were distinct peoples when the constitution was adopted. Their vulnerability was not as such difficult to be appreciated by the drafters of the constitution. Take for instance the case of Argoba. Neither the 1995, nor the Revised Amhara Regional Constitution of 2001 recognized them. It was only through a law made by the Regional Council after the 2001 Revised Constitution that the Argoba were recognized and granted woreda nationality administration.¹⁵² The legal requirements to be recognized as ‘nation, nationality or people’ that existed in 1995 were not changed after 2001, at least the Federal Constitution is concerned. In other words, the Argoba would have been recognized as nationality in the 1995 constitution as far as the legal requirements are concerned.

¹⁵⁰ Interview with Ato Tesfahun Mulatu, Deputy Chairperson of Executive Committee, Provisional Committee of Kemant Identity and Self-Governance Claims Council, on 26 November 2009 at 6:00- 8:00, Gondar.

¹⁵¹ *Id.*

¹⁵² Argoba Nationality Proclamation, *supra* note 4. Under article 3(1), the Argoba Nationality Woreda is established as autonomous self-governance.

From the above assessment, it will not be unreasonable to conclude that minority rights protection is more of related to political commitments than of rights oriented. Had it not been for these reasons, others, like the Kemant, would have been recognized and would have enjoyed self-administration. This implies how much politics plays a central role in the protection of minorities. Of course, even in Europe, it is said, “[a]ction in favor of minority protection within the European Union has ceased to be an issue of legal legitimacy and become a question of political will.”¹⁵³

The 1995 Amhara Regional Constitution provided that the right to self-determination is given to the peoples of Amhara and the Himra, Awi and Oromo.¹⁵⁴ In other words, those who do not belong to the Himra, Awi and Oromo are considered Amhara. The Kemant, for instance, belong to none of the three ethnic groups. The intention of the drafter of the constitution was clear: the Kemant are Amhara. Stated otherwise, the Kemant who were in 1994 distinct now in 1995 became Amhara. This is simply an attempt to assimilation. This trend was repeated, as seen above, by the Revised Constitution and by the fact that the Kemant has been for the first time missing from the National Population and Housing Census of 2007.

The respondent’s ethnic identity information, among others, is required during a census.¹⁵⁵ However, more than half of the respondents (53.54%) were not asked their ethnic groups, as can be understood from the Table 2 below, during the 2007 Census. Even among those who were asked, the great majority of them (83.33%) replied Kemant as their ethnic group. On the one hand, not asking their basic identity information may be an indication of disregard of the respondents’ ethnic group. On the other, changing the information given relating to their ethnic group to another group is contrary to their right of self-determination.

¹⁵³ Martin Estebanez, *supra* note 73, at 162.

¹⁵⁴ Unlike the Revised Constitution, the right to self-determination is enshrined under article 14.

¹⁵⁵ Interview with Ato Gebeyehu Abelti, *supra* note 42.

Question	Item	Number	Per cent
Whether respondent's ethnic group was asked	Yes	105	46.46
	No	121	53.54
Reply of those respondents who were asked was asked	Kemant	88	83.81
	Amhara	14	13.33
	Other	3	2.86

Table 2

From these facts, it is not unreasonable to conclude how minority rights protection is politically motivated in the region. And this action of the Regional State will have the following effect regarding the Kemant:

The effort to assimilate minorities into society may be as effective in eliminating the group as attacks upon the lives of members; if successful, the result is the death of a culture: the carriers of cultures are spared, but they pass on a different culture to succeeding generations-not improbably, the culture of the oppressors.¹⁵⁶

In other words, the political commitment in the region is to assimilate the Kemant into the Amhara ethnicity and culture contrary to the desires of the members of the Kemant ethnic group.¹⁵⁷ And it should not be forgotten that politics plays a key role in the implementation of human rights in general and minority rights in particular. Respondents were asked about the responsibility of the government regarding the Kemant identity, culture, language and history.

¹⁵⁶ Thornberry, supra note 64, at 141.

¹⁵⁷ Interviews with Ato Nega Gete, supra note 30 and Ato Tesfahun Mulatu, supra note 150.

Question	Item	Number	Per cent
Responsibility of the government regarding the promotion and the development of Kemant identity, culture, language and history	Respect and implement art.39(Treat the Kemant equally with others)	156	69.03
	Special support	23	10.18
	People Struggle for their rights	10	4.42
	Media Coverage, Schools for Kemantney, printing and distributing the history and culture of the Kemant	29	12.83
	Inclusion in the Census	6	2.65
	Not Responding	2	0.88

Table 3

As shown from Table 3, the majority of the respondents (69.03 %) stated that the government respect and treat Kemant equally with other ethnic groups in accordance with article 39 (of the Federal Constitution). In effect, they are saying that the government bodies do not respect the Constitution, and the problem lies in its implementation. In this respect, it should be mentioned that a group of Kemant have been claiming their identity and requesting the Regional Government for recognition. But, there has never been any response to date, and the regional government did not deny this.¹⁵⁸ Regarding the responsibility of the Regional Council, “In the future, if it is found necessary, we may undertake studies regarding their claim.”¹⁵⁹ Here, an issue may be (should be) raised as to who determines whether a certain identity claim is ‘necessary or not’.

3.2.2.2 Lack of Affirmative Action

We have already seen earlier in Chapter Two how affirmative action is related to minority rights and their protection. Here, we will see how practically its absence affected the Kemant in their striving for rights enshrined both in the regional and federal constitutions.

¹⁵⁸ An interview with Ato Abebe Arega, Deputy Speaker of the Amhara Regional Council, on 24 November 2009 at 2:30-3: 00, pm, Bahir Dar and Dr. Misrak Mekonnen, Speaker of the Amhara Regional Council, on 25 November 2009 at 9:00-9: 30, Bahir Dar, the former remembers that they came to him in 2001 E. C. with such questions while the latter has learned that they have submitted their claims to the House of Federation. However, both did not know what response was given or at what stage it is in the Region.

¹⁵⁹ Dr. Misrak Mekonnen, *supra* note 158.

Ever since the adoption of the constitutions, there have been efforts to assert and claim their rights of recognition and self-administration. Such efforts were, however, most often, hindered due to lack of support by the government as it did to the ethnic groups in the region.¹⁶⁰ The media which play key role in the promotion of the cultures and history of minorities did nothing or little in relation to the Kemant.¹⁶¹ On the contrary, rather than promoting the culture and history of the Kemant, the commitment of some of the regional officials is releasing propaganda that the Kemant no more exists, that they do not have distinct characteristics that differentiate from the Amhara.¹⁶² Indeed, as shown under Table 13(*infra*, page 68), most of the respondents (88.05%) replied that they have never heard their Kemant identities in any mass media.

3.3 Rights of the Kemant

3.3.1 Recognition

Under chapter Two, we saw that ethnic, linguistic or religious groups have a right to existence and this existence should be recognized by the state within which they reside. Denial of such recognition implies denial of their existence and this is a clear violation of the international human rights.

As we saw, both the Regional and Federal Constitution hardly employ the term minority, but, they use instead ‘nation, nationality or people.’ Common article 39 defines as to which constitutes ‘nation, nationality or people.’

¹⁶⁰ Interview with Ato Negat Gete, *supra* note 30.

¹⁶¹ In the promotion of the culture, history, language, etc. of ethnic groups in the region, the Amhara Regional Information Bureau plays an essential role. In its ‘የ1997 ዓ.ም ዓመታዊ የመረጃ መጽሀፍ’ published in Sene 1998 E. C. , it included Kemant as one of the ethnic groups of the Region while in the ‘‘የ1999ና 2000 ዓ.ም ዓመታዊ የመረጃ መጽሀፍ’ published in Yekatit 2001 E. C. it did not mention Kemant as one of the ethnic groups. I asked the Depute Head of the Bureau, Ato Tamirat Dejenie why this variation occurred and he replied to me that in the former publication “it was unconsciously that the Kemant was included as ethnic group,” but in the latter publication, he continued, “considering the consequences and the fact that Kemant and others, such as Woito, are not constitutionally recognized, we did not include them as ethnic groups.” However, in its Tahisas 2001 E. C. publication entitled ‘የአግራ ክልል ብሄረሰቦች’, the Bureau included as ethnic groups those which are not recognized by the regional constitution, such as the Woito, Argoba and Awra –Amba communities and their history and cultures (page 16). Regarding the Kemant, there is no mention of it and its cultures and history. It is surprising to see that a community with a lifespan of not more than 30 years as being considered distinct community while the Kemant, being in existence for several centuries, was not considered as distinct by Regional Government.

¹⁶² Interview with Ato Negat Gete, *supra* note 30.

3.3.1.1 Contiguosness

Among the elements is the group claiming such status should reside in contiguous geographical area. The Kemant live in areas almost uniformly populated by them with the exception of the City of Gondar in which case the Kemant reside with other ethnic groups. Although determination of such issue is a matter of objective reality, respondents were asked as to the settlement of the population of the Kemant in rural areas.

Question	Item	Number	Per cent
What the Settlement of the Kemant population /rural areas/ is	Contiguous	170	75.22
	Not contiguous	43	19.03
	Other	13	5.75

Table 4

As the above Table 4 shows, the majority of them (75.22%) replied ‘contiguous’ and 19.03% said ‘non-contiguous’. The rest (5.75%) stated that in some places there is mixed settlement with the Amhara. Of course, the article does not require absolutely contiguous but ‘predominately’ contiguous. Taking the first and the last figures together, it is possible to reach the conclusion that the settlement of the Kemant fulfills the legal requirements.

3.3.1.2 Language

The second element is an intelligible language among the group. The Kemant have a language which was once widely spoken in North Gondar region. Currently, although it is threatened to be extinct, it has speakers as mother and second tongues. Zelalem Leyew has observed the following:

As far as identity among the Kemant is concerned, language is not necessarily a defining factor. The best example[s] for this are those who claimed a Kemant identity without speaking the Kemantney These people say, ‘Kemantney is my language but I do not

*Speak it and yet I am a Kemant. Though the language is near extinct, it has not led to a loss of the ethnic identity of the Kemant*¹⁶³

Question	Variable	Number	Per cent
Whether s/he speaks Kemantney	No	209	92.48
	Yes	17	7.52

Table 5

Zelalem’s finding in this respect is similar to the respondents’ response. Although 92.48% of the 216 respondents do not speak Kemantney, as shown in Table 5, 99.12 % the 226 respondents claimed Kemant ethnicity while only 0.88 % replied Amhara as their ethnicity, as shown in Table 6, below.

Question	Item	Number	Percentage
Asked to which ethnicity he/she belongs	Kemant	224	99.12
	Amhara	2	0.88

Table 6

The figures in Tables 5 and 6 show that majority of the population do not actually speak the language. However, they still claim Kemant identity. Not only do those who do not yet speak Kemantney claim Kemant ethnicity, but also they are eager to learn Kemantney if they can find the opportunity. Respondents were also asked whether they would like to learn it and to be identified with Kemant identity, and 97.13% of them replied ‘yes’. As Table 7, below, indicates, only insignificant portion of the respondents (2.87%) showed dislike to the language.

