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**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES**

**THE PROTECTION OF NATIONAL MINORITIES IN
AMHARA NATIONAL REGIONAL STATE: THE CASE OF
OROMO MINORITIES IN ANGOLLELA AND TERA
WOREDA**

**BY
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OROMO MINORITIES IN ANGOLLELA AND TERA
WOREDA**

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Approval Sheet by the Board of Examiners

The Protection of National Minorities in Amhara National Regional State: The Case of Oromo Minorities in Angollela and Tera Woreda

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DECLARATION

I, **Honelign Hailu**, hereby declare that this dissertation is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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Acronyms

ANRS	Amhara National Regional State
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CESR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council of the UN
FDRE	Federal Democratic Republic of Ethiopia
HoF	House of Federation
HPR	House of Peoples Representatives
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
PCIJ	Permanent Court of International Justice
SNNP	Southern Nations, Nationalities and Peoples
SPDPM	Sub-Commission on the Prevention of Discrimination and Protection of Minorities

UN	United Nations
UNESCO	United Nations Economic, Scientific and Cultural Organization
WGM	Working Group on Minorities
WHO	World Health Organization

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Abstract

The Constitution of the Amhara National Regional State, as provided under Article 73(1), established Nationality Administration (*Yebehereseb Astedader*) to the Peoples of Himra, Awi and Oromo in the area inhabited by such peoples. The Nationality Council (*Yebehereseb Mekerbet*) of the nationality administration has a number of powers such as determining the working language of the nationality, ensuring the protection of the nationality's rights to speak and write in its own language, develop and promote its own culture as well as maintain and preserve its own history. In addition to the above peoples, the Argobas have also their own nationality Administration by virtue of Proclamation No.130/2006, a proclamation establishing the Argoba Nationality Woreda. This proclamation guarantees the rights mentioned above to the Argoba people. As a result, these minority nationalities of Amhara National Regional State are able to exercise rights significant to minorities like the right to use, develop and promote their culture and language, the right to self-government and equitable representation in the regional and federal government.

Although the Amhara National Regional State's recognition and protection of the interests of minorities of the regional state is admired, it did not address the interests of minorities found outside the nationality administrations. This research is intended to show the protection of the Oromos found in Angollela and Tera Woreda (the study area), found in North Shewa Zone, outside the nationality administration established for the Oromo people. The Oromo minorities of Angollela and Tera Woreda, accounting 12% of the Woreda population, are not able to exercise those rights like the right to develop and promote their culture, equitable representation in the Woreda Council and Administrative Council, the right education in their mother tongue and the like simply because they happen to exist outside the nationality administration established for the Oromos.

As a result, I argue that the Oromo minorities of Angollela and Tera Woreda should be entitled to equitable representation in the Woreda Council and Administrative Council, the right to develop and promote their culture, the right to trial in their own language and the right to be taught in their mother tongue. This requires the Amhara National Regional

State to take appropriate measures including legislative measures dealing to the peculiar interests of minorities found in such situation. Like wise, the Woreda Administration should also make its practices in conformity with the peculiar interests of the Oromo minorities of the Woreda.

Key Words: Angollela and Tera Woreda; Minorities; Oromos; Protection; Right

CHAPTER ONE

INTRODUCTION AND OVERVIEW OF THE STUDY

1.1. Introduction

Article 39(2) of the FDRE Constitution recognizes the right of Nations, Nationalities and peoples to speak, write and develop its own language; to express, develop and promote its culture; and to preserve its history. Likewise, Art 39(1) of the Constitution of the Amhara National Regional State guaranteed this same right to the peoples of the Regional State. All Nations, Nationalities and Peoples have also the right to have equitable representation in the Federal and State governments.¹ Although this right is entrusted to all Nations, Nationalities and peoples, minorities need special protection as a result of their numerical inferiority. To this effect, Art 54(3) of the FDRE Constitution, for example, reserved 20 seats of the House of Peoples Representatives to minority nationalities and peoples. In the same manner, the Constitution of the Amhara National Regional State has attempted to accommodate the interest of the minorities in the region by granting nationality administration at least to Himra, Awi and Oromo peoples.² Such nationality administrations have important rights that enable the people in such administrations to guarantee their right to self-administration or self-government. The Nationality administrations, for example have the right to determine the working language of the nationality concerned.³

The Oromo people are not only situated in Oromiya nationality administration. Significant number of the Oromo people also live in different Amhara dominated Zones of the Amhara National Regional State, outside their nationality administration. The study is concerned with the protection of the rights of these Oromo minorities living outside their nationality administration, in North Shoa Zone, Angolela and Tera Woreda.

¹ The Constitution of the Federal Democratic Republic of Ethiopia, 21 August 1995, Article 39(3), Proclamation No.1, Federal Negarit Gazeta, 1st Year, No.1.

² The Revised Constitution of the Amhara National Regional State, 5th November 2001, Art. 73(1), Proclamation No.59, Zikre Hig of the Amhara National Regional State in the Federal Democratic Republic of Ethiopia, 7th Year, No.2.

³ Id, Art.74 (3) (a).

Particular emphasis is given to the political participation, the right to develop and promote culture, the right of the children of the Oromo minorities to be taught in their mother tongue and the right of these minorities to be tried in their own language.

1.2. Background of the Study

In a manner conforming to the constitution of the FDRE, the constitution of the Amhara National Regional State recognizes the ethnic diversity of the region. This is reflected in a number of provisions of the constitution. The preamble paragraph of the constitution acknowledges the ethnic diversity of the region by providing that “we the peoples of the Amhara National Regional State ...”.⁴ The Constitution further strengthens this through vesting the supreme power of the National Regional State on the peoples of the Amhara Region.⁵ This provision has importance to ethnic minorities of the region as the constitution of some regions like the Constitution of the Oromia National Regional State, vests supremacy only on the Oromo people.⁶

Besides recognizing the multi-ethnicity of the region, the constitution of the Amhara National Regional State guarantees important rights to the ethnic minorities of the region. These rights include the right to self-determination including secession, the right to develop and promote their language and culture and the right to preserve their history.⁷ To ensure the realization of these rights the constitution guarantees the Himra, Awi and Oromo peoples to have their own nationality administration.⁸ They have also their own representation in the Regional council.⁹

As a result, the ethnic minorities in Amhara National Regional State, especially the Himra, Awi and Oromo people, who have their own nationality administration can exercise their rights to self-determination develop and promote language, preserve their history and self-government effectively. However, the Oromo peoples in Amhara

⁴ Id, Preamble para.1.

⁵ Id, Art 8(1).

⁶ The Constitution of Oromia National Regional State, 2001, Art. 8.

⁷ The Amhara Constitution (*Supra* note 2), Art 39(1).

⁸ Id, Art. 73(1)

⁹ Id, Art 48(2) cum. Art.74(1).

National Regional State are not confined to their nationality administration. There is significant number of the Oromo people in different Zones of the Region. Among these zones North Shoa Zone is the one. The Oromo minorities of Angollela and Tera Woreda cover significant portion of the Oromos living in North Shewa. The Constitution of the Amhara National Regional State and other legislations did not regulate the situation of the Oromos living in these circumstances. It is this fact that led the writer to deal with the protection of the Oromos in one of the Woredas of North Shewa (Angollela and Tera).

1.3. Statement of the Problem

Political participation is a mechanism through which citizens can influence decisions of their government. Political participation in majority minority relationship is vital as the latter can have their own say in the affairs of the government and protect their interests from the domination of the majority. The Copenhagen principle to this effect provides that effective participation in political life suggests meaningful de facto participation, which may include certain “special measures” comparable to those required to ensure “full equality” for minorities in the exercise of human rights.¹⁰ The formulation adopted certainly does not require that minorities or there be given a veto over the democratic decision of the majority, but it does mean that ‘mere’ democracy may not be enough.¹¹

The Oromo minorities do not have considerable representation in Angollela and Tera Woreda Council and Administrative Council. For example, out of 12 Woreda Administrative Council Members, only a single individual is from the Oromo minority. This could hinder the Oromo minorities of Angollela and Tera Woreda from meaningfully exercising their right to effective participation in the affairs of the government as guaranteed under the constitution of the Amhara National Regional State and FDRE Constitution.¹²

¹⁰ Paragraph 35 of the Copenhagen principle (Adopted during the Copenhagen Meeting of the Conference on the Human Dimension of the Conference and Security Cooperation in Europe (SCE), June 1990).

¹¹ Hurst Hannum, “Contemporary Developments in the International Protection of the Rights of Minorities”, 66 *Notre Dame L. Rev.* 1431 (1990-1991), p.1442.

¹² FDRE Constitution (*Supra* note 1), Art 39(3) and The Amhara Constitution (*supra* note 2), Art 39 (2).

The Oromo minorities in Angolela and Tera Woreda are also in trouble in courts. As Amharic is the working language of the Woreda court and the social courts of the Kebeles, including those Kebeles highly dominated by the Oromos, the latter can not effectively litigate their case in courts. The situation is more difficult where one of the litigants is a member of the dominant Amhara people who can express him/her self in Amharic while the other litigant is a member of the Oromo minorities who can not speak or for that matter can not even listen Amharic. This may hamper the justice system in general and cause serious problems to the Oromo minorities in particular.