Question	Item	Number	Per cent
Whether s/he would like to learn Kemantney and to be identified with Kemant identity	Yes	203	97.13
	No	6	2.87

Table 7

¹⁶³ZELALEM LEYEW, supra note 11, at 90.

Moreover, specific question with respect to language was forwarded to the respondents. The question relates to whether using Amharic language entails them an Amhara identity. Surprisingly, as the next, Table 8 indicates, most of the respondents (97.14%) answered negatively while 2.87 % replied affirmatively.

Question	Item	Number	Per cent
Whether using Amharic entails Amhara identity	No	203	97.13
	Yes	6	2.87

Table 8

3.3.1.3 ‘Belief in common or related identities’

The third requirement is that the group should have a ‘belief in common or related identities.’ As we saw in Chapter One, the Kemant believe they have common ancestors, Ayaner/Yaner/, the grandson of Canaan, and his wife, Entala. Among the respondents who said Amhara and Kemant are different, almost all (95.71%) claim Kemant has ancestors different from the neighboring ethnic Amhara, as it is shown Table 9.

Question	Item	Number	Per cent
Distinctions of Kemant from Amhara	Descent	27	12.86
	Religion	1	0.48
	Language	6	2.86
	All	164	78.09
	Other(descent and language)	10	4.76
	Not Responding	2	0.95

Table 9

In this regard, Zelalem Leyew has reached the same conclusion in that “On the question of the definition of Kemant, respondents highlighted religion, **descent**, and language as major factors that can easily help them identify someone as Kemant **today**.”¹⁶⁴(Emphasis added.)

Question	Item	Number	Per cent
Religion of the respondents	Orthodox	218	96.46
	Protestant	4	1.77
	<i>Hege-Lebona</i> /Kemant Religion/	3	1.33
	Catholic	0	0
	Islam	0	0
	Other	1	0.44
Whether religion of the respondents being other than Hege-Lebona does not affect their Kemant identity	Yes	187	83.86
	No	11	4.93
	Not Responding	25	11.21

Table 10

Although religion, descent and language are characteristics that differentiate Kemant as distinct, and even if 96.46 % of the respondents’ religion is Orthodox as that of the majority of the Amhara, the majority of the respondents (83.86 %) replied the fact that their religion is other than Hege-Lebona (Kemant religion) does not affect their Kemant identity, as is shown in Table 10. We have seen the same thing with respect to Kemantney language regarding respondents’ identity. In other words, Kemants give more emphasis to their common identity based on their descent or origin.

3.3.1.4 Common culture or similar customs

The fourth requirement to be met by the claimant is that the group should ‘have or share a large measure of a common culture or similar customs.’ Culture is in short a way of life of a group or a

¹⁶⁴ *Id.* at 93.

community as distinct from others. It includes, among others, eating habits, dressing style, religious rites, traditions, histories and the like.

What has prevented the Kemant from assimilation with the neighboring peoples has been their religion, which is different from both the dominant Orthodox religion, and Islam. Unlike churches and mosques in cases of Christianity and Islam, respectively, the Kemant religion rites take place in venerated groves as discussed under Chapter One. Unlike the Orthodox faith, the Kemant observe as holy day only Saturday which lasts from Friday dusk to Saturday dusk and work all the rest days of the week.

3.3.1.5 ‘Common psychological make-up’

The fifth, and the last, element that should be satisfied by the claimant group is that the group should exhibit ‘a common psychological makeup.’ This element is more of subjective one as that of the element three mentioned above. It relates to feelings and desires of the people, their reflections towards them and the other. As it was stated in Chapter One, even though the great majority of the population do not follow the Kemant religion/*Hege-Lebona*/ and speak Kemantney, they still consider they are one with those whose religion is Kemant and who speak the language, and moreover, they consider the language theirs and desire to learn it.

Moreover, the Kemant believe they are disadvantaged, marginalized and stigmatized for a long time. As a result, they want to have this corrected and want to promote their own culture, history, language, religion and traditions. They are conscious of their Kemant identity, and Zelalem Leyew agrees with this:

*This implies many things: their regret for the near extinction of both their language and religion, their continuing concern for the loss of their Kemant identity in favor of Amhara and a sense of fostering a feeling and consciousness of some different identity by showing loyalty to their obsolete language and religion.*¹⁶⁵

¹⁶⁵ *Id.* at 50.

Particularly, almost all the respondents (98.23%) have the same feeling with respect to the failure of the government to include the Kemant in the 2007 Population and Housing Census. As Table 11, below shows, the respondents felt that the act of the government not only deprives the identity, religion, culture, language and history from being promoted and respected, but also denies the existence of Kemant and discriminates them from other ethnic groups.

Question	Item	Number	Per cent
Implication of 2007 Census	Denial of the existence of Kemant	3	1.33
	Depriving of their identity, religion, culture, language & history	15	6.64
	Not treating equally with other ethnic groups	26	11.50
	All	178	78.76
	Other	4	1.77

Table 11

3.3.1.6 Requirements Combined

From the above facts, it is possible to conclude that the Kemant fulfils the requirements provided for recognition as ‘nation, nationality or people’ under the common article 39 of the Regional and Federal constitutions. Surely, they have a right to such status as other ethnic groups of the Region and the Country. Denying such recognition is denying their existence while actually they exist and satisfy the legal requirements. In short, it will be a violation of their constitutional right, taking into consideration the importance of official recognition as evidenced by the following paragraph:

[I]t has become necessary to establish the Nationality having self-governance authority, in order to recognize the identity of members of the nationality and to preserve culture, tradition and history of same [i.e., Argoba].¹⁶⁶

The fact that the state does not recognize the Kemant not only violates the Constitutional provisions, but also the country’s international duties with respect to minorities. In this regard, F.

¹⁶⁶ Argoba Nationality Proclamation, supra note 4, Preamble Paragraph 2.

Capotorti noted “. . . If the existence of a minority group within the state is objectively demonstrated, non-recognition of the minority does not dispense the State from the duty to comply with the principles of [international minorities['] protection provisions].”¹⁶⁷

3.3.2 Internal Self-determination

As a logical order, once a group is recognized as a distinct people (in our case, ‘nation, nationality or people’), what follows is to exercise the rights reserved to such status. The Kemant as ‘nation, nationality, or people’ or in short, as a minority, should have a right of self-determination. Self-determination is a bundle of rights of minorities. Self-determination is commonly classified as internal and external depending on the aspirations of the group. For the purpose of this paper, we are only interested in the internal aspect.

In the next subsections, some aspects of internal self-determination are dealt with.

3.3.2.1 Self-rule

Autonomy is a means by which minority rights are promoted and protected. The rationale of autonomy is that it gives the group to administer itself within its jurisdiction and is better suited to the promotion and protection of its peculiar cultures, language, religion, and history in line with its aspirations and desires. The extent and scope of autonomy varies from case to case as we saw in Chapter Two. What matters is that the group should be entitled to self-administer itself at the appropriate level by taking into consideration the size of the population, the availability of resources and others affecting the viability of the autonomy.

In Ethiopia, according to article 39(3) of the Federal Constitution, each ‘nation, nationality, or people’ has a ‘full measure of self-government.’ The same right is provided for under article 39(2) (3) of the Amhara Region constitution and such right is given to ‘the peoples’ of the Regional State. What self-government includes is stated in both constitutions in that it includes the right to establish institutions of government within the territory of the minority.

¹⁶⁷ F. Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic, UN Sales No. E. 78. XIV. 1 (1978), at para.570, as quoted by Roth, *supra* note 70, at 92.

Therefore, the Kemant have a right to establish self-administration institutions within their territory. The type of local government institutions to be established by the Kemant depends on their number, geographical coverage and resource feasibility.

The Amhara Regional State is constitutionally structured to comprise the Region, Woreda and Kebele administrative units.¹⁶⁸ However, by law another administrative unit called Zonal administration, between the Regional and Woreda units, is established.¹⁶⁹ There are seven administrative zones¹⁷⁰, and Bahir Dar Special zone.¹⁷¹ The Himra, Awi and Oromo peoples have their own nationality administrations constitutionally¹⁷² established, and correspond with the hierarchy of Zonal administration.

The Kemant geographically reside in more than two Woredas. Population wise, the Kemant have more or less the same as that of the Himra according to the 1994 Population Census, and the same as that of the Oromo and Awi according to the estimation of the Kemant themselves.

Question	Item	Number	Per cent
Respondents were asked whether they like if the Kemant have self-governance	Yes	222	98.23
	No	3	1.33
	Other	0	0
	Not Responding	1	0.44

Table 12

As Table 12 above shows, respondents were asked whether they support the establishment of self-administration by the Kemant and thereby develop and promote its identity, culture, history and language. Accordingly, almost all of them (98.23%) responded affirmatively while 1.33% of them said “no”.

¹⁶⁸ Article 45(10), the Revised Amhara Regional Constitution of 2001.

¹⁶⁹ The Zonal Administrative Offices Establishment and Determination of their Powers and Duties of Council of Regional Government Regulations No. 1/2001.

¹⁷⁰ *Id.* article 3.

¹⁷¹ It was established by ‘Bahir Dar Special Zone Administration Regulations No.1/1995.’

¹⁷² Article 73, the Revised Amhara Regional Constitution.

Of course, taking into consideration the provisions of both the federal and regional constitution, there is no question in the importance of the establishment of local self-government by a distinct group in order to protect and promote its unique identities. Therefore, taking into account these facts the Kemant should have a nationality administration at Zonal level.

3.3.2.2 Cultural and Linguistic Rights

Culture, language and religion are, among others, identity features of the group and which the group desires to maintain and protect.¹⁷³ The Kemant, as we saw in chapter one, have their own distinct culture, language and religion which are at the verge of extinction due to negative influences from the dominant Amhara culture, language and Orthodox faith. They are in dire need of protection and preservation to pass to the next generation.

Religion, language and cultural life of members of minorities are not only protected under article 27 of the ICCPR, but also many provisions of the International Covenant on Economic, Social and Cultural Rights protect the collective aspect of them.

At the national level, article 39(3) of the Federal Constitution provides that “Every Nation, Nationality and People in Ethiopia has 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.” In the same vein, article 39(1) of the Amhara Region Constitution, which should conform in fundamental rights of individuals and minority rights to the Federal Constitution, states that the ‘people’ of the Region “Has the right to preserve its own National identity and strive towards its due respect, maintain, enrich and care for its legacy and history as well as utilize and enhance its own language, assert its own culture, develop and promote same.”

Therefore, the Kemant has a constitutional right to assert, develop and promote its own culture, religion, language and history as means of preserving its national identity. In other words, state acts, be it regional or federal, which take away this right is unconstitutional. The fact that the majority of the Kemant speak Amharic should not be taken as a ground for denying them

¹⁷³ HENRARD, *supra* note 63, at 243.

recognition and self-governance. Rather, it should be considered as a positive factor tying both the Amhara and the Kemant together while maintaining their distinctions.

This constitutional right may be violated by the state by not treating a certain ethnic group equally with the other. For instance, the state should give equitable coverage through its mass media regarding the promotion of each ethnic group’s history, culture, language and tradition as far as doing so does not violate the fundamental rights of individuals belonging to the concerned ethnic group or others.

Question	Item	Number	Per cent
Whether the respondents have heard Kemant identity, culture, history, etc. in government mass media	No	199	88.05
	Yes	24	10.62
	Not Responding	3	1.33

Table 13

As shown in the above Table, respondents were asked whether they have ever heard transmission of the Kemant identity, culture, history, etc. in either the Federal or Regional mass media, and 88.05 % of them replied “no” while 10.62% said “yes”. Even those who replied affirmatively stated that it was only once or very few days that they have heard.

3.3.2.3 Right to Political Participation and Representation

The interests of a minority group may be affected not only by what goes on in its territory ,but also by those decisions which take place at the regional or federal level. As a result, the group should be represented proportionally to reflect its interests and concerns.

Accordingly, in Ethiopia, each ‘nation, nationality and people’ has the right to equitable representation in state and federal governments.¹⁷⁴Likewise, the peoples of the Amhara Region have the right to “enjoy an effective participation in the system of the federal government in a freer, nondiscriminatory, appropriate, fair and equitable means of representation.”¹⁷⁵In addition,

¹⁷⁴ FDRE Constitution, article39 (3).

¹⁷⁵ Revised Amhara Regional Constitution, article 39 (2).

at the regional level, “the representation of other nationalities and peoples [apart from the Oromo, Awi and Himra peoples] settling in the regional state shall be taken care of with special considerations.”¹⁷⁶

Question	Item	Number	Per cent
Respondents were asked whether they believe the Kemant are represented in the Federal or / and the Regional government offices	Yes	9	3.98
	No	209	92.48
	Other	3	1.33
	Not Responding	5	2.21

Table 14

However, as the figures in Table 14 show, the overwhelming majority (92.48%) of the respondents do not believe that the Kemant are represented in either of the government offices.

Participation does not merely mean representation in the parliament, either in the House of Peoples’ Representatives, or in the House of Federation. It should extend to in the other branches of government: the executive and the judiciary. For decisions by these organs may affect the interests of the minority groups, they shall be also represented.

The Kemant, as one of the ethnic groups of the country and of the Amhara Region, and fulfills the definition of ‘nation, nationality or peoples’, shall have the above right of participation at both the regional and federal governments in accordance with the common article 39 of the Regional and Federal Constitution. Denying such right will have negative repercussions on the enjoyment of other rights of the group.

3.3.2.4 Affirmative Action

An affirmative action is a special measure attached with vulnerable groups in a state. It is an action to treat members of the minority differentially, a deviation from the equal treatment required by principles of individual human rights. It is indispensable in the implementation of minority rights, for minority rights enforcement requires positive actions on the part of the state.

¹⁷⁶ *Id.* article 45(2)

In this respect, neither the Regional, nor the Federal Constitution does provide for special treatment of minorities in the enjoyment of their rights. They treat each ‘nation, nationality and people’ equally as if they are all on equal footing. Even in some respects, they protect better those who may be considered dominant in that they are constitutionally recognized and institutions with their infrastructure are within their control.

The only constitutional provision is article 86(4) of the FDRE which reads ‘Government shall provide special assistance to Nations, Nationalities, and Peoples least advantaged in economic and social development.’ However, this is mere economic objectives and does not entitle minorities to claim as a right.

Accordingly, there is no support made with a view to protecting and promoting the Kemant identity, culture, language and history. Among the respondents, 87.61% said both the Federal and Regional governments have not yet made any action in favor of the Kemant; Only 4.42 replied they have made such efforts in favor of the Kemant, as can be understood from the following Table.

Question	Item	Number	Per cent
Whether the Federal/Regional Government has made any effort with respect to the promotion and protection of Kemant identity, culture, history, etc	Yes	10	4.42
	No	198	87.61
	Other	12	5.31
	Not Responding	6	2.65

Table 15

And the fact that the state does not make such actions in favor of the Kemant has an impact on members in using Kemantney language. Table 16 shows that 45.93 %, 0.48%, 36.84% and 16.27 % of the respondents replied lack of opportunity to learn, stigma and exclusion, lack of opportunity and stigma and exclusion, and all ,respectively, as a reasons to their inability to learn Kemantney.

Question	Item	Number	Per cent
Reasons for respondents' inability to use Kemantney	Lack of Opportunity to learn	96	45.93
	Ashamed of it	0	0
	Stigma & exclusion	1	0.48
	Lack of Opportunity and stigma & exclusion	77	36.84
	All	34	16.27

Table 16

From the respondents' responses, it is possible to discern the importance of the affirmative action in favor of minorities in using their rights and how lack of it affects their rights.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

A) Conclusion

Contemporarily, protection of minority rights has become a burning issue in many parts of the world. In developing countries, particularly “new states which emerged from the rubble of decolonization have had to face the tremendous task of building up a state comprising peoples of different ethnic, linguistic, cultural, religious and tribal affiliations.”¹⁷⁷ Minority rights and self-determination in favor of ethnic minority rights have become vogue in human rights discourse and among scholars and activists despite the fact that there is no a separate international convention on the rights of minorities. Some countries’ laws and practices in this regard are promising, among which is post-1991 Ethiopia. By incorporating self-determination as a constitutional right of sub-national groups or ‘nations, nationalities or peoples’, Ethiopia has gone far not only in Africa but also in the world. Not only is self-determination made a constitutional right, but also it is unconditional. Moreover, the beneficiaries are identified. These issues are not still determined in international law and there is no consensus among the international community. In other words, in this regard, Ethiopia is ahead of international law and the international community.

However, this unconditional right to self-determination is not granted to all minorities by international standards. The Constitution has recognized constitutionally only the Afar, Amhara, Harare Peoples, Oromo, Somali and Tigre, and collectively, the Gambela Peoples, Benishangul-Gumuz and Southern nations, nationalities and peoples by establishing their own state. The ethnic groups in the first category by default are beneficiaries of self-determination while other ethnic groups within them and within the other states are expected to fulfill the definitional requirements of nation, nationality or peoples. By so doing, the Constitution has made two classes of ethnic groups: the constitutionally recognized and the non-constitutionally recognized, which could be termed *second-class ethnic groups*. In other words, the Ethiopian Constitution

¹⁷⁷REHMAN, *supra* note 96, at 219.

has gone far in enshrining secession but less in providing special rights to ethnic minorities. Even the second-class ethnic groups may be grouped, practically speaking, into two: those *politically-favored* in that they enjoy the status of ‘nation, nationality or people’ as they are recognized in the regional constitutions and those which are *non-politically-favored* ethnic groups.

In turn, state constitutions followed the same procedures as the Federal Constitution. As we saw, the Amhara National Regional State constitution recognized some ethnic groups and denied others. The Kemant case shows that the second-class ethnic groups are, practically and politically, under the sovereignty of states in which they are found. At worst, the Kemant fall in the category of *non-politically-favored* ethnic groups. Although the ultimate power is vested with the House of Federation, the states determine those which deserve the status of nation, nationality or peoples among such second-class ethnic groups. Such determination depends, not on the legal requirements, but on political considerations of the mainstream ethnic group in whose name the state is designated.

Proclamation 251/2001 empowers the regional states to entertain any claims related to identities. To reiterate, even if the ultimate power resides in the House of Federation in deciding issues of identities, the House may not be a neutral body. This is due to the fact that the mainstream ethnic group (state) is represented while the claimant is not. For instance, in Kemant identity claim in the House of Federation, the Amhara ethnic group will be involved in its own case. There is no guarantee in the House that other major ethnic groups against allying with the state in which the identity claim is raised. Other ethnic groups may be motivated by their political considerations in allying than taking in to consideration the valid legal claims of the *non-politically-favored* ethnic groups.

The present research found that regional states, particularly which are dominated by one strong ethnic group, such as the Amhara, not only suffer from partiality and bias in considering identity claims, but also they may hinder them from using their rights under the Federal Constitution. For instance, the Kemant had been included in the National Population and Housing Census until 1994, which is a year before the establishment of regional states, but the Kemant were denied this right of recognition in the next Census of 2007. As the research finding indicated, the overwhelming majority of the Kemant populations are eager to see their distinct identity

recognized and protected. However, they could not either get the region's favor or pass the huddles posed by it in using their rights as enshrined in the Federal Constitution.

By definition, minority rights are claims against the dominant ethnic group or the majority, and causing these claims to be decided by such dominant group is not valid. The writer argues that Kemant's constitutional right to self-determination versus Amhara Regional State dominance can be analogized with Ethiopia's right on the Blue Nile water versus Egypt's power. This is equally applicable to other *second-class ethnic groups*, particularly those *non-politically-favored* ones. Indeed, Minasse Haile is correct in asserting "the Ethiopian ethnic federation would not be able to limit the powers of the state governments, thereby placing the fate of minorities in the subunits at the mercy of the tribal majorities without any protection by the central government."¹⁷⁸

To sum up, these *non-politically-favored* ethnic groups can be considered as aliens to the Federal Constitution, for the Constitution vests sovereignty¹⁷⁹ with each 'nation, nationality or peoples' and they have not yet attained such status. In effect, the Constitution has caused them to be forcedly assimilated with the dominant ethnic group in the states in which they are found.

B) Recommendations

It will not be an exaggeration to say number '80' in Ethiopia designates the number of ethnic groups although the actual number is greater than that.¹⁸⁰ The point to make is that there are many more ethnic groups than that are recognized as 'nations, nationality and peoples' and have representation in the House of Federation. Put simply, only sixty-five ethnic groups have representation in the House of Federation.¹⁸¹ It is such status that entitles to the group to enjoy the rights enshrined under sub-articles (1), (2) & (3) of 39, Federal Constitution. In other words, the Constitution does not have any other provision which can benefit ethnic groups which have not yet obtained such status; the only option left to them is to be assimilated with the mainstream

¹⁷⁸ Minasse Haile, *The New Ethiopian Constitution: Its Impact Upon Unity, Human Rights And Development*, 20 SUFFOLK TRANSNATIONAL LAW REVIEW (1996), at 51.

¹⁷⁹ According to article 8, 'All sovereign powers resides in the Nations, Nationalities and Peoples of Ethiopia.'

¹⁸⁰ There are 85 ethnic groups in the country according to Census 2007, *supra* note 9, at 86-88. Even this does not include all ethnic groups, like the Kemant.

¹⁸¹ Abera Degefa, *supra* note 81, at 134-135.

ethnic group. No doubt this option is against their rights and will affect the very existence of them. As a result, the writer suggests the following solutions:

Since the problems relate to the inherent defect of the constitution, they demand an amendment of the constitution. However, the very article which contained self-determination and the rights which relate to identities is found in Chapter Three of the Federal Constitution which requires a very rigid procedure of amendment.¹⁸² The viable alternative will be to recognize as ‘nation, nationality or people’ an ethnic group which uses its right of self-determination. To follow up such implementations, the House of Federation should take the responsibility as granted by the Constitution, rather than delegating its power to the Regional States within which the concerned ethnic groups found. As a result, Proclamation No. 251/2001, which empowers regional states to consider at first hand the claims of an ethnic group, should be repealed.