Minority cultures need affirmative support because of unequal circumstances that define their relationship with dominant cultures. Minority cultures are vulnerable to the decision of the majority around them.¹³ The Oromo minorities in Angolela and Tera Woreda, as minorities, need such affirmative measures by the Woreda Administration in general and the Woreda Culture and Tourism office in particular, aimed at developing and promoting their own culture which is not available to them. Moreover, the Oromo minorities should also get protections from interferences in the exercise of their right to culture from state and non-state actors.

Education is fundamental to the preservation of any culture, minority or majority. It has been the primary vehicle through which majority societies have attempted to assimilate minorities, and it should not be surprising that minority communities view the right to maintain their own educational institutions as essential for self-preservation.¹⁴ Teaching children in unfamiliar language is likely to disadvantage them in their academic performance and adaptation.¹⁵ The children of the Oromo minorities in Angolela and Tera Woreda are not taught in their mother tongue. This might have a negative implication on the Oromo pupils. Education is also crucial in the development of a certain language and facilitating the transfer of the culture of the community to its off springs. Thus, education of the children of Oromo minorities is vital not only for the sake of the children but also for the survival of the Oromos as a community. The Oromo

¹³ Adeno Addis, "Individualism, Communitarism and Rights of Ethnic Minorities", *66 Notre Dame L. Rev.* 1219 (1990-1991), p.1263.

¹⁴ *Id.*, p.264.

¹⁵ *Ibid.*

minorities of Angollela and Tera Woreda did not get all these advantages accruing from education in ones mother tongue. Such conditions may in the long-run result in the assimilation of the Oromo minorities and loss their own separate identify.

The Oromo people in their own nationality administrative of Oromia Zone are able to exercise their right to write, speak and develop their own language, promote and develop their own culture, tried in courts with their own language, participate in the political affairs of the government effectively, provided state services with their own language and educate their children with their mother tongue language (Affann Oromo). However, the Oromo minorities that live outside this nationality administration like the study area (Angollela and Tera Woreda) are unable to exercise such important rights recognized in the FDRE Constitution and international human rights instruments like the International Covenant on Civil and Political Rights (ICCPR) to which Ethiopia is state a party, merely because they happen to exist outside the Oromo nationality administration.¹⁶

1.4. Research Questions

Based on the problems stated above the study addressed the following questions.

- Did the Oromo minorities have equitable representation in the Woreda Council and Administrative Councils? If not, what is its implication on the effectively participation of these minorities in the overall affairs of the Woreda in general and on matters of special concern to them in particular? What should be done to overcome these situations and ensure the effective participation of the Oromo minorities in the Woreda Council and Administrative Council?
- What impacts did the trial in Amharic have on the Oromo parties of the proceeding especially in criminal cases? Is the Woreda court's translator service sufficiently addressing the concerns of these parties? If not sufficient what possible solutions could be available to the Oromo parties of the proceeding?

¹⁶ Article 27 of the ICCPR provides that in those states in which ethnic, religious or linguistic minorities exist, persons belong to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.

- Are the Oromo minorities of Angollela and Tera Woreda effectively exercising their right to culture? Is there any interference in the enjoyment of this right? Did the Woreda administration, particularly the Woreda Culture and Tourism Office took some positive measures aimed at ensuring the development and promotion of the culture of the Oromo minorities of the Woreda? If such measures are not available what impacts could they have on the right to develop and promote culture of the Oromo minorities?
- What are the impacts of the instruction of the children of the Oromo minorities of Angollela and Tera Woreda in Amharic on the right to education of the children? Would it be better if the students are instructed in their mother tongue? What should be done to enable these children be thought in their mother tongue?
- Why did the constitution of the Amhara National Regional State and other legislations failed to address the situation of minorities that live outside the nationality administrations? What are the implications of such failure? Does it make sense that while guaranteeing the rights of the Oromo minorities in their nationality administration to self-government, use and develop their language, promote and develop their culture, educate their children with their mother tongue not to extend such rights to the Oromo minorities outside the Oromia nationality administration like the study area (Angolela and Tera Woreda)? Should not it be required to take into account such scenarios?

1.5. Scope of the Study

Although the Oromo minorities are available in different Woredas of North Shoa Zone, the study is exclusively concerned in the protection of Oromo minorities in one of these Woredas, i.e. Angollela and Tera Woreda.¹⁷

¹⁷ The Oromos are also available in different Woredas of North Shoa Zone like “Mida and Anstokia and Gemeza”.

1.6. Objectives of the Study

1.6.1. General objectives

The main objective of this study is to assess the protection of the Oromo minorities that live outside the Oromia Nationality Administration in other Zones, particularly in Angollela and Tera Woreda of North Shewa Zone.

1.6.2. Specific Objectives

The study has the following specific objectives.

- To assess what the representation of the Oromos in Angollela and Tera Woreda Council and Administrative Council looks like
- To investigate how is the Oromo parties of the proceeding who can not speak and listen Amharic treated in the Woreda Court where the working language of the court is Amharic
- To explore whether the Oromo minorities of Angollela and Tera are exercising the right to express, develop and promote their culture properly
- To examine what are the impacts of the instruction of the children of the Oromo minorities of Angollela and Tera Woreda on the right to education of the Oromo children
- To evaluate the sufficiency of the Constitution of the Amhara National Regional State and other legislations in providing protection to minorities found in such state of affairs

1.7. Significance of the Study

The study helps to indicate the situation of minorities living outside the Nationality Administrations in general and the situation of the Oromo minorities of Angollela and Tera Woreda in particular. It also reveals what seems the situation of minorities in the lower levels of administrations and the practices of treating these minorities in such administrations and the compatibility of such practices with the Constitutions of the

FDRE and the Amhara National Regional State and international human rights instruments ratified by Ethiopia. Moreover, the study also helps to suggest possible solutions on how to accommodate the special interests of minorities found in such situations. The study will also serve as an input to efforts in the protection of the Oromo minorities of Angollela and Tera Woreda living with the majority Amharas. It will be also instrumental to initiate further studies concerning the situation of minorities like the Oromos of Angollela and Tera Woreda.

1.8. Research Methodology

To accomplish this study both primary and secondary sources were employed. The writer has conducted field observation in Angollela and Tera Woreda to in examine what the situation of the Oromo minorities looks like. To this effect the writer has observed the teaching- learning process in the classrooms of Adadi and Ruksi schools and watch proceedings of the Angollela and Tera Woreda court.

The writer has also conducted one focus group discussion with the Oromo elders of Ruksi Kebele on issues related with the culture of the Oromo people. As a result, the writer has got sufficient information regarding what seems the cultural practices of the Oromos of Angollela and Tera Woreda, how and when they celebrated and what problems they encounter while celebrating these cultural activities.

384 questionnaires have been distributed to obtain information as to what the members of the Oromo minorities of Angollela and Tera Woreda feel about issues related with the representation of these minorities in the Woreda Council and Administrative Council, their situations in court proceeding, their right to express, develop and promote culture as well as the instruction of the children of the Oromo minorities in Amharic, a language unfamiliar to them.

The number of the respondents of the questionnaire (384) participants is determined based on the formula $n = \frac{N}{1 + N(e)^2}$ where n =sample size, N = total number of the population and $e=0.05$. The total number of the Oromo minorities in Angollela and Tera

Woreda is 9737. Based on the above formula, the sample size of the study is $n=9737/1+9737(0.05)^2$ which is equal to 384.23(nearly 384).

Interviews have been held with various heads of offices of the Woreda Administrations, such as the head of the Woreda Administration Office of Angollela and Tera Woreda concerning the representation of the Oromos in the Woreda Administrative Council and the speaker of the Woreda Council as to the representation of the Oromos in this Council. Moreover, interview with the head of the Woreda Education Office about the issues related with the instruction of the children of the Oromo minorities in their mother tongue had been conducted. The writer has also interviewed the students, teachers and directors of schools on the same issue. An interview with the officer of the Woreda Culture and Tourism Office regarding the right to develop and promote culture of the Oromo minorities was held. Interview with judges of Woreda and Social courts regarding the rights of the Oromo minorities to be tried in a language they understand have also been conducted.

Apart from the above primary sources the writer also used secondary sources such as the Internal Working Procedure of the Angollela and Tera Woreda Council as an input to the study. The Constitutions of the FDRE and the Amhara National Regional State, international human rights instruments and other books, articles and internet resources were also analyzed to accomplish the research.

1.9. Limitation of the Study

The researcher has no knowledge of Affan Oromo language and this was a challenge to effectively undertake the study. The writer has managed to solve the problem through two paid translators.

1.10. Organization of the Thesis

The thesis is categorized into five chapters. The first (current) chapter is devoted to the research proposal which includes introduction, background of the study, statement of the problem, scope of the study, objective of the study, significance of the study, research methodology and limitation of the study.

The second chapter of the thesis is exclusively concerned with reviewing literatures concerning the protection of minorities under international law and Ethiopian law. As a result the concept minority under international law, the protection of minorities before the era of the League of Nations, during the League's era and the protection of minorities with in the UN system are dealt under the title protection of minorities under international law. Under the title of the protection of minorities under Ethiopian law, various aspects of the rights of minorities like the right to representation in the Federal government, the right to self-government and the right to develop and promote culture and language are discussed.