As stated earlier, the Constitution made two categories of ethnic groups, of which the second-class ethnic groups are of the kind that may be called by international standard as minorities. The Constitution, instead of making special rights to them, made discrimination against them. As this deviates arguably from article 27 of International Covenant on the Civil and Political Rights, which is interpreted as comprising affirmative action, the provisions of Constitution should be interpreted in line with such international document.¹⁸³ In this regard, the Federal Government should assist such ethnic groups in their efforts in using their right of self-determination as enshrined under article 39. With such support, they may come to the positions of the dominant ethnic groups, for “[n]either the Amharas and Tigrrians nor the Oromos have a monopoly to dominate Ethiopia’s political scene on the basis of dynastic credentials, traditional claims, demographic advantage or the advantage of being better endowed with resources.”¹⁸⁴

Lastly, the writer suggests to the Federal Government for an establishment of institution which will be entrusted with supervision of the implementation of rights of ethnic groups and should be

¹⁸² See articles 104 and 105 cum article 39.

¹⁸³ FDRE Constitution, article 13(2).

¹⁸⁴ KINFE ABRAHAM, ETHIOPIA FROM BULLETS TO THE BALLOT BOX: THE BUMPY ROAD TO DEMOCRACY AND THE POLITICAL ECONOMY OF TRANSITION 63(The Red Sea Press Inc., 1994).

neutral or involves both parties.¹⁸⁵ The House of Federation should not only see cases of identity laid before it by the parties. It should study and collect by its own relevant facts about each ethnic groups of the country.

¹⁸⁵ For instance, the Kemant identity claims were deliberated, among others, on 9 January 2010 by the Standing Committee of the House of Federation. *ETV Evening News, 9 January 2010*. Although I could not access to the deliberation of the Committee as it is not yet translated into script, an interview with anomalous persons from the House attending the session, delegates from the Amhara state were present while the Kemant was not represented. The delegates strongly opposed to not only the Kemant did originally submit a proper claim in the region but also the legitimacy of the 18,500 petitions lodged with the House of the Federation by the representatives of the Kemant for lack of 'official seal'. However, how can claimants get petitions authenticated by the government? After all article 21 of Proclamation No. 251/ 2001 does not necessarily require official seal, and if it is found necessary depending on the circumstances, it is applicable to those which have their own self-administration. Despite these kinds of predicaments by claimants, the decision of the Committee seems to be in favor of the state. Therefore, establishing a neutral body in which both parties will be involved will solve these problems by the minority ethnic groups.

BIBLIOGRAPHY

BOOKS

Alfredsson, Gudmundur, *Minority Rights and a New World Order*, in BROADENING THE FRONTIERS OF HUMAN RIGHTS: ESSAYS IN HONOR OF ASBJORN EIDE, 55-77(Donna Gomien, ed, 1993).

Alston, Philip, *Peoples' Rights: Their Rise and Falls*, in PEOPLES' RIGHTS (Philip Alston, ed., Oxford University Press, 2002).

CARLSON, ANDREW J. AND CARSON, DENNIS G., HEALTH, WEALTH AND FAMILY IN RURAL ETHIOPIA: KOSSOYE, NORTH GONDAR REGION, 1963-2007(Addis Ababa University Press, 2008).

Crawford, James, *Right of Self determination in International Law*, in PEOPLES' RIGHTS (Philip Alston, ed. , Oxford University Press, 2002).

Dinstein, Yoram and Tobory, Mala, eds., THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS (Dordrecht/ Boston/London: Martinis Nijhoff Publishers, 1992).

FASIL NAHOM, A CONSTITUTION FOR A NATION OF NATIONS: THE ETHIOPIAN PROSPECTIVE (Red Sea Press, Inc., Asmara: 1997).

GAMST, FREDERICK C., THE QEMANT: PAGAN-HEBRAIC PEASANTRY OF ETHIOPIA (New York: Holt, Rinehart and Winston, 1969).

GHAI, YASH,(ED.), AUTONOMY AND ETHNICITY: NEGOTIATING COMPETING CLAIMS IN MULTIETHNIC STATES (Cambridge University Press,2000).

Hailbronner, Kay, *The Legal Status of Population Groups in a Multinational State under Public International Law*, in THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinis Nijhoff Publishers, 1992)

HANCOCK, GRAHAM, THE SIGN AND THE SEAL: A QUEST FOR THE LOST ARK OF THE COVENANT (William Heinemann LTD, 1992, Reprinted in 1997 by Alley Books).

HENRARD, KRISTIN, DEVISING AN ADEQUATE SYSTEM OF MINORITY PROTECTION: INDIVIDUAL HUMAN RIGHTS, MINORITY RIGHTS AND THE RIGHT TO SELF-DETERMINATION (The Hague/Boston/London: Martinus Nijhoff Publishers, 2000).

KINFE ABRAHAM, ETHIOPIA FROM BULLETS TO THE BALLOT BOX: THE BUMPY ROAD TO DEMOCRACY AND THE POLITICAL ECONOMY OF TRANSITION (The Red Sea Press Inc., 1994).

Kohli, Atul, *Federalism and the Accommodation of Ethnic Nationalism*, in FEDERALISM AND TERRITORIAL CLEAVAGES 251-299 (Ugo M. Amoretti and Nancy Bermeo eds., 2004). Kottak , KOTTACK, CONRAD PHILLIP, ANTHROPOLOGY: THE EXPLORATION OF HUMAN DIVERSITY 54 (McGraw-Hill: New York/London 6th ed., 1994).

KYMLICKA, WILL, POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM AND CITIZENSHIP(Oxford University Press, 2001).

Kymlicka, Will, *Emerging Western Models of Multination Federalism:Are They Relevant for Africa?*, in, ETHNIC FEDERALISM: THE ETHIOPIAN EXPERIENCE IN COMPARATIVE PERSPECTIVE(David Turton, (ed) Addis Ababa: Addis Ababa University, 2006).

Kymlicka, Will , *Federalism, Nationalism and Multiculturalism*, in THEORIES OF FEDERALISM : A READER (Dimitrios Karmis and Wayne Normal ,eds. , PalgraveMacmillan, New York , 2005).

LYONS, GENE .M AND MAYAL, JAMES (EDS.), INTERNATIONAL HUMAN RIGHTS IN THE 21ST CENTURY: PROTECTING THE RIGHTS OF GROUPS (Rowman & Littlefield Publishers, Inc., Lanham, 2003).

Martin Estebanez, Maria Amore, *The Protection of National or Ethnic, Religious and Linguistic Minorities*, in THE EUROPEAN UNION AND HUMAN RIGHTS 42, 133-163 (Nanette A. Neuwahl and Allan Rosas, eds, Martinus Nijhoff Publishers, The Hague,1995).

REHMAN, JAVAID, THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS (Kluwer Law International: The Hague/London/Boston, 2000).

SIGLER, JAY A., *MINORITY RIGHTS: A COMPARATIVE ANALYSIS* (1983).

STERN, HENRY A., *WANDERINGS AMONG THE FALASHAS IN ABYSSINIA: TOGETHER WITH A DESCRIPTION OF THE COUNTRY AND ITS VARIOUS INHABITANTS* 43(London: Wertheim, Macintosh, and Hunt, 1862).

THORNBERRY, PATRICK, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* (Clarendon Press, Oxford, 1991).

Tronvol, Kjetil, *Minority Rights Group International, ETHIOPIA: A NEW START?* (2000).

ZELALEM LEYEW, *THE KEMANTNEY LANGUAGE: A SOCIOLINGUISTIC AND GRAMMATICAL STUDY OF LANGUAGE REPLACEMENT* (Unpublished PhD Dissertation, Addis Ababa University, 2000).

Journals and other Documents

Aberra Degefa , *The Scope Of Rights of National Minorities Under The Constitution Of Federal Democratic Republic Of Ethiopia*, in 2 SERIES ON ETHIOPIAN CONSTITUTIONAL LAW (Faculty of Law ,2008).

Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, 28 THE YALE JOURNAL OF INTERNATIONAL LAW (2003).

Bereket Habteselassie, *Self- Determination in Principle and In Practice: The Ethiopian – Eritrean Experience*, 29 COLUMBIA HUMAN RIGHTS LAW REVIEW 91(1997).

Buchanan, Allen, *Federalism, Secession, and the Morality of Inclusion*, 37 ARIZ. L. REV. 54(1995).

CAPOTORTI, FRANCESCO, *STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES* AT 96, U. N . Sales No. E. 91.XIV.2 (1991), as quoted by Jerome Wilson, *Ethnic Groups and Self-Determination*, 11 CONN. J. INT’L L. (1995-1996).

Castellino, Joshua and Gilbert, Jérémie, *Self-Determination, Indigenous Peoples and Minorities*, 3 MACQUARIE LAW JOURNAL 8[2003].

Freeman, Michael, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, (Jul., 1999).

GROS-ESPIELL ,H., THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS (New York: United Nations, 1980), para. 59, as cited by Michael Freeman, *The Right To Self-Determination In International Politics: Six Theories In Search Of A Policy*, 25 REVIEW OF INTERNATIONAL STUDIES, (Jul., 1999).

Kirgis, Frederic, *The Degree of Self- Determination in the United Nations Era*, 88 AM. J. INT'L. L. (1994).

Henrard, Kristin and Smis, Stefaan, *Recent Experiences In South Africa And Ethiopia To Accommodate Cultural Diversity: A Regained Interest In The Right Of Self-Determination*, 44 JOURNAL OF AFRICAN LAW1 (2000).

Minasse Haile, *The New Ethiopian Constitution: Its Impact Upon Unity, Human Rights And Development*, 20 SUFFOLK TRANSNATIONAL LAW REVIEW (1996).

Quirin, James, *Caste and Class in Historical North-West Ethiopia: The Beta Israel (Falasha) and Kemant, 1300-1900*, 39 JOURNAL OF AFRICAN HISTORY (Cambridge University Press, 1998).

Roth, Stephen J., *Toward A Minority Convention: Its Need And Content*, in THE PROTECTION OF MINORITY RIGHTS AND HUMAN RIGHTS (Yoram Dinstein and Mala Tobory, eds., Dordrecht/ Boston/London: Martinis Nijhoff Publishers, 1992).

Thornberry, Patrick, *Self-Determination, Minorities, Human Rights: A Review of International Instrument*, 38 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, (Oct., 1989).

Van der Beken, Christophe, *Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level*, 20AFRICA FOCUS 105 (2007).

Van der Beken , Christophe, *Ethiopian Constitutions and the Accommodation of Ethnic Diversity :The Limits of the Territorial Approach*, in, ISSUES OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Tsegay Regassa, ed, Faculty of Law, Addis Ababa University, 2009).

Wilson, Jerome, *Ethnic Groups and Self-Determination*, 11 CONN. J. INT'L L. 465 (1995-1996).
World Morning Star Association, *Igbo Nation: Its Origin and Significance*, MORNING STAR NEWS, visited on Oct. 19,2009, 1: 09: 49PM at <file:///Users/James%20T.%20Womack/Desktop/Editorial.mht>.

Yared Legesse, *Linguistic Regimes in Multinational Federations: The Ethiopian Experience in a Comparative Perspective*, in, *ISSUE OF FEDERALISM IN ETHIOPIA: TOWARDS AN INVENTORY*, 2ETHIOPIAN CONSTITUTIONAL LAW SERIES (Regassa, Tsegay ed., Faculty of Law, Addis Ababa University, 2009).

The UN Human Rights Committee, General Comment No. 23, Article 27 ICCPR, U.N.Doc.HRI/GEN/1/Rev.1. at 38(1994).

LAWS

INTERNATIONAL

The Convention On The Prevention and Punishment of the Crime of Genocide, General Assembly Resolution, UNGAR 260 A(III) (1948).

International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, entered into force 23 Mar. 1976, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966).

United Nations Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities, UN.GA. Res.47/135, 18 December 1992.

NATIONAL

Argoba Nationality Woreda Establishment and Determination of Its Powers and Duties Proclamation No.130/2006, Amhara National Regional State Zikre Hig-No.15 April 18, 2006.

The Zonal Administrative Offices Establishment and Determination of their Powers and Duties of Council of Regional Government Regulations No. 1/2001.

Bahir Dar Special Zone Administration Regulations No.1/1995.

Proclamation No.236 /1983 to Provide for the Establishment of the Institute for the Study of Ethiopian Nationalities, Negarit Gazeta, 42nd Year, No. 7.

A Proclamation to Provide For Consolidation of the House of Federation and Definition of Its Powers and Responsibilities Proclamation No.251/2001, Federal Negarit Gazeta, 7th Year No.41, Addis Ababa -6th July,2001.

The Federal Democratic Republic Of Ethiopia Constitution of 1995 Federal Negarit Gazeta, 1st Year No. 1 Addis Ababa-21st 1995.

The Revised Amhara National Regional Constitution Approval Proclamation No. 59/ 2001 Amhara National Regional State Zikre Hig-No.15 November 5/ 2001.

Office of the Population and Housing Census Commission , Transitional Government of Ethiopia, The 1984 Population and Housing Census Analytical Report at National Level, Addis Ababa, December 1991.

Office of Population and Housing Census Commission, Central Statistical Agency, Federal Democratic Republic of Ethiopia, The 1994 Population and Housing Census, Results at the National Level, Volume 1 Statistical Report, Addis Ababa, June 1998.

Proclamation No.7/1992 to provide for the Establishment of National/Regional Self-governments, Negarit Gazeta-51th Year, No. 2.

Population Census Commission, Federal Democratic Republic of Ethiopia, Summary and Statistical Report of the 2007 Population and Housing Census, Addis Ababa, December 2008.

Interviews made with:

1) Ato Gebeyu Abelti, Vice Director, Population and Social Statistics, Central Statistics Agency, on 30 November 2009, at 11:30-6:30, Addis Ababa.

2)Ato Tamirat Dejene, Deputy Head, Government Information and Media Relations Work Process Owner, Amhara Regional State Information Bureau , on 25November 2009 at 11:00-11:20 am, Bahir Dar.

- 3) Womber Muluneh Mersha, the highest religious leader of the Kemant religion(Hege-Lebona) at Aykel (on 17 November 2009) and at Gondar (on 18 November 2009).
- 4)Ato Nega Gete, who wrote a book about the Kemant and who has struggled for their recognition and self-governance since the 1991, on 18 November 2009 at 4:00- 6:00 pm , Gondar.
- 5) Ato Endeshaw Bogale, who has ever been struggling for the recognition and self-rule and other interests of the Kemant since the 1960s and currently Chairperson of Executive Committee, Provisional Committee of Kemant Identity and Self-Governance Claims Council, on 22 November 2009 at 7:00- 9:00 , Gondar.
- 6) Ato Challachew Gelaw, Amharic Language Education Affairs Executor, Amhara Regional State Education Bureau, on 23 November 2009 at 4: 00-4: 30 pm, Bahir Dar.
- 7) Ato Habtamu Buzuneh, Social Sciences Curriculum Executor, Amhara Regional State Education Bureau, on 23 November 2009 at 4:30-5: 00 pm, Bahir Dar.
- 8) Ato Abebe Arega, Deputy Speaker of the Amhara Regional Council, on 24 November 2009 at 2:30-3: 00, pm, Bahir D
- 9)Dr. Misrak Mekonnen, Speaker of the Amhara Regional Council, on 25 November 2009 at 9:00-9: 30, Bahir Dar.
- 10)Ato Tesfahun Mulatu, Deputy Chairperson of Executive Committee, Provisional Committee of Kemant Identity and Self-Governance Claims Council, on 26 November 2009 at 6:00- 8:00, Gondar.

Annex 1: Questionnaire

The Questionnaire relates to a study being conducted on Minority Rights Protection in Amhara National Regional State with special emphasis on the Kemant People which are found in North Gondar Administrative Zone. The Study is for the partial fulfillment of the requirements of Master of Laws (LL.M) in Human Rights and is sponsored by Postgraduate Program of Faculty of Law, Addis Ababa University.

Introduction:- By answering the questions properly, you are contributing greatly to the protection of the minority rights of the Kemant in particular and other nations and nationalities of Ethiopia in general. Thank You!

N.B:-1. In filling the questionnaire, it is not necessary to mention your name.

2. Answer the questions by putting the (√) mark in the box in front of the choice you agree and by writing on the space provided next to (Other); if you want to change the first choice, put the (×) mark on it and put the (√) mark in the box in front of the choice you finally agree.

I. Personal Information

- | | | |
|--|--------------|---|
| 1. Sex _____ | 2. Age _____ | 3. Occupation |
| 4. Education Background <input type="checkbox"/> | | 3.1 Private <input type="checkbox"/> |
| 4.1 Reading and writing <input type="checkbox"/> | | 3.2 Gov't Employee <input type="checkbox"/> |
| 4.2 Elementary School <input type="checkbox"/> | | 3.3 Farmer <input type="checkbox"/> |
| 4.3 Secondary School <input type="checkbox"/> | | 3.4 Student <input type="checkbox"/> |
| 4.4 Bachelor Degree <input type="checkbox"/> | | 3.5 Unemployed <input type="checkbox"/> |
| 4.5 Master's Degree <input type="checkbox"/> | | 3.6 Other _____ |
| 4.6 Other _____ | | |
| 6. Kebele _____ | | 5. Woreda _____ |

II. Choose or state what you think is best.

1. What is your ethnic group?

A/ Kemant

B/ Amhara

2. Do you know the fact that 85 ethnic groups of Ethiopia were counted in the 2007 National Population and Housing Census while the Kemant were not counted?

A/ No

B/ Yes

3. Were you asked your nation/nationality during the Census under discussion?

A/Yes

B/ No

4. What was your reply, if you were asked about your ethnic group, during the Census?

A/ Kemant

B/ Amhara

C/ Other

5. What are the implications of the actions of the government by not including the Kemant in the Census as stated in question “2”?

A/ Denial of the existence of the Kemant

B/ Depriving the Kemant of their identity, culture, language, history and religion, and ultimately their disappearance.

C/ The fact that the Kemant are not treated equally with other ethnic groups.

D/ All

E/ Other_____

6. Are the Kemant and the Amhara the same in terms of ethnicity?

A/ No

B/ Yes

7. If your reply to question “6” is “No”, on what grounds they are distinct?

A/ Descent

B/ Religion

C/ Language

D/ All

E/ Other

8. With which ethnicity do you prefer to be identified, Amhara or Kemant?

A/ Amhara

B/ Kemant

9. If your reply to question “8” is “B”, have you ever disclosed your ethnicity to persons who are not members of the Kemant?

A/ Yes

B/ No

10. If your reply to question “9” is “No”, what are the reasons?

A/ Feeling of inferiority complex

B/ Fear of stigma and exclusion

C/ A & B

D/ Other_____

11. Do you speak Kemantney?

A/ No

B/ Yes

12. If your reply to question “11” is “No”, what are the reasons?

A/ Lack of opportunity to learn

B/ Being ashamed of speaking the language

C/ Fear of stigma and exclusion

D/ A & C

E/All

F/ Other_____

13. If your reply to question “11” is “No”, do you like still to be identified with Kemant ethnicity and use Kemantney?

A/ Yes

B/ No

14. If your reply to question “11” is “No”, does the fact that you use Amharic entail you to be an Amhara?

A/ No

B/ Yes

15. Do you think that either the Federal or Regional Government has made any effort with a view to Kemant identity, culture, language and history to be recognized and respected?

A / Yes

B/ No

C/ Other_____

16. Do you think the Kemant are represented in different levels of offices of either the Federal or Regional Government?

A/ Yes

B/ No

C/ Other_____

17. If your reply to question “16” is “No”, what may be the reasons?

A/ The people/Kemant/ do not want to be represented

B/ Governmental influence

C/Other_____

18. Do you like if the Kemant have their own self-governance and thereby to develop and to have respected their language, culture and history and to?

A/ Yes B/ No C/ Other _____

19. Have you ever heard Kemant identity, culture, history, etc., transmitted in either Federal or Regional government mass media?

A/ No B/ Yes

20. What is your religion?

A/ Orthodox B/ Protestant

C/ *Hege-Lebona*/Kemant Religion/ D/ Catholic

E/ Islam F/ Other _____

21. Can you still identify yourself with Kemant ethnicity even if your reply to question “20” is not *Hege-Lebona*?

A/ Yes B/No

22. If your reply to question “20” is “Kemant Religion”, is there breach or restriction in practicing it?

A/ Yes B/ No

23. If your reply to question “22” is “Yes”, has the government taken measures?

A/ No B/ Yes C/ Other _____

24. What is the geographical location or settlement of the Kemant in rural areas?

A/ Contiguously settled in areas isolated from the Amhara people

B/ Settled dispersedly with the Amhara people

C/ Other _____

25. What do you thing the government should do with a view to developing and promoting the Kemant identity, language, culture and history by using their right of self-determination? State.

Annex 1: Questionnaire

The Questionnaire relates to a study being conducted on Minority Rights Protection in Amhara National Regional State with special emphasis on the Kemant People which are found in North Gondar Administrative Zone. The Study is for the partial fulfillment of the requirements of Master of Laws (LL.M) in Human Rights and is sponsored by Postgraduate Program of Faculty of Law, Addis Ababa University.

Introduction:- By answering the questions properly, you are contributing greatly to the protection of the minority rights of the Kemant in particular and other nations and nationalities of Ethiopia in general. Thank You!

N.B:-1. In filling the questionnaire, it is not necessary to mention your name.

2. Answer the questions by putting the (√) mark in the box in front of the choice you agree and by writing on the space provided next to (Other); if you want to change the first choice, put the (×) mark on it and put the (√) mark in the box in front of the choice you finally agree.