Under the third chapter the protection of national minorities in Amhara National Regional State is examined. Thus, the right of these minorities to representation in the regional government particularly in the regional council and constitutional interpretation commission, the right to self-government and the right to develop and promote language and culture as incorporated in the Constitution of the regional state are dealt.

The fourth chapter of the thesis is concerned with the protection of the Oromo minorities in the study area (Angollela and Tera Woreda) and particular emphasis is given to the representation of the Oromo minorities in the Woreda Council and Administrative Council, the right to trial in ones own language, the right to express and develop and promote language and the right to education in mother tongue. Accordingly, data and information gathered from the respondents of the questionnaire, the interviewees and other documents regarding the protection of the Oromo minorities of Angollela and Tera Woreda are analyzed.

The last and the fifth chapter of the thesis is the conclusion. In this chapter, based on the data and information analyzed in the fourth chapter the writer provides what the protection of the Oromo minorities of Angollela and Tera Woreda looks like in light of the Constitutions of the FDRE and the Amhara National Regional State and international human rights instruments ratified by Ethiopia. In this chapter, the writer has also suggested possible solutions and measures that should be taken to ensure the effective protection of the interests of the Oromo minorities of Angollela and Tera Woreda.

CHAPTER TWO

PROTECTION OF MINORITIES

2.1. The Concept Minority under International Law

2.1.1. Attempts to Define Minorities under International Law

The lack of a definition of the term “minority” has been troubling the international community for a very long time. In spite of all the efforts made, there is today still no accepted general, universal or regional, definition of the term¹⁸. Various authors provide their own explanations for such failures to reach at a common agreed upon definition.¹⁹ As early as in 1930 the Permanent Court of International Justice (PCIJ), in its advisory opinion in connection with the issue of emigration of the Greco-Bulgarian “communities”, defined such a community as:

*[A] group of persons living in a given country or locality having a race, religion, language and tradition in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.*²⁰

¹⁸ Athanasia Spiliopoulou Akermark, *Justifications of Minority protection in International Law*, (1996), p.86.

¹⁹ For example Alfredsson associated the failures with the lack of will of states and their little real desire to find a definition since they intend to delay the adoption of international documents, or they wish to narrow the scope of any definition and so exclude groups “making trouble” in their own territory, G. Alfredsson, Report on “ Equality and Non-Discrimination: Minority Rights”, 7th International Colloquy on the European Convention on Human Rights, Council of Europe, Strasbourg, 1990, H/Coll(90)6, p.12, Cf. Akermark, *Supra* note 18 p.86. Javaid Rehman contends that the failure has been due mainly to a feeling that the concept is inherently vague and imprecise and that no proposed definition would ever be able to provide for the innumerable minority groups that could possibly exist. Javaid Rehman, *The Weaknesses in the International Protection of Minority Rights*, (2000), p.14. Whatever the rationales behind the failure, the ambition of having internationally agreed definition on minorities has not yet realized.

²⁰ PCIJ, Interpretation of the Convention between Greece and Bulgaria Respecting Reciprocal Emigration, Advisory Opinion of 31 July 1930, Series B, No. 17, p.33, Cf. Akermark, *supra* note 18, p.86.

The definition given by the Permanent Court of International Justice (PCIJ), includes references to certain objective, external characteristics (race, religion, language and tradition), to the subjective feeling of solidarity and the desire to preserve those characteristics, and to a specific country or region (territory).²¹

The Sub-Commission on Prevention of Discrimination and Protection of Minorities (SPDPM) took part in the issue of definition at an early stage of its work. In 1949, the Secretary-General prepared for the Sub-Commission a memorandum entitled Definition and Classification of minorities. The memorandum grouped minorities in various ways, for example on the basis of origin (way of creation of minority) and contiguity (relation between group and territory), and it also discussed the question of citizenship.²²

Despite the continuous hesitancy in defining the term ‘minority’ within international law, the issue was given urgency by the inclusion of an article relating to ‘persons belonging to ethnic, religious or linguistic minorities in the 1966 International Covenant on Civil and Political Rights (ICCPR). Subsequently, Special Rapporteur Francisco Capotorti, who was assigned to the task of preparing a study pursuant to Article 27 of the ICCPR, formulated a definition specific to this article. In his study on the Rights of Persons Belonging to Ethnic, Linguistic and Religious Minorities, he defined a ‘minority’²³ as a:

*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, traditions, religion or language.*²⁴

²¹ Akermarck, *Supra* note 18, p.88.

²² Id, p.89

²³ The definition of Capotorti was based on the case law of the Permanent Court of International Justice (PCIJ), proposals forwarded by governments, and discussions held within both the Sub-Commission and the Commission on Human Rights. Jelena Pejic, “Minority Rights in International Law”, *Human Rights Quarterly* 19, (1997), p. 670.

²⁴ Francisco Capotorti, Study on Persons Belonging to Ethnic, Religious and Linguistic Minorities, UN Doc. E/CN.4/Sub.2/384/Rev.1, (1979).

Capotorti could not exceed the mandate given by the Sub-Commission and the definition is thereby limited in its objective. It is drawn up solely in relation to Article 27 of the ICCPR and its context is that of human rights and the protection of human dignity.²⁵ Capotorti's definition was also criticized on a number of other grounds.

The first criticism was the fact that the definition is a combination of both the objective and subjective elements in ascertaining a minority group. As Thomas W. Simon said the demand that subjective factors be included in the definition of minority would exclude two types of cases. First, it fails to capture those who do not subjectively identify with a group because they are afraid to exhibit a sense of solidarity with the group. Second, the subjectivity requirement excludes those who do not identify with a group, not out of fear, but because of some sort of choice or inattentiveness. A person may not know her or his so-called ethnicity or have any familiarity with the traditions and customs of the ethnic group and still be negatively treated as a member of an ethnic group.²⁶ Regarding the objective factors Simon provides that there are no successful, objective renderings of the groups in question. Candidates for objective characteristics include genetic traits and physiognomic attributes. None of these work for the concept of race. Race is a social construct and not a biological characteristic. Even if we could define race using "objective" biological analyses, we could not define ethnic group or any of the other categories that fit under the heading of "minorities" in biological terms alone. He also argues that the more we demand objective criteria for group identity and the more solidity we require for groups, the less the laws reflecting these demands will protect loosely knit groups, such as migrant workers, which do not have either clear objectively defining characteristics or a strong senses of solidarity.²⁷

The second proposition which needs to be addressed is that of the numerical strength of the group in question. It seems acceptable that the numerical strength must at least for 'a sufficient number of persons to preserve their traditional characteristics, hence, a single individual could not form a minority group. On the other hand, it is contended that to put

²⁵ Akermarck, *Supra* note 18, p.89.

²⁶ Thomas W. Simon, "Minorities in International Law", *10 Can. J. L. & Jurisprudence* 507 (1997), p.516.

²⁷ *Id.*, p.517.

in place an absolute principle that in order to be recognized as a minority, an entity must necessarily be ‘numerically inferior’ places an unnecessary heavy burden on the group and may well be factually incorrect. According to Simon, the minority concept, controversial as it is, cannot be treated in such a restrictive manner.²⁸

The third criticism arises out of the Capotorti definition is that of the position of non-nationals within the state. The definition excluded non-nationals out of the ambit of protection provided under Article 27 of the ICCPR. However, recent developments within the Human Rights Committee (HRC) provide that the protection provided under Article 27 extends to non-nationals as well. In a 1986 General Comment on the position of aliens, the Committee stated that the rights set forth in the Covenant apply to every one, irrespective of his or her nationality or statelessness. It added that where aliens constitute a minority within the meaning of Article 27, they shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language.²⁹ The Committee’s General Comment of 1994, devoted specifically to the protection of minorities, reiterated this view.³⁰

The other criticism against Capotorti’s definition pertains to its under inclusiveness. The grouping “ethnicity, religion, and language” leave many plausible candidates for judicial protection out of the picture. International instruments use many group identifiers: gender, sexual orientation, physical or mental disability, class, economic status, social origin, and descent. Article 27 of the ICCPR does not allow for any of these to serve as a basis for group identity. While many of these types of groups receive protection from discrimination in Article 26, there is no *prima facie* reason for denying members of these groups the rights of self identity accorded in Article 27. The preferential treatment given

²⁸ Ibid. To this effect Rehman cited the case of the Bengalis of East Pakistan as an example. East Bengalis constituted nearly 54 percent of the total population formed a numerical majority but had very little share in political and constitutional affairs of the state. The case of the majority black South Africans during the era of apartheid could also be another example to question the issue of numerical inferiority in Capotorti’s definition.

²⁹ General Comment No. 15: The position of aliens under the Covenant :. 04/11/1986, CCPR General Comment No.15 (General Comments), Twenty-seventh Session, (1986), para.7.