I. Personal Information

- | | | |
|--|--------------|---|
| 1. Sex _____ | 2. Age _____ | 3. Occupation |
| 4. Education Background <input type="checkbox"/> | | 3.1 Private <input type="checkbox"/> |
| 4.1 Reading and writing <input type="checkbox"/> | | 3.2 Gov't Employee <input type="checkbox"/> |
| 4.2 Elementary School <input type="checkbox"/> | | 3.3 Farmer <input type="checkbox"/> |
| 4.3 Secondary School <input type="checkbox"/> | | 3.4 Student <input type="checkbox"/> |
| 4.4 Bachelor Degree <input type="checkbox"/> | | 3.5 Unemployed <input type="checkbox"/> |
| 4.5 Master's Degree <input type="checkbox"/> | | 3.6 Other _____ |
| 4.6 Other _____ | | |
| 6. Kebele _____ | | 5. Woreda _____ |

II. Choose or state what you think is best.

1. What is your ethnic group?

A/ Kemant B/ Amhara

2. Do you know the fact that 85 ethnic groups of Ethiopia were counted in the 2007 National Population and Housing Census while the Kemant were not counted?

A/ No B/ Yes

3. Were you asked your nation/nationality during the Census under discussion?

A/Yes B/ No

4. What was your reply, if you were asked about your ethnic group, during the Census?

A/ Kemant B/ Amhara C/ Other

5. What are the implications of the actions of the government by not including the Kemant in the Census as stated in question “2”?

A/ Denial of the existence of the Kemant

B/ Depriving the Kemant of their identity, culture, language, history and religion, and ultimately their disappearance.

C/ The fact that the Kemant are not treated equally with other ethnic groups.

D/ All

E/ Other_____

6. Are the Kemant and the Amhara the same in terms of ethnicity?

A/ No B/ Yes

7. If your reply to question “6” is “No”, on what grounds they are distinct?

A/ Descent B/ Religion C/ Language

D/ All E/ Other

8. With which ethnicity do you prefer to be identified, Amhara or Kemant?

A/ Amhara B/ Kemant

9. If your reply to question “8” is “B”, have you ever disclosed your ethnicity to persons who are not members of the Kemant?

A/ Yes B/ No

10. If your reply to question “9” is “No”, what are the reasons?

A/ Feeling of inferiority complex

B/ Fear of stigma and exclusion

C/ A & B

D/ Other_____

11. Do you speak Kemantney?

A/ No

B/ Yes

12. If your reply to question “11” is “No”, what are the reasons?

A/ Lack of opportunity to learn

B/ Being ashamed of speaking the language

C/ Fear of stigma and exclusion

D/ A & C

E/All

F/ Other_____

13. If your reply to question “11” is “No”, do you like still to be identified with Kemant ethnicity and use Kemantney?

A/ Yes

B/ No

14. If your reply to question “11” is “No”, does the fact that you use Amharic entail you to be an Amhara?

A/ No

B/ Yes

15. Do you think that either the Federal or Regional Government has made any effort with a view to Kemant identity, culture, language and history to be recognized and respected?

A / Yes

B/ No

C/ Other_____

16. Do you think the Kemant are represented in different levels of offices of either the Federal or Regional Government?

A/ Yes

B/ No

C/ Other_____

17. If your reply to question “16” is “No”, what may be the reasons?

A/ The people/Kemant/ do not want to be represented

B/ Governmental influence

C/Other_____

18. Do you like if the Kemant have their own self-governance and thereby to develop and to have respected their language, culture and history and to?

A/ Yes B/ No C/ Other _____

19. Have you ever heard Kemant identity, culture, history, etc., transmitted in either Federal or Regional government mass media?

A/ No B/ Yes

20. What is your religion?

A/ Orthodox B/ Protestant

C/ *Hege-Lebona*/Kemant Religion/ D/ Catholic

E/ Islam F/ Other _____

21. Can you still identify yourself with Kemant ethnicity even if your reply to question “20” is not *Hege-Lebona*?

A/ Yes B/No

22. If your reply to question “20” is “Kemant Religion”, is there breach or restriction in practicing it?

A/ Yes B/ No

23. If your reply to question “22” is “Yes”, has the government taken measures?

A/ No B/ Yes C/ Other _____

24. What is the geographical location or settlement of the Kemant in rural areas?

A/ Contiguously settled in areas isolated from the Amhara people

B/ Settled dispersedly with the Amhara people

C/ Other _____

25. What do you thing the government should do with a view to developing and promoting the Kemant identity, language, culture and history by using their right of self-determination? State.

Annex 2: Summary of the Data

I. Personal Information of Respondents

Variables	Item	Number	Percentage
Sex	Male	146	64.60
	Female	80	35.40
Age	18-30	104	46.02
	31-40	57	25.22
	41-50	36	15.93
	51&above	29	12.83
Occupation	Gov't employee	126	55.75
	Private	36	15.93
	Farmer	4	1.77
	Student	22	9.73
	Unemployed	8	3.54
	Others	5	2.21
	Not Responding	25	11.06
Education Background	Reading & Writing	6	2.65
	Elementary	18	7.96
	Secondary	57	25.22
	Certificate	5	2.21
	Diploma	40	17.70
	Degree	57	25.22
	Masters	3	1.33
	Not Responding	40	17.70
Residence (Woreda)	Gondar	108	47.79
	Lay Armachiho	52	23.00
	Chilga	55	24.34
	Metema	2	0.88
	Wogera	2	0.88
	Quara	1	0.44
	Not Responding	6	2.65

II. Summary of the Data (main)

Question	Item	Number	Percentage
1	Kemant	224	99.12
	Amhara	2	0.88
2	No	60	26.55
	Yes	166	73.45
3	Yes	105	46.46
	No	121	53.54
4	Kemant	88	83.81
	Amhara	14	13.33
	Other	3	2.86
5	Denial of the existence of Kemant	3	1.33
	Depriving of their identity, religion culture, language & history	15	6.64
	Not treating equally with other nation/nationalities	26	11.50
	All	178	78.76
	Other	4	1.77
6	No	210	92.92
	Yes	12	5.31
	Not Responding	4	1.77
7	Descent	27	12.86
	Religion	1	0.48
	Language	6	2.86
	All	164	78.09
	Other(descent and language)	10	4.76
	Not Responding	2	0.95
8	Amhara	3	1.33
	Kemant	215	95.13
	Other	6	2.65
	Not Responding	2	0.88
9	Yes	102	47.44
	No	113	52.56
10	Inferiority Complex	2	1.77
	Stigma & exclusion	13	11.50
	Both	96	84.96
	Other	2	1.77
11	No	209	92.48
	Yes	17	7.52
12	Lack of Opportunity to learn	96	45.93
	Ashamed of it	0	0
	Stigma & exclusion	1	0.48
	Lack of Opportunity and stigma & exclusion	77	36.84
	All	34	16.27
	Other	1	0.48
13	Yes	203	97.13

	No	6	2.87
14	No	203	97.13
	Yes	6	2.87
15	Yes	10	4.42
	No	198	87.61
	Other	12	5.31
	Not Responding	6	2.65
16	Yes	9	3.98
	No	209	92.48
	Other	3	1.33
	Not Responding	5	2.21
17	Unwillingness to be represented	1	0.48
	Governmental influence(negative)	179	85.65
	Other	29	13.87
18	Yes	222	98.23
	No	3	1.33
	Other	0	0
	Not Responding	1	0.44
19	No	199	88.05
	Yes	24	10.62
	Not Responding	3	1.33
20	Orthodox	218	96.46
	Protestant	4	1.77
	<i>Hege-Lebona</i> /Kemant Religion/	3	1.33
	Catholic	0	0
	Islam	0	0
	Other	1	0.44
21	Yes	187	83.86
	No	11	4.93
	Not Responding	25	11.21
22	Yes	3	100
	No	0	0
23	No	3	100
	Yes	0	0
	Other	0	0
24	Contiguous	170	75.22
	Not contiguous	43	19.03
	Other	13	5.75
25	Respect and implement art.39(Treat the Kemant equally with others)	156	69.03
	Special support	23	10.18
	People Struggle for their rights	10	4.42
	Media Coverage, Schools for Kemantney, printing and distributing the history and culture of the Kemant	29	12.83
	Inclusion in the Census	6	2.65
	Not Responding	2	0.88

Annex 2: Summary of the Data

I. Personal Information of Respondents

Variables	Item	Number	Percentage
Sex	Male	146	64.60
	Female	80	35.40
Age	18-30	104	46.02
	31-40	57	25.22
	41-50	36	15.93
	51&above	29	12.83
Occupation	Gov't employee	126	55.75
	Private	36	15.93
	Farmer	4	1.77
	Student	22	9.73
	Unemployed	8	3.54
	Others	5	2.21
	Not Responding	25	11.06
Education Background	Reading & Writing	6	2.65
	Elementary	18	7.96
	Secondary	57	25.22
	Certificate	5	2.21
	Diploma	40	17.70
	Degree	57	25.22
	Masters	3	1.33
	Not Responding	40	17.70
Residence (Woreda)	Gondar	108	47.79
	Lay Armachiho	52	23.00
	Chilga	55	24.34
	Metema	2	0.88
	Wogera	2	0.88
	Quara	1	0.44
	Not Responding	6	2.65

II. Summary of the Data (main)

Question	Item	Number	Percentage
1	Kemant	224	99.12
	Amhara	2	0.88
2	No	60	26.55
	Yes	166	73.45
3	Yes	105	46.46
	No	121	53.54
4	Kemant	88	83.81
	Amhara	14	13.33
	Other	3	2.86
5	Denial of the existence of Kemant	3	1.33
	Depriving of their identity, religion culture, language & history	15	6.64
	Not treating equally with other nation/nationalities	26	11.50
	All	178	78.76
	Other	4	1.77
6	No	210	92.92
	Yes	12	5.31
	Not Responding	4	1.77
7	Descent	27	12.86
	Religion	1	0.48
	Language	6	2.86
	All	164	78.09
	Other(descent and language)	10	4.76
	Not Responding	2	0.95
8	Amhara	3	1.33
	Kemant	215	95.13
	Other	6	2.65
	Not Responding	2	0.88
9	Yes	102	47.44
	No	113	52.56
10	Inferiority Complex	2	1.77
	Stigma & exclusion	13	11.50
	Both	96	84.96
	Other	2	1.77
11	No	209	92.48
	Yes	17	7.52
12	Lack of Opportunity to learn	96	45.93
	Ashamed of it	0	0
	Stigma & exclusion	1	0.48
	Lack of Opportunity and stigma & exclusion	77	36.84
	All	34	16.27
	Other	1	0.48
13	Yes	203	97.13

	No	6	2.87
14	No	203	97.13
	Yes	6	2.87
15	Yes	10	4.42
	No	198	87.61
	Other	12	5.31
	Not Responding	6	2.65
16	Yes	9	3.98
	No	209	92.48
	Other	3	1.33
	Not Responding	5	2.21
17	Unwillingness to be represented	1	0.48
	Governmental influence(negative)	179	85.65
	Other	29	13.87
18	Yes	222	98.23
	No	3	1.33
	Other	0	0
	Not Responding	1	0.44
19	No	199	88.05
	Yes	24	10.62
	Not Responding	3	1.33
20	Orthodox	218	96.46
	Protestant	4	1.77
	<i>Hege-Lebona</i> /Kemant Religion/	3	1.33
	Catholic	0	0
	Islam	0	0
	Other	1	0.44
21	Yes	187	83.86
	No	11	4.93
	Not Responding	25	11.21
22	Yes	3	100
	No	0	0
23	No	3	100
	Yes	0	0
	Other	0	0
24	Contiguous	170	75.22
	Not contiguous	43	19.03
	Other	13	5.75
25	Respect and implement art.39(Treat the Kemant equally with others)	156	69.03
	Special support	23	10.18
	People Struggle for their rights	10	4.42
	Media Coverage, Schools for Kemantney, printing and distributing the history and culture of the Kemant	29	12.83
	Inclusion in the Census	6	2.65
	Not Responding	2	0.88

Annex 3: The Questionnaire in Amharic

መጠይቅ

በአማራ ብሔራዊ ክልላዊ መንግሥት የአናሳ ብሔረሰብ ሰብአዊ መብቶች ጥበቃን በተመለከተ በሰሜን ጎንደር መስተዳድር ዞን በሚገኙት የቅማንት ሕዝብ ላይ የሚደረግ ጥናት መጠይቅ ነው። ጥናቱ የሚካሄደው በአዲስ አበባ ዩኒቨርሲቲ የሕግ ፋኩልቲ የድህረ ምረቃ ፕሮግራም በሰብአዊ መብቶች ክፍል የሁለተኛ ዲግሪ (LL.M) ማሟያ ነው።

መግቢያ:- ይህን መጠይቅ በአግባቡ በመሙላት በተለይ ለቅማንት ሕዝብ እእና በአጠቃላይ

ለሌሎች የኢትዮጵያ ያናሳ ብሔረሰቦች ሰብአዊ መብቶች ጥበቃ በሚደረገው ጥረት የሚያደርጉትን ክፍተኛ አስተዋጽኦ በቅድሚያ አመሰግናለሁ።

ማሳሰቢያ:- 1. መጠይቁን ሲሞሉ ስምዎን መጥቀስ አስፈላጊ አይደለም።

2. በሚስማሙበት ምርጫ ፊት ለፊት ባለው ሳጥን ውስጥ (J) ምልክት በማድረግ እእና በባዶ ቦታው (ሌላ) በሚለው ላይ በመጻፍ ጥያቄዎችን ይመልሱ፤ ከተሳሳቱ በመጀመሪያ ምርጫዎ ላይ (X) ምልክት ያድርጉና ትክክል ነው ያሉትን (J) በማድረግ ይምረጡ።

1. ስለግል መረጃ

- 1. የታታ _____
- 2. ዕድሜ _____
- 3. ሥራ _____
- 4. የትምህርት ደረጃ _____
- 4.1 ማንበብና መጻፍ
- 4.2 1ኛ ደረጃ
- 4.3 2ኛ ደረጃ
- 4.4 የመጀመሪያ ዲግሪ
- 3.1 የግል ስራተኛ
- 3.2. የመንግሥት ሠራተኛ
- 3.3 ገበሬ
- 3.4 ተማሪ
- 3.5 የሌለው

4.5 2ኛ ዲግሪ

3.6 ሌላ _____

4.6 ሌላ _____

6. ቀበሌ _____

5. ወረዳ _____

II. የሚስማሙበትን ይምረጡ ወይም ይጥቀሱ::

1. ብሔርዎ ምንድን ነው?

ሀ/ቅማንት ለ/አማራ

2. በ1999 ዓ.ም. በተካሄደው ብሔራዊ የሕዝብና ቤቶች ቆጠራ 85 የኢትዮጵያ ብሔር ብሔረሰቦች ሲቆጠሩ ቅማንት ግን አለመቆጠሩን ያውቃሉ?

ሀ/ አላውቅም ለ/ አውቃለሁ

3. በተካሄደው ብሔራዊ የሕዝብና ቤቶች ቆጠራ ወቅት ስለብሔርዎ ተጠይቀው ነበር?

ሀ/ ተጠይቃለሁ ለ/ አልተጠየኩም

4. በቆጠራው ወቅት ተጠይቀው ከሆነ ምን ብለው መለሱ?

ሀ/ ቅማንት ለ/ አማራ ሐ/ ሌላ -----

5. በተራ ቁጥር «2» እንደተገለጸው መንግሥት የቅማንት ሕዝብ እንደብሔረሰብ እንዳይቆጠር ማድረግ ምንን ያመለክታል?

ሀ/ ቅማንት የሚባል ብሔረሰብ ያለ መሆኑን መካድ

ለ/ የቅማንት ሕዝብ ማንነቱን፣ ባሕሩን፣ ቋንቋውን፣ ታሪኩንና ሐይማኖቱን

እንዲታፈንና ብሎም እንዲጠፋ ማድረግ

ሐ/ ከሌሎች ብሔር ብሔረሰቦች ጋር የአኩልነት ቦታታያልተሰጠው መሆኑን

መ/ ሁሉም

ሠ/ሌላ _____

6. ቅማንትና አማራ ከብሔር አንፃር አንድ ናቸው ብለው ያስባሉ?

ሀ/ አይደሉም

ለ/ ናቸው

7. ለተራ ቁጥር "6" መልስዎ "የተለያዩ ናቸው" ከሆነ በምን ይለያያሉ?

ሀ/ በዘር ለ/ በዕይማኖት ሐ/ በቋንቋ መ/ በሁሉም

ሠ/ ሌላ _____

8. በአማራነት ወይስ በቅማንትነት ቢታወቁ የትኛውን ይመርጣሉ?

ሀ/ በአማራ ለ/ በቅማንት

ሐ/ ሌላ _____

9. ለተራ ቁጥር 8 መልስዎ "ለ" ከሆነ ራስዎን ከቅማንት ውጭ ለሆነ ሰው ሲያስተዋውቁ ስለቅማንትነትዎ ገልፀው ያውቃሉ?

ሀ/ አውቃለሁ

ለ/ አላውቅም

10. በተራ ቁጥር "9" መልስዎ "አላውቅም" ከሆነ ምክንያቱ ምንድነው?

ሀ/ የበታችነት ስሜት ስለሚሰማኝ

ለ/ አድሎና መገለል ስለሚደርስብኝ

ሐ/ ሀ ና ለ

መ/ ሌላ _____

11. ቅማንትኛ ቋንቋ ይችላሉ?

ሀ/ አልችልም

ለ/ አችላለሁ

12. በተራ ቁጥር «11» መልስዎ «አልችልም» ከሆነ ምክንያቱ ምንድነው?

ሀ/ የመማር አጋጣሚውን ስላላገኘው

ለ/ ቋንቋውን መናገር ስለማፍርበት

ሐ/ መገለልና መናቅ ስለሚደርስብኝ

መ/ ሆናሐ

ሠ/ ሁሉም

ረ ሌላ -----

13. በተራ ቁጥር «11» መልስዎ «አልችልም» ከሆነ በቅማንትነትዎ ማንነት

መታወቅና በቋንቋው መጠቀም ይፈልጋሉ?

ሀ/ አፈልጋለሁ ለ/ አልፈልግም

14. በተራ ቁጥር «11» መልስዎ «አልችልም» ከሆነ አማርኛ ቋንቋ መናገሩ አማራ ነኝ ያስኝዎታል?

ሀ/ አያስኝኝም ለ/ ያስኝኛል

15. የቅማንት ሕዝብ ማንነቱ፣ ባህሉ፣ ቋንቋውና ታ ታሪኩ እንዲታወቅና እንዲከበር የፌዴራል ሆነ የአማራ ብሔራዊ ክልላዊ መንግሥት ጥረት አድርገዋል ብለው ያስባሉ?

ሀ/ አድርጓል ለ/ አላደረገም

ሐ/ ሌላ -----

16. በክልልም ሆነ በፌዴራል መንግሥት ውስጥ ባሉ የሥልጣን እርከኖች የቅማንት

ሕዝብ ተወክሏል ብለው ያምናሉ?

ሀ/ ተወክሏል ለ/አልተወከለም

ሐ/ ሌላ -----

17. በተራ ቁጥር «16» መልስዎ «አልተወከለም» ከሆነ ምክንያቱ ምን ሊሆን

ይችላል?

ሀ/ ሕዝቡ መወከል ስለማይፈልግ

ለ/ የመንግሥት ተጽዕኖ ስላለ

ሐ/ ሌላ -----

18. የቅማንት ሕዝብ የራሱ የሆነ የአስተዳደር ዕርክን ኖጅቶሱን በራሱ እና እንዲያስተዳድርና ቋንቋውን፣ ባህሉንና ታሪኩን ቢያሳድግና ቢያስከብር ይፈልጋል?

ሀ/ እፈልጋለሁ ለ/ አልፈልግም

ሐ/ ሌላ _____

19. በክልል ሆነ በፌዴራል መንግሥት ስለቅማንት ሕዝብ ማንነት፣ ባሕል፣ ታሪክ ወ.ዘ.ተ በመገናኛ ብዙኃን ሲተላለፍ ሰምተዋል?

ሀ/ አልሰማሁም ለ/ ሰምቼአለሁ

20. ሐይማኖትዎ ምንድነው?

ሀ/ ኦርቶዶክስ ለ/ ፕሮቴስታንት

ሐ/ ሕገ ልቦና /ቅማንት ሐይማኖት /

መ/ ካቶሊክ

ሠ/ እስላም

ረ/ ሌላ _____

21. በተራ ቁጥር «20» መልስዎ "ሕገ ልቦና /ቅማንት ሐይማኖት /" ካልሆነ ብሔራዊ ቅማንት ነኝ ማለት ይችላሉ?

ሀ/ እችላለሁ ለ/ አልችልም

22. በተራ ቁጥር «20» መሠረት ሐይማኖትዎ ቅማንት ከሆነ እስምነትዎን

በሚያራምዱበት ጊዜ ተጽዕኖ ደርሶብዎታል?

ሀ/ ይደርስብኛል ለ/ አይደርስብኝም

23. በተራ ቁጥር «22» መልስዎ «ተጽዕኖ ይደርስብኛል» ከሆነ ተጽዕኖውን

ለማስወገድ መንግሥት እእርምጃ ወስዷል?

ሀ/ አልወሰደም ለ/ ወስዷል

ሐ/ ሌላ _____

24. የቅማንት ሕዝብ የመልካም ምድር አሰፋፈር በገጠር እንደሆነ ነው?