³⁰ General Comment No.23: The Rights of Minorities (Art.27):.CCPR/C/21/Rev.1/Add.5, General Comment No.23 (General Comments), Fiftieth Session, (1994).

to a few groups or categories identified in Article 27 seems unjustified. It is unclear why anyone who speaks a minority language should receive preferential treatment over those whose group affiliations revolve around sexual orientation.³¹

In 1978, the Commission on Human Rights established an open-ended Working Group pursuant to Sub-Commission Resolution 5(XXX), which recommended that the Commission consider drafting a declaration on the rights of members of minorities within the framework of Article 27 of the Covenant. Yugoslavia submitted a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities to the Working Group to be used as a basis for discussion.³² The Commission subsequently requested the Sub-Commission to prepare a text defining the term “minorities”, taking into account a variety of studies, comments and views.³³

In the light of this, M. Deschenes submitted a proposal in 1985 concerning a definition of the term to the Sub-Commission. Like the Capotorti approach, the proposal was drafted within the framework of Article 27 of the ICCPR. The following formulation was suggested:

*A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.*³⁴

Capotorti and Deschenes differ slightly in their formulations, but both presuppose the existence of a distinct collectivity, qualitatively greater than a mere aggregation of individuals. In both cases, that collectivity is defined by ethnicity, religion or language.³⁵ The main addition by Deschenes is the last element of the definition according to which

³¹ Simon, *Supra* note 26, p.515.

³² UN Doc. E/CN.4/L.1367/Rev.1 (1978).

³³ Ibid.

³⁴ UN Doc. E/CN.4/Sub.2/1985/31.

³⁵ Eric Heinze, “The Construction and Contingency of the Minority Concept”, in D. Fottrell and B. Bowring(eds.), *Minority and Group Rights in the New Millennium*, (1999), p.44.

the aim of the group will is 'equality in fact and in law'.³⁶ The subsequent discussions in the Sub-Commission revealed several criticisms of this formulation. In particular disapproval was expressed regarding the expression "motivated by the will to survive" and the "aim to achieve equality". The proposal was forwarded unapproved, together with the comments to the Commission. As a direct consequence of this sequence of events, the Working Group took the view that the question of a definition was not a necessary prerequisite for drafting the declaration and it would be preferable to proceed with work on the operative text.³⁷

Accordingly, at its secession in 1986, the Working Group of the Commission postponed the discussion on a draft declaration on the rights of persons belonging to minorities. Consequently, the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was finally adopted without including any definition. No definition is either to be found in the Human Rights Committee comment on Article 27 of the ICCPR.³⁸

2.1.2. Characteristics for the Identification of Minorities

2.1.2.1. The Objective Criteria

It is crucial that the group in question, in order to constitute a minority, must be an objectively distinct group, with features distinguishing it from other groups within the state. These distinguishing features, for the purpose of Article 27 of the ICCPR, will focus on ethnic, religious or linguistic factors. However, this problem is exacerbated in states where a large number of different groups exist.³⁹

Another objective criterion for the identification of minorities is numerical inferiority of the group in question in relation to the total population of the state as incorporated in the definitions of Capotorti and Deschenes.⁴⁰ It has now become clear that the existence of a

³⁶ Akermarck, *Supra* note 18, p.91.

³⁷ UN Doc. E/CN.4/1986/43.

³⁸ *Supra* note 36.

³⁹ Malcolm N. Shaw, "The Definitions of Minorities in International Law", in Yoram Dinstein and Mala Tabory (eds.), *The Protection of Minorities and Human Rights*, (1992), p.23-24.

⁴⁰ *Id.*, p.24.

minority is determined in the strictly objective criterion of whether or not an ethnic, religious or linguistic group represents less than 50 percent of the state's population.⁴¹ Where the numerical structure of a state is such that it is impossible to tell which of a number of groups of roughly equal numerical size the majority is and which are the minority elements, Capotorti wisely suggests that Article 27 would be applicable to all of them.⁴²

Non-dominance of the group is another important objective factor in the identification of minorities. The aim of this was simply to avoid the situation characterized by the South African situation, where a minority dominates and persecutes a majority. There is little need in protecting a minority in such a position of power that dominates the machinery of the state in question. The question that, of course arises is whether the oppressed majority could be regarded as a "minority" in order to benefit from the provisions of the relevant international instruments. This, however, appears perverse.⁴³ This is because such groups are protected using other human rights instruments such as the Genocide Convention of 1948 and the Racial Discrimination Convention of 1965, and possibly by the internal expression of self-determination.⁴⁴ "To interpret minorities to include majorities is just a little too far, even for lawyers."⁴⁵

It appears to be commonly accepted that in order for members of the minority to be protected, they must be nationals of the state in question. This is based on recognition that there is a crucial difference between nationals of a state and foreigners, who already benefit from customary international law and, in certain situations, specific treaty regimes. However, this is the traditional approach and now begins to be questioned.⁴⁶ The situation, for instance, of stateless persons and refugees who do not form distinctive groups as such, but adhere to already existing minorities of nationals within the state in question is worthy of comment. It would appear that, although covered by human rights provisions generally as individuals within the territory of the state and subject to its

⁴¹ Fernand de Varennes, *Language, Minorities and Human Rights*, (1996), p.141.

⁴² Capotorti, *Supra* note 24, p. 96.

⁴³ Shaw, *Supra* note 39, p.26.

⁴⁴ Capotorti, *Supra* note 24, p.12.

⁴⁵ Shaw, *Supra* note 43.

⁴⁶ *Ibid.*

jurisdiction, they would be in a situation of inferiority as compared with other members of their group within the state in trying to maintain or assert those rights protected under Article 27.⁴⁷ It seems the reason that initiate the Human Rights Committee to adopt the General Comment on the position of aliens in 1986 that provides the rights set forth in the Covenant apply to every one irrespective of his or her nationality or statelessness. It added that where aliens constitute a minority within the meaning of Article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess their own religion, and to use their own language.⁴⁸

Article 27 of the ICCPR stipulates that the provision applies “in those states in which ethnic, religious or linguistic minorities exist”. According to Capotorti the reason for the insertion of this phrase was in order to prevent the formation of new minorities and to discourage the awakening of a minority consciousness in groups already assimilated.⁴⁹ The argument has been made that this therefore requires that the minority should be long existed in the territory, but one should resist an excessive interpretation of this phrase. It means that the minority must exist as such. There is no stipulation as to how long this state of affairs has continued, nor any minimum qualification period. Nor, in fact, does it mean that only minorities actually recognized by the state can fall within Article 27.⁵⁰

2.1.2.2. The Subjective Criteria

A group has to have a sense of identity that is manifested in a collective will to maintain its distinctive characteristics to be the beneficiary of the rights provided under Art.27 of the ICCPR.⁵¹ But does this will of the group to preserve its distinctive characteristics necessarily be expressed? According to Capotorti, the will of the group “emerges from the fact that a given group has kept its distinctive characteristics over a period of time.”⁵² The will of the group need not be expressed openly because it can be inferred from the

⁴⁷ Ibid.

⁴⁸ *Supra* note 29.

⁴⁹ Capotorti, *Supra* note 24, p.35.

⁵⁰ *Supra* note 15, p.27.

⁵¹ *Supra* note 24.

⁵² Ibid.

objective existence of a group possessing distinct ethnic, religious or linguistic characteristics.⁵³

In actual fact, where a group exists in a state and has preserved its distinctive characteristics for a long period of time, non-recognition of the rights of such group would tend to generate conflict between the majority and the group. As provided in Art.27 of the ICCPR, the group of persons sharing these distinctive characteristics should “exist” or have long lasting ties with the state in which they live. But the question is for how long are they expected to live in the territory to be conferred a minority status? The General Comment No.23, which was given by the Human Rights Committee, will help in shedding some light on this issue. This Comment stated that given the nature and scope of the rights under Art.27, “it is not relevant to determine the degree of permanence that the term ‘exist’ connotes.”⁵⁴ According to the Comment, Art.27 confers rights on persons belonging to minorities, which ‘exist’ in a state party.⁵⁵ Article 27 of the ICCPR does not prohibit, or exclude the possibility of, the voluntary assimilation of members of minority groups into the dominant/majority culture. Groups of individuals whose ambition is to assimilate into a dominant culture are not minorities for the purpose of Article 27.⁵⁶

2.2. Protection of Minorities under International Law

2.2.1. Historical Developments of Minority Protection before the League of Nations

Although customary law had nothing to say about repression of citizens of a state by that state, with the possible exception of the law of humanitarian intervention, international law has manifested its concern with minorities in another fashion. The protective treaty, relating in whole or in part to a specific minority group or groups, is the characteristic

⁵³ Shaw, *Supra* note 39, p.28.

⁵⁴ *Supra* note 30, para.5.1.

⁵⁵ Abera Dagafa, “The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia”, *Series on Ethiopian Constitutional Law*, Vol.1 (2008), p.33.

⁵⁶ Steven Wheatley, *Democracy, Minorities and International Law*, (2005), p.29.

means adopted by states.⁵⁷ An early example of such a treaty was the promise in 1250 by St. Louis of France to the members of the Marinite community to protect them as if they were French subjects.⁵⁸ The status of France as a Christian protector was latter rivaled by Australia and Russia in their relations with Sublime Porte. If these instances were a melancholy reflection of relations between Christian and Moslems, or at least of reflections between Christian and Moslem powers, the reformation gave rise to the even more pressing need of protecting one Christian sect from another when religious wars and spontaneous changes resulted in the partisans of one faith finding themselves within the territory of a prince belonging to a different confession. Therefore, several treaties were developed dealing with the rights of Protestants within catholic territory and vice versa.⁵⁹ The protestant minority in Transylvania attained free exercise through the treaty between the king of Hungary and the prince of Transylvania in 1606. The treaty of Westphalia in 1648 between France and the Holy Roman Empire granted similar freedoms to Protestants.⁶⁰

In the course of historical developments, there emerged a clear trend in international treaties towards safeguarding political and civil rights of national minorities, alongside the protection of religious minorities.⁶¹ The Final Act of the Congress of Vienna of 1815 was the first important international instrument to contain clauses safeguarding national minorities.⁶² At the 1878 Congress of Berlin, countries desiring to be admitted on an equal footing into the European family of nations were required to affirm the principles forming the basis of social organization in European states.⁶³ The 19th century also saw a movement toward multilateral guarantees and a marked eastward drift of the treaties –the classic minorities’ problem acquired a central European and Balkan flavor as Greece,

⁵⁷ Patrick Thornberry, “Is there a Phoenix in the Ashes? International Law and Minority Rights”, *15 Tex. Int’l L J.* 421, (1980), p.425.

⁵⁸ Ibid. See also Rehman, *supra* note 19, p.32.

⁵⁹ Thornberry, *Supra* note 57, p.426.

⁶⁰ Tore Moden, *The International Protection of National Minorities in Europe*, (1969), p.35. See also Rehman, *supra* note 19, p.32, Thornberry, *supra* note 57, p.4266, Simon, *supra* note 26, p.508 and Hannum, *supra* note 11, p.1431.

⁶¹ Vladmir A. Kartashkin, “International Protection of Minorities: the Soviet Perspective”, in Yoran Dinnstein and Mala Tabory (eds.), *The Protection of Minorities and Human Rights*, (1992), p.377.

⁶² Ibid. See also Thornberry, *Supra* note 57, p.426.

⁶³ Li-ann Thio, *Managing Babel: The International Legal Protection of Minorities in the 20th Century*, (2005), p.22.

Serbia, Romania, Bulgaria and Montenegro were carved out of the tottering Ottoman Empire.⁶⁴ While the system of group protection by treaty prior to the League of Nations may have acted to forestall or mitigate some excesses threatened or perpetrated by states, it clearly needed improvement. The defects were mainly related to the question of implementing the various guarantees; there was for example, a lack of effective supervisory machinery to verify whether the treaty system also constituted a potential danger to international peace in that the agreements could serve as a pretext for unilateral intervention in the internal affairs of states to further narrow national interests.⁶⁵

2.2.2. Protection of Minorities by the League of Nations

2.2.2.1. Minority Treaties of the League

While international concern for the religious, civil, and political rights of minorities had been manifest as early as the 16th and more particularly during the 19th centuries, effective implementation of this concern by means of an international guarantee had not been attempted until the peace settlements following World War I.⁶⁶ Although clauses on minorities and racial and religious discrimination were finally excluded from the Covenant⁶⁷, a series of international instruments were drawn up in which stipulations for the protection of minorities in certain countries were guaranteed by the League as conditions of the territorial settlements, and declarations were required from certain countries before they were permitted to join the league. Other instruments conferred on minority rights the character of positive international law.⁶⁸

⁶⁴ Thornberry, *Supra* note 57, p.427.

⁶⁵ Ibid.

⁶⁶ Mary Gardiner Jones, "National Minorities: A Case Study in International Protection", *Law and Contemporary Problems*, Vol.14, No.4, *International Human Rights: Part 2* (Autumn 1949), p.604.

⁶⁷ The absence of any minorities provision was in accordance with the British view that such questions were better dealt within the territorial treaties guaranteed by the League, and was partially explained by the diversity of minority demands, making general formula difficult. (Thornberry, *Supra* note 57, p.429.) The absence of a provision within the Covenant of the League of Nations for the protection of religious freedom was probably due to the belief that freedom of religion would be a part of the protection of the rights of minorities through the minorities' treaties. (John R. Valentine, "Toward A Definition of National Minority", 32 *Denv. J Int'l L. & Pol'y* 445, (2003-2004), p.451).

⁶⁸ Warwick McKean, *Equality and Discrimination under International Law.*, (1983), p.20.

The minorities' regime of the League of Nations took four different forms. These are the five minorities treaties concluded 1919-1920⁶⁹, four special chapters of the peace treaties of 1919-1923 imposed on the vanquished states⁷⁰, four subsequent treaties⁷¹ and five unilateral declarations signed by various states between 1921-1932 upon their admission to the League of Nations, of which the Council of the League of Nations took note in ad hoc resolutions.⁷²

The minority treaties guaranteed by the League of Nations, whose prototype was the Polish treaty of July 28, 1919, were largely identical in their contents. Nonetheless the Treaty for Upper Silesia was an exception, and was much more detailed than the generally-worded treaties comprising the remainder of this group. The treaty of Lausanne also differed in many respects from other minority treaties. The guarantees for preservation of the Swedish language in the Aaland Islands and for the self-government of the Germans and Hungarians in Roumania, the Valachs in Greece, and the Ruthenes in Czechoslovakia exceed far the rights of the other minorities.⁷³

⁶⁹ Such treaties include the treaty between Principal Allied and Associated Powers and Poland, Versailles 28 June 1919, the treaty between Principal Allied and Associated Powers and Czechoslovakia, the treaty between Principal Allied and Associated Powers and the Serbo-Croat-Slovene State, St. Germain-en-Laye, 10 September 1919, the treaty between Principal Allied and Associated Powers and Romania, Paris, 9 December 1919, and the treaty between Principal Allied and Associated Powers and Greece, Sevres, 10 August 1920. Joseph B. Kelly, "National Minorities in International Law", *Denver Journal of International Law and Policy*, Vol.3, Issue 2 (1973), p.256. See also Rehman, *supra* note 19, p.38-39, Moden, *supra* note 60, p.50, Thio, *supra* note 63, p.66.

⁷⁰ The treaty between Principal Allied and Associated powers and Austria, St. Germain-en-Laye, 10 September 1919, Articles 62-69, the treaty between Principal Allied and Associated Powers and Bulgaria, Neuilly-sur-Seine, 27 November 1919, Articles 49-57, the treaty between Principal Allied and Associated powers and Hungary, Trianon, 4 June 1921, Articles 54-60, and The treaty between Britain, France, Italy, Japan, Greece, Romania, the Serbo-Croat-Slovene State and Turkey, Lausanne, 24 July 1923, Articles 37-45. Rehman, *Supra* note 19, p.39, Moden, *supra* note 60, p.50.

⁷¹ The Polish Danzig Convention of 9 November 1920, the agreement between Sweden and Finland concerning the population of the Aaland Islands placed on record and approved by resolution of the Council of the League of Nations on 27 June 1921, the German-Polish Convention relating to Upper Silesia of 15 May, 1922, and the Convention of 8 May, 1924 concerning the territory of Memel, between Allied and Associated Powers and Lithuania. Rehman, *Supra* note 19, p.39, Moden, *supra* note 60, p.50-51.

⁷² The states that made such a declaration were: Albania 2 October 1921, Lithuania 12 May 1922 (extended to Memel district 29 September 1924), Latvia 7 July 1923, Estonia 17 September 1923, and Iraq 30 May, 1932. Rehman, *Supra* note 19, p.39, Moden, *supra* note 60, p.51.

⁷³ Moden, *Supra* note 60, p.54.

The obligations assumed by states fell roughly into four categories. The first, embracing citizenship rights defined the conditions under which citizenship could be acquired.⁷⁴ In the second and third categories were included rights of life, liberty, and religious freedom of general applicability to all inhabitants⁷⁵ and civil and political rights for all nationals, including equality before the law and equal access to civil service, business, and profession as well as the use of their own language in religion, press and assembly.⁷⁶

Finally, certain special rights, designed to protect their identity, were guaranteed to all nationals belonging to racial, religious, or linguistic minorities. These rights include the free enjoyment of equal treatment and security in law and in fact with other nationals; the receipt of primary school education in their own language; the right to establish under their own control charitable, educational, social, and religious institutions; and the right to share equitably in the enjoyment and application of public funds allocated for educational, religious, or charitable purposes.⁷⁷

⁷⁴ The general criteria of citizenship, adopted by most minority states, conferred automatic citizenship rights on those individuals who had resided habitually in the territory, or whose parents maintained such habitual residence, or who had been born in the territory and had no other nationality. (Poland, Arts. 3-6; Czechoslovakia, Arts. 3-4; Rumania, Arts. 3-4; Yugoslavia, Arts. 3-4). In the Austrian and Hungarian treaties, citizenship was automatically conferred on all persons possessing on the effective date of the treaty rights of citizenship (*Pertinenza*) (Austria, Art. 64 and Hungary, Art. 56). In the Bulgarian treaty, on the other hand, only persons who were habitually resident in the country on the effective date of the treaty were eligible for citizenship (Art. 51). The Turkish treaty contained special nationality provisions apart from the general provisions found in all the peace treaties. Jones, *Supra* note 66, p.606.

⁷⁵ Art. 2 of the Polish Minority Treaty (Treaty Between the Principal Allied and Associated Powers and Poland Signed at Versailles, June 28, 1919, here in after called the Polish Treaty), typical of the obligations undertaken in this respect by all the minority states, provides that: "Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion." All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, where practices are not inconsistent with public order or public morals.

⁷⁶ For example, Article 7 of the Polish treaty provides: "All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion." Differences of religion, creed or confession, shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honors, or the exercise of professions and industries. "No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings." Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language, either orally or in writing, before the Courts."

⁷⁷ Articles 8 and 9 of the Polish Treaty.

In addition, certain of the treaties contained special provisions for the protection of particular minority groups,⁷⁸ such as the Jews in Poland,⁷⁹ the Mussulmans in Yugoslavia,⁸⁰ the Saxons and Czecklers in Rumania,⁸¹ the Ruthenians in Czechoslovakia, and certain others.⁸² A majority of the states making unilateral declarations of adherence to the minority system adopted substantially similar obligations.⁸³ The bilateral arrangements, on the other hand, frequently contained more elaborate and detailed substantive provisions relating to the educational rights of minorities and other matters.⁸⁴ General provision was made in each treaty to assure the protection of life, liberty, and free exercise of religion to all inhabitants of a state, without distinction as to birth, nationality, race, religion, or language.⁸⁵

Only nationals, however, were to enjoy civil and political rights and to possess equality before the law without distinction as to race, language, or religion.⁸⁶ Nationality was to belong as of right to all persons who could reasonably be considered as entitled to it by

⁷⁸ The treaty with Poland contains special provision in regard to Jews. The treaties with Yugoslavia and Greece have provisions which safeguard the rights of Mussulmans. In the Czecho-Slovak treaty is incorporated the charter for the autonomy of the Ruthenians south of the Carpathians; and the treaty with Roumania assures the educational and religious autonomy of the Saxons and Szeckler of Transylvania. Helmer Rosting, "Protection of Minorities by the League of Nations", *17 Am. J. Int'l L* 641, (1923), p.649.

⁷⁹ Poland agreed to the establishment by the Jews of Educational Committees to distribute the public funds received for educational purposes and to organize and manage the Jewish schools. (Art.10 of the Polish Treaty). In addition Poland obligated herself not to compel the performance of any act by a member of the Jewish minority which would constitute a violation of the Sabbath. (Art. 11 of the Polish Treaty).

⁸⁰ Art.10 of the Yugoslavian Treaty granted the Mussulmans virtual autonomy in matters of family law and personal status and guaranteed the protection of their mosques, cemeteries, and other religious establishments. Jones, *Supra* note 66, p.607.

⁸¹ *Ibid.* Art. 11 of the Rumanian Treaty guaranteed the Saxons and Czecklers scholastic and religious autonomy.

⁸² *Ibid.* Czechoslovakia undertook to accord the fullest political autonomy to the Ruthenians in the Carpathian Territory. (Arts. 10-12).

⁸³ An exception was the Finnish Declaration in which Finland bound itself to guarantee to the population of the Aaland Islands the preservation of their language, culture, and local Swedish traditions (Art.1), and specifically the compulsory use of Swedish in the schools, the continued ownership of property solely in hands of legal residents, and the right to use 50 percent of tax revenues for Aaland Island purposes. *Ibid.*

⁸⁴ *Ibid.* See, for example, the Czech-Polish Convention relating to Silesian Teschen, Orava, and Spisz in which specific provision was made that the upholding of minority rights should not be regarded as an act of disloyalty (Art. 12) and that no pressure should be exercised with a view to persuading parents to send their children to a school which did not teach in the language of their mother tongue (providing expressly that the declaration of the individual as to his mother tongue could not be disputed) (Art. 13). The use of their own language in the courts and other official bodies was spelled out in considerable detail (Arts. 14-16), as were the educational rights granted to minorities (Arts. 17-21). See also Brunn Convention executed by Czechoslovakia and Austria containing detailed provisions with respect to educational rights of their minorities, and the German Polish Convention relating to Upper Silesia.

⁸⁵ E.g. Article 2 of the Polish Treaty.

⁸⁶ *Id.*, Art.7

habitual residence, or birth, without any discrimination, and nationals were to be treated equally, regardless of race, language, or religion. Minorities whose distinguishing features were their political views or which constituted a social or economic class were not given protection by the treaties.⁸⁷

2.2.2.2. The Operation of the League's Minority Regime

The method of guarantee adopted by the inter minorities regime, rather than the substance of minority protection, constituted the point of disjuncture from the past practice.⁸⁸ Placing minorities obligations under a public institutional guarantee was designed to remedy the perceived defects of the pre-war system, in the form of 'rudimentary nature of its machinery and organization' and the 'uncertainty, ineffectiveness and susceptibility to abuse of its sanctions'.⁸⁹ Previously, international instruments like the 1878 Treaty of Berlin which contained minority protective provisions did not provide for collective action in the event of a breach, vesting the right of intervention singly in signatory states. According to Thio, this created the danger of a state exercising a unilateral political right of interference in another state's internal affairs. As a result, some form of permanent supervision was needed to replace the ad hoc approach under the concert system where action was halted when Great Powers, driven by competing interests, could not agree on a common course of action. Hence, there arises a need to have separate minority treaty regime.⁹⁰

Measures for the observance of the minority treaties after the First World War were based upon international norms and upon international law.⁹¹ The League regime through a system of collective responsibility and permanent control was designed to eradicate the partisan element in enforcement. This marked a shift from the previous uncoordinated

⁸⁷ McKean, *Supra* note 68, p.21-22.

⁸⁸ Julius Stone, *International Guarantees of Minority Rights: Procedure of the Council of the League of Nations in Theory and Practice* (1932) at 3-15, Cf., Thio., *supra* note 63, p.67.

⁸⁹ Inis L. Claude Jr., *National Minorities: An International Problem* (1955) at 9, Cf. Ibid.

⁹⁰ Thio, *Supra* note 63, p.67.

⁹¹ Moden, *Supra* note 60, p.58.

response of the international community to a more systematic approach, with the object of depersonalizing and regularizing the monitoring and enforcing of treaty obligations.⁹²

The League of Nations guarantee for the protection of minority rights was both internal and external. Internally, the obligated state undertook that the treaty provisions were to be regarded as fundamental laws invalidating all laws, regulations or official action in conflict with them, whether relating to minorities or to the population as a whole.⁹³ Externally, the guarantee was more limited, applying to the various rights only “so far as they affect persons belonging to racial, religious or linguistic minorities.” In that case they constituted “obligations of international concern.”⁹⁴

The various minority states recognized in the treaties that the statutes for the protection of minorities involved international obligations, which were guaranteed by the League of Nations. Any modifications of the minority treaties required the consent not only of the interested parties but also of a majority of the League of Nations’ Council, one of the League’s institutions supervising minorities’ issues. Each member of the Council had the right, in case of a breach of the treaty or of a threatened breach, to bring the matter to the attention of the Council. The Council was then entitled to take the necessary measures and give such directions as it may deem proper and effective in the circumstances.⁹⁵ The introduction of the judicial element represented a novel contribution of the interwar minority protection machinery. The intent was to further depoliticize minority-related disputes by removing them from the realm of politics and diplomacy to that of law and the impartial determination of the Permanent Court of International Justice (PCIJ).⁹⁶

The Assembly had no formal role over the supervision of the minorities’ treaties. However, minorities issues fell within the broad Article 3(3) of the League’s Covenant which authorized the assembly to address ‘any matter within the sphere of the action of League or affecting the peace of the world’.⁹⁷ The League through the Council bore

⁹² Jones, *Supra* note 66, p.606.

⁹³ Thornberry, *Supra* note 57, p.433.

⁹⁴ Article 12 of the Polish Treaty.

⁹⁵ *Id.*, Article 12.

⁹⁶ Thio, *Supra* note 63, p.68.

⁹⁷ *Id.*, p.69.

collective responsibility in underwriting the international minorities guarantee. With the council as a forum where minorities' questions could be treated impersonally or impartially, the hope was that the bilaterlisation of minorities' issues between states would be prevented.⁹⁸ A request for the adoption of measures to protect minority groups could be introduced with binding force only by a member of the Council of the League or a non-member state party to the minority treaty. Neither individual members of the minority nor its organizations had any formal right to approach the League. They could only try to inspire member states interested in safeguarding their rights to bring action in the matter before the Council.⁹⁹

In October 1920, after considerable debate on the guarantee assumed by the League, the Council adopted a resolution which established the basic procedural machinery for the submission and consideration of minorities' questions. This system was characterized by two main features: first the establishment of a right of petition in favor of non-Council members as well as the minorities themselves or persons acting on their behalf; and second, the creation of minorities committees, composed of three Council members, charged with the duty of examining all petitions submitted and making recommendations to the Council as to whether it should take action or not.¹⁰⁰

The main procedure through which the League system operated was that, in the first place, the Secretariat of the League examined the petition to determine whether it was receivable. It is to be noted that, although minorities had been given the right to make petitions, these petitions were more in the nature of providing information rather than being a party to any probable proceedings.¹⁰¹ Once the petition is received, an investigation of the facts involved was undertaken by the minorities section, entrusted with the task of communicating the petition to the government concerned and conducting whatever correspondence was necessary in order to ensure reasonable observance of the time limit within which its comments must be submitted. A detailed memorandum was then prepared summarizing the allegations and observations of the government, together

⁹⁸ Id, p.80.

⁹⁹ Moden, *Supra* note 60, p.59.

¹⁰⁰ Jones, *Supra* note 66, p.610.

¹⁰¹ Rehman, *Supra* note 19, p.40.

with such additional information as the section was able to obtain on its own initiative through other channels.

Then, preliminary examination of the petition will be undertaken. In general, the Committee refused to take action if the facts involved occurred before the inception of the minorities treaties, if the issue was at the time of the petition still pending before the authorities of the minority state, or finally if the alleged grievance related merely to an anticipated-rather than an actual-case of discrimination in the application of a statute which on its face appeared harmless.¹⁰²

If the claims appeared to be clearly without foundation, the case was closed and the Council notified that no action was deemed necessary. If, on the other hand, the explanations appeared unsatisfactory, the Committee opened negotiations with the government with the ostensible object of securing additional information. The negotiations were generally carried on by members of the Minorities Section within certain broad objectives laid down by the Committee. In addition to these specific negotiations, members of the Minorities Section frequently made annual visits to the countries which had assumed minority obligations with a view to familiarizing themselves with the local conditions and problems and with the points of view of both official and non-official elements directly concerned with minority problems.¹⁰³ A number of petitions have been dealt in accordance with this procedure. In most cases it has not been found necessary by a member of the Council, in consideration of the observations presented by the interested government, to call the attention of the Council to the question, only two cases have been brought before the Council.¹⁰⁴

The instruments for the protection of minorities provided for the intervention of the Court in cases where differences of opinions arose between the government concerned and any of the allied or associated powers or any other power which was a member of the Council. The states which had assumed obligations with regard to minorities were

¹⁰² Jones, *Supra* note 66, p.613.

¹⁰³ Id, p.614.

¹⁰⁴ Rosting, *Supra* note 78, p.656. (They were the cases of the German minorities in Poland and the Jewish minorities in Hungary. For the details of the case refer p.657 and the following).

obliged to refer the dispute to the Court if the other parties requested it. Furthermore, the decision of the court was final. The Court also was empowered to provide advisory opinions. The authority for delivering advisory opinions as well as the competence ‘to hear and determine any disputes of an international character’ was granted by the Covenant of the League.¹⁰⁵ Most matters brought before the Court related to the *sui generis* Upper Silesian system. Three contentious matters were submitted to the Court, all of which concerned the German minority in Poland. Two were eventually withdrawn and the Court gave judgment in one case only. Five questions were submitted for advisory opinions, three concerning German minorities in Poland, one the Polish minority in Danzig and one the Greek minority in Albania.¹⁰⁶

2.2.2.3. The Death of the Minorities Regime of the League of Nations

The League Minority Treaty System worked well for some years, for some minorities and on some issues, though it failed to achieve overall success. The absence of any rational layout of the system, with its rather “arbitrary confinement to smaller states of Eastern and Central Europe, was probably the biggest drawback in the system of the protection of minorities”.¹⁰⁷ The lack of a general and uniform system of obligations regarding minorities provided a convenient weapon for those states who wish to avoid their own treaty obligations and Poland ultimately withdrew from the supervisory mechanisms of the League in this basis, undermining the entire system.¹⁰⁸ According to Thornberry, the minorities themselves, the direct beneficiaries of the system, were also keen critics, demanding, *inter alia*, liberalization of the petition procedures, assurances that the system was not a stepping stone to eventual assimilation, and requiring greater autonomy. Finally, and especially after Hitler’s rise to power, the more destructive minority sentiments were inflamed by propaganda emanating from kin states such as Germany, Austria, Hungary and Bulgaria, all committed to a fundamental revision of the Versailles settlement and eager to prize open the smallest crack in the structure.¹⁰⁹

¹⁰⁵ The Covenant of the League of Nations, (1919), Article 14.

¹⁰⁶ McKean, *Supra* note 68, p.28.

¹⁰⁷ Rehman, *Supra* note 19, p.41.

¹⁰⁸ Valentine, *Supra* note 67, p.453.

¹⁰⁹ Thornberry, *Supra* note 57, p.437.

Despite its many shortcomings, the League system was a great step forward in terms of developing the notion of rights against the state. It certainly helped define nature of the minorities' problem and elucidate the difficulties of a practical solution. It continued and broadened the humanitarian tradition of international law, contributing to the moral consciousness of mankind.¹¹⁰ The legacy of the system therefore in some ways provides a positive moment in the painful history of group rights. At least an attempt, be it limited in vision and ultimately unsuccessful, was made to elevate the issue of minority protection in an international arena.¹¹¹

2.2.3. Protection of Minorities by the United Nations

2.2.3.1. Protection by the UN Organs

When the United Nations was founded after the Second World War, the prevailing view was that special provisions for the rights of minorities were not needed if individual human rights were properly protected.¹¹² The Charter of the United Nations shows no evidence of a consideration for minority rights. It did not recognize minority rights as a problem of international concern.¹¹³ It refers only, in Article 1(3), to the development of co-operation "in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." This approach, which subsumes the protection of minority rights in the general protection of human rights, is reflected in the mandates of the main and subsidiary United Nations bodies. The General Assembly may, as stated in Articles 10 and 13 of the Charter, make recommendations to promote the protection of human rights and fundamental freedoms. Similarly, the Economic and Social Council may, in accordance

¹¹⁰ Id, p.438.

¹¹¹ Rehman, *Supra* note 19, p.42.

¹¹² Vldadmir Kartashkin, "The protection of Minorities within the Framework of the United Nations", *12 Rev. quebecoise de droit int'l* 33, (1999), p.33.

¹¹³ Jay A. Sigler, *Minority Rights: A Comparative Analysis*, (1983), p.77.

with article 62, “make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”¹¹⁴

At the 1946 Peace Conference in London, Hungary submitted a draft treaty for the protection of minorities which was not accepted. Proposals to include a provision on minorities in the Universal Declaration of Human Rights (UDHR) also failed.¹¹⁵ However, the issues of minority rights were not put aside. The Commission on Human Rights (CHR), established in 1946, was given the task of making recommendations on various human rights subjects, including the protection of minorities.¹¹⁶

At its first session in 1947, it approved the establishment of a body of independent experts called the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (SPDPM).¹¹⁷ The Sub-Commission was originally intended to be two separate Commissions, one for discrimination, the other for minorities.¹¹⁸ The task of the Sub-Commission, according to its instructions, is to “undertake studies, particularly in the light of the Universal Declaration of Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, and linguistic minorities.”¹¹⁹

The Commission on Human Rights, which is composed of government representatives, is the parent body of the Sub-Commission for the Prevention of Discrimination and Protection of Minorities. As Thio said, it treated the Sub-Commission’s initiatives to promote minority protection in a lukewarm fashion while generally receiving proposals regarding the prevention of discrimination more auspiciously.¹²⁰ In 1950, the CHR

¹¹⁴ *Supra* note 112.

¹¹⁵ Instead, the day after the UDHR was unanimously adopted on December 1948, the General Assembly adopted Resolution 217C (III), expressing UN policy towards minorities as sort of consolation prize. It justified excluding a specific provision given the difficulty of adopting a ‘uniform solution’ to ‘complex and delicate question’. In stating the decision ‘not to deal in a specific provision with the question of minorities’ in UDHR, the resolution implied that minority rights were protected by general UDHR provisions. Lian-Thio, “Resurgent Nationalism and the Minorities Problem: the United Nations and Post Cold War Developments”, 4 *SJICL*, (2000), p.308.

¹¹⁶ McKean, *Supra* note 68, p.60.

¹¹⁷ *Id.*, p.34.

¹¹⁸ Kelly, *Supra* note 69, p.265.

¹¹⁹ Moden, *Supra* note 60, p.100.

¹²⁰ Thio, *Supra* note 115, p.306.

openly rebuked the SCPDPM for its activist role regarding minority protection. Many Commission members declared that it should avoid aggressive quasi-litigious and enforcement proposals and instead undertake ‘acceptable’ activities such as undertaking studies or publishing minorities’ yearbook. In 1951, the SCPDPM suffered a near-death experience: considering the SCPDPM’s work inconsequential, the Economic and Social Council (ECOSOC) sought to liquidate the SCPDPM and to transfer its functions to other bodies.¹²¹ Meanwhile, in 1952, following strong pressure from states, the General Assembly asked the Council to reconsider its decision temporarily to discontinue the Sub-Commission, and the Council accordingly reconsidered its decision and extended the Sub-Commission’s life, requesting it to pay particular attention to the prevention of discrimination.¹²²

The SCPDPM stimulated from the institutional depression briefly in 1969 when ECOSOC authorized the CHR to appoint a Special Rapporteur to undertake a comprehensive study on minorities within the framework of Article 27 of the ICCPR. The SCPDPM had helped to draft this primary conventional minorities’ obligation which the CHR adopted in 1953. This resulted in the adoption of the Capotorti Report of 1979, which remains the most comprehensive treatment of the minorities’ problem within the framework of a conventional obligation. The CHR also formed an informal working group on 1978 to consider a draft minorities’ declaration within the framework of Article 27 of the ICCPR. This shows that there was a modest re-awakening of interest in minorities’ issues after 1979.¹²³

In the face of extensive human rights violations proceeding partially from the denial of minority rights, it was apparent within the UN by 1989 that general human rights, while necessary as a ‘floor’, did not sufficiently address legitimate minority concerns. Hence, the focus on protecting individuals on the basis of their group affiliations intensified. As a result, discrete minority provisions were incorporated into various conventions.¹²⁴ Within

¹²¹ Ibid.

¹²² McKean, *Supra* note 68, p.77.

¹²³ Thio, *Supra* note 115, p.307.

¹²⁴ Examples include the Convention on the Right of the Child (CRC) of 1989 and the ILO Convention No. 169 of 1989. Id, p.312-313.

the SCPDPM, the focus was on elaborating principles relevant to minority protection through a series of studies. Work continued on the draft declaration on minorities. In 1992, 14 years after it was first proposed, the General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This was part of the continuing effort to identify specific human rights areas requiring further international action to develop the existing legal frame work. Specifically, it constituted part of the post Cold War UN efforts to play an ‘increasingly important role’ in protecting minorities. In 1993, some 170 states adopted by consensus the Vienna Declaration and Program of Action which referred to minorities’ issues, albeit in individualist terms, and urged states promote the Minorities Declaration.¹²⁵

The Declaration is more of a fresh start than the expansion of ICCPR. The drafters were well aware of the distinctions between individual and group rights. The most important positive outcome is the fact that “shall not be denied the rights”, the negative formulation from Article 27 of ICCPR, has been replaced with stronger formulation” in Article 2 of the Declaration “have the right”. This is an explicitly positive approach.¹²⁶ In addition to the ‘traditional’ minority rights to religion, language and culture, the Declaration does contain some progressive provisions. These relate to effective participation and trans-frontier contacts.¹²⁷

The non-legally binding nature of the UN’s most comprehensive instrument on the special rights of minorities, the Minorities Declaration, indicates the “reticence flowing from the political sensitivity states maintain towards minorities’ issues.” “While global in reach, it is a cautious and conservative document and represents the current available state consensus towards efforts to promote minority rights.” As a political declaration, the Minorities Declaration does exert some weight as there is some value in a state declaring a commitment to implement its principles, as it provides an accepted reference point in

¹²⁵ Id, p.314.

¹²⁶ Dragana Kovačević , International Minority Protection System, Ethnicity Research Center, Belgrade, available at: www.kas.de/upload/auslandshomepages/serbien/Kovacevic_en.pdf (Accessed on 23 March, 2010).

¹²⁷ Thio, *Supra* note 115, p.334.

terms of accountability. Minority groups can also invoke the Declaration, a consensus document, in advancing and adding legitimacy to their claims in the political sphere.¹²⁸

The Declaration itself did not provide for any means of implementation. There was general agreement that the UN role in protecting national or ethnic minorities ‘should increase’ and that attention should be directed towards seeking ‘procedural solutions’ to implement the Declaration. Given the post 1989 prominence of minorities’ issues particularly in relation to ethnic conflict, there was a clear need to re-emphasize all facets of the SCPDPM’s original mandate. Consequently, the SCPDPM in 1995 created the Working Group on Minorities (WGM) to serve as a focal point for minorities’ issues within its burgeoning human rights agenda.¹²⁹ This was an important decision, given the ever-expanding breadth of human rights issues falling under the SCPDPM’s mandate and reflected in its 1999 name change.¹³⁰ This has since evolved into a *de facto* means of implementing the Declaration, with the WGM becoming the primary forum where minorities’ issues are discussed at depth.¹³¹

In addition to the Sub-Commission and its Working Group, the United Nations has a whole range of mechanisms and special procedures for dealing with minority rights in a case by case basis. These include a confidential procedure for the consideration of communications about human rights violations provided for under Economic and Social Council resolution 1503 (XLVIII) and the activities of various special rapporteurs on such issues as religious intolerance and freedom of thought and expression. Questions relating to the protection of minorities also arise occasionally in specialized agencies such as the United Nations Economic, Scientific and Cultural Organization (UNESCO), the International Labor Organization (ILO) and the World Health Organization (WHO).¹³²

¹²⁸ Id, p.339.

¹²⁹ Id, p.318.

¹³⁰ The name of the Sub-Commission for the Prevention of Discrimination and Protection of Minorities (SCPDPM) was changed in 1999 into the Sub-Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms (SCPPHR). Id, p.347.

¹³¹ *Supra* note 126.

¹³² Kartashkin, *Supra* note 112, p.35.

2.2.3.2. Protection by Treaty Bodies

The protection of minority rights is discussed not only in the organs of the United Nations system, but also in the treaty bodies established under various human rights conventions by the United Nations General Assembly.¹³³ The ICCPR and CERD are the two primary human rights treaties of particular relevance to minority protection. Minorities' issues have also been discussed in the works of the Committees overseeing ICESCR, CEDAW, the Child Convention and the Convention Against Torture (CAT). Although these bodies are independent, treaty -established bodies and not UN organs, their roles as integral facets of the UN human rights system are evident.¹³⁴

These treaty bodies have important role in ensuring the substantive rights of minorities to use and develop their own language, profess their own religion and promote and develop their own culture. The treaty bodies did also play enormous role in clarifying the obligations of states towards minority protection. Despite its drafting history and the negative formulation of Article 27, the practice of the HRC has clearly established that this article entails positive state duties. This is reflected in the framing of questions posed by HRC experts to state representatives, asking governments about steps taken to promote minority culture and the resources allocated in this respect.¹³⁵

Likewise, while recognizing the valid interest of a state in having an official language as an aid to promoting national integration, the HRC has recommended that this be accompanied by efforts to help minority groups retain their language and the importance of language as a means of collective group identification.¹³⁶ The CERD Committee has adopted a broad interpretation of discrimination based on national or ethnic origin and including religious and linguistic minorities. It has called on state parties to adopt special measures for the protection of minorities.¹³⁷ The Committee on Economic, Social and Cultural Rights (CESCR) has also laid down guidelines concerning the form and content

¹³³ Ibid.

¹³⁴ Thio, *Supra* note 63, p.217.

¹³⁵ *Supra* note 54, para. 6.1.

¹³⁶ Id, para.6.2.

¹³⁷ HRI/GEN/1/Rev.7 A/51/18, General recommendation XXI on the right to self-determination, CERD Committee, Forty-eighth Session, (1996), para.5.

of state reports, to facilitate its monitoring role in assessing a state's performance in the field of economic, social and cultural rights. A particular concern was given for the situations of indigenous populations and minorities who are disadvantaged in their enjoyment of economic, social and cultural rights.¹³⁸

The Genocide Convention of 1948 is also instrumental in ensuring the physical existence of minorities. The Convention in its capacity as the leading instrument for protecting the physical existence of minorities has obvious contemporary relevance in international law.¹³⁹

The protection of minorities within the frame work of the United Nations was initially influenced by the individualist right philosophy of the Western European countries. As a result, early attempts to incorporate provisions on the protection of minorities were not successful. Article 27 of the ICCPR, which provides the rights of ethnic, religious and linguistic minorities, conferred the rights to individual members of such minorities rather than to the minorities as a group and was negatively phrased. The issue of minority protection got a regained interest within the UN since the late 1980's and the early 1990's. Since then the UN adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities in 1992. The General Comments of the HRC also affirm that Article 27 of the ICCPR provides protection not only to the nationals of the state but also to migrant workers or even visitors.¹⁴⁰ Thus, the UN organs as well as the treaty bodies has recently give attention to the issues of minorities and provide favorable situations to their protection.

¹³⁸ Thio, *Supra* note 63, p.228.

¹³⁹ Rehman, *Supra* note 19, p.55.

¹⁴⁰ *Supra* note 30, para.5.2.

2.3. Protection of Minorities under Ethiopian Laws

In Ethiopia there are about 85 Nations, Nationalities and Peoples.¹⁴¹ The FDRE Constitution guarantees a number of rights to these Nations, Nationalities and Peoples. The rights guaranteed under the Constitution include the right to self-determination including secession, the right to self-government, the right to promote and develop their culture and the right to speak, write and develop their own language.¹⁴² These rights are applicable to all Nations, Nationalities and Peoples including minorities. However, the Constitution nowhere defines minority. Although it did not define the term minority, the parallel report submitted by the Ethiopian Human Right Council to the Committee on the Elimination of Racial Discrimination (CERD) Committee provides six categories of ethnic minorities in Ethiopia.¹⁴³ These are:

- a. Non-native Communities/groups, mostly of Northern origin, who have permanently settled in the areas acquired in the course of the expansion of the Ethiopian state in the late 19th century.
- b. Non-native communities who have migrated to other areas or have been displaced by war and settled in other areas for centuries.
- c. Communities/groups who had been permanently resettled in areas other than their original homelands in the context of the resettlement and *villagization* programs of the military regime in the aftermath of the drought that hit northern Ethiopia in the mid of 1980s.
- d. Individuals, communities and groups that work and live in regions other than those of their ethnic origin by virtue of exercising their freedom of movement and their right to work and live in other parts of Ethiopia.
- e. Individuals with mixed ethnic background, i.e. citizens born from parents belonging to different ethnic groups; and

¹⁴¹ Summary and