ሀ/ ወጥ በሆነ መልኩ ከአማራ ሕዝብ ጋር ሳይቀላቀል ለብቻው የሰፈረ ነው

ለ/ ከአማራው ጋር ተቀላቅሎ የሰፈረ ነው

ሐ/ ሌላ _____

25. መንግሥት የቅማንት ሕዝብ የራሱን ዕድል በራሱ የመወሰን መብቱን በመጠቀም ማንነቱን፣ ቋንቋውን፣ ባሕሉንና ታታሪኩን ከማስተዋወቅና ከማሳደግ አንጻር ምን ማድረግ አለበት ይላሉ? ይግለጹ።

Annex 3: The Questionnaire in Amharic

መጠይቅ

በአማራ ብሔራዊ ክልላዊ መንግሥት የአናሳ ብሔረሰብ ሰብአዊ መብቶች ጥበቃን በተመለከተ በሰሜን ጎንደር መስተዳድር ዞን በሚገኙት የቅማንት ሕዝብ ላይ የሚደረግ ጥናት መጠይቅ ነው። ጥናቱ የሚካሄደው በአዲስ አበባ ዩኒቨርሲቲ የሕግ ፋኩልቲ የድህረ ምረቃ ፕሮግራም በሰብአዊ መብቶች ክፍል የሁለተኛ ዲግሪ (LL.M) ማሟያ ነው።

መግቢያ:- ይህን መጠይቅ በአግባቡ በመሙላት በተለይ ለቅማንት ሕዝብ እእና በአጠቃላይ

ለሌሎች የኢትዮጵያ ያናሳ ብሔረሰቦች ሰብአዊ መብቶች ጥበቃ በሚደረገው ጥረት የሚያደርጉትን ክፍተኛ አስተዋጽኦ በቅድሚያ አመሰግናለሁ።

ማሳሰቢያ:- 1. መጠይቁን ሲሞሉ ስምዎን መጥቀስ አስፈላጊ አይደለም።

2. በሚስማሙበት ምርጫ ፊት ለፊት ባለው ሳጥን ውስጥ (✓) ምልክት በማድረግ እእና በባዶ ቦታው (ሌላ) በሚለው ላይ በመጻፍ ጥያቄዎችን ይመልሱ፤ ከተሳሳቱ በመጀመሪያ ምርጫዎ ላይ (X) ምልክት ያድርጉና ትክክል ነው ያሉትን (✓) በማድረግ ይምረጡ።

1. ስለግል መረጃ

- | | | |
|---|--------------|---|
| 1. የታታ _____ | 2. ዕድሜ _____ | 3. ሥራ _____ |
| 4. የትምህርት ደረጃ | | 3.1 የግል ስራተኛ <input type="checkbox"/> |
| 4.1 ማንበብና መጻፍ <input type="checkbox"/> | | 3.2. የመንግሥት ሠራተኛ <input type="checkbox"/> |
| 4.2 1ኛ ደረጃ <input type="checkbox"/> | | 3.3 ገበሬ <input type="checkbox"/> |
| 4.3 2ኛ ደረጃ <input type="checkbox"/> | | 3.4 ተማሪ <input type="checkbox"/> |
| 4.4 የመጀመሪያ ዲግሪ <input type="checkbox"/> | | 3.5 የሌለው <input type="checkbox"/> |

4.5 2ኛ ዲግሪ

3.6 ሌላ _____

4.6 ሌላ _____

6. ቀበሌ _____

5. ወረዳ _____

II. የሚስማሙበትን ይምረጡ ወይም ይጥቀሱ::

1. ብሔርዎ ምንድን ነው?

ሀ/ቅማንት ለ/አማራ

2. በ1999 ዓ.ም. በተካሄደው ብሔራዊ የሕዝብና ቤቶች ቆጠራ 85 የኢትዮጵያ ብሔር ብሔረሰቦች ሲቆጠሩ ቅማንት ግን አለመቆጠሩን ያውቃሉ?

ሀ/ አላውቅም ለ/ አውቃለሁ

3. በተካሄደው ብሔራዊ የሕዝብና ቤቶች ቆጠራ ወቅት ስለብሔርዎ ተጠይቀው ነበር?

ሀ/ ተጠይቃለሁ ለ/ አልተጠየኩም

4. በቆጠራው ወቅት ተጠይቀው ከሆነ ምን ብለው መለሱ?

ሀ/ ቅማንት ለ/ አማራ ሐ/ ሌላ -----

5. በተራ ቁጥር «2» እንደተገለጸው መንግሥት የቅማንት ሕዝብ እንደብሔረሰብ እንዳይቆጠር ማድረግ ምንን ያመለክታል?

ሀ/ ቅማንት የሚባል ብሔረሰብ ያለ መሆኑን መካድ

ለ/ የቅማንት ሕዝብ ማንነቱን፣ ባሕሩን፣ ቋንቋውን፣ ታሪኩንና ሐይማኖቱን

እንዲታፈንና ብሎም እንዲጠፋ ማድረግ

ሐ/ ከሌሎች ብሔር ብሔረሰቦች ጋር የአኩልነት ቦታታያልተሰጠው መሆኑን

መ/ ሁሉም

ሠ/ሌላ _____

6. ቅማንትና አማራ ከብሔር አንጻር አንድ ናቸው ብለው ያስባሉ?

ሀ/ አይደሉም

ለ/ ናቸው

7. ለተራ ቁጥር "6" መልስዎ "የተለያዩ ናቸው" ከሆነ በምን ይለያያሉ?

ሀ/ በዘር ለ/ በዕይማኖት ሐ/ በቋንቋ መ/ በሁሉም

ሠ/ ሌላ _____

8. በአማራነት ወይስ በቅማንትነት ቢታወቁ የትኛውን ይመርጣሉ?

ሀ/ በአማራ ለ/ በቅማንት

ሐ/ ሌላ _____

9. ለተራ ቁጥር 8 መልስዎ "ለ" ከሆነ ራስዎን ከቅማንት ውጭ ለሆነ ሰው ሲያስተዋውቁ ስለቅማንትነትዎ ገልፀው ያውቃሉ?

ሀ/ አውቃለሁ

ለ/ አላውቅም

10. በተራ ቁጥር "9" መልስዎ "አላውቅም" ከሆነ ምክንያቱ ምንድነው?

ሀ/ የበታችነት ስሜት ስለሚሰማኝ

ለ/ አድሎና መገለል ስለሚደርስብኝ

ሐ/ ሀ ና ለ

መ/ ሌላ _____

11. ቅማንትኛ ቋንቋ ይችላሉ?

ሀ/ አልችልም

ለ/ አችላለሁ

12. በተራ ቁጥር «11» መልስዎ «አልችልም» ከሆነ ምክንያቱ ምንድነው?

ሀ/ የመማር አጋጣሚውን ስላላገኘው

ለ/ ቋንቋውን መናገር ስለማፍርበት

ሐ/ መገለልና መናቅ ስለሚደርስብኝ

መ/ ሆናሐ

ሠ/ ሁሉም

ረ ሌላ -----

13. በተራ ቁጥር «11» መልስዎ «አልችልም» ከሆነ በቅማንትነትዎ ማንነት መታወቅና በቋንቋው መጠቀም ይፈልጋሉ?

ሀ/ አፈልጋለሁ ለ/ አልፈልግም

14. በተራ ቁጥር «11» መልስዎ «አልችልም» ከሆነ አማርኛ ቋንቋ መናገሩ አማራ ነኝ ያስኝዎታል?

ሀ/ አያስኝኝም ለ/ ያስኝኛል

15. የቅማንት ሕዝብ ማንነቱ፣ ባህሉ፣ ቋንቋውና ታ ታሪኩ እንዲታወቅና እንዲከበር የፌዴራል ሆነ የአማራ ብሔራዊ ክልላዊ መንግሥት ጥረት አድርገዋል ብለው ያስባሉ?

ሀ/ አድርጓል ለ/ አላደረገም

ሐ/ ሌላ _____

16. በክልልም ሆነ በፌዴራል መንግሥት ውስጥ ባሉ የሥልጣን እርከኖች የቅማንት ሕዝብ ተወክሏል ብለው ያምናሉ?

ሀ/ ተወክሏል ለ/አልተወከለም

ሐ/ ሌላ _____

17. በተራ ቁጥር «16» መልስዎ «አልተወከለም» ከሆነ ምክንያቱ ምን ሊሆን ይችላል?

ሀ/ ሕዝቡ መወከል ስለማይፈልግ

ለ/ የመንግሥት ተጽዕኖ ስላለ

ሐ/ ሌላ _____

18. የቅማንት ሕዝብ የራሱ የሆነ የአስተዳደር ዕርክን ኖሮት እራሱን በራሱ እንዲያስተዳድርና ቋንቋውን፣ ባህሉንና ታሪኩን ቢያሳድግና ቢያስከብር ይፈልጋል?

ሀ/ እፈልጋለሁ ለ/ አልፈልግም

ሐ/ሌላ _____

19. በክልል ሆነ በፌዴራል መንግሥት ስለቅማንት ሕዝብ ማንነት፣ ባሕል፣ ታሪክ ወ.ዘ.ተ በመገናኛ ብዙኃን ሲተላለፍ ሰምተዋል?

ሀ/ አልሰማሁም ለ/ ሰምቼአለሁ

20. ሐይማኖትዎ ምንድነው?

ሀ/ ኦርቶዶክስ ለ/ ፕሮቴስታንት

ሐ/ ሕገ ልቦና /ቅማንት ሐይማኖት /

መ/ ካቶሊክ

ሠ/ እስላም

ረ/ ሌላ _____

21. በተራ ቁጥር «20» መልስዎ "ሕገ ልቦና /ቅማንት ሐይማኖት /" ካልሆነ ብሔራዊ ቅማንት ነኝ ማለት ይችላሉ?

ሀ/ እችላለሁ ለ/ አልችልም

22. በተራ ቁጥር «20» መሠረት ሐይማኖትዎ ቅማንት ከሆነ እእምነትዎን

በሚያራምዱበት ጊዜ ተጽዕኖ ደርስብዎታል?

ሀ/ ይደርስብኛል ለ/ አይደርስብኝም

23. በተራ ቁጥር «22» መልስዎ «ተጽዕኖ ይደርስብኛል» ከሆነ ተጽዕኖውን

ለማስወገድ መንግሥት እእርምጃ ወስዷል?

ሀ/ አልወሰደም ለ/ ወስዷል

ሐ/ ሌላ _____

24. የቅማንት ሕዝብ የመልካም ምድር አሰፋፈር በገጠር እእንዴት ነው?

ሀ/ ወጥ በሆነ መልኩ ከአማራ ሕዝብ ጋር ሳይቀላቀል ለብቻው የሰፈረ ነው

ለ/ ከአማራው ጋር ተቀላቅሎ የሰፈረ ነው

ሐ/ ሌላ _____

25. መንግሥት የቅማንት ሕዝብ የራሱን ዕድል በራሱ የመወሰን መብቱን በመጠቀም ማንነቱን፣ ቋንቋውን፣ ባሕሉንና ታታሪኩን ከማስተዋወቅና ከማሳደግ አንጻር ምን ማድረግ አለበት ይላሉ? ይግለጹ።

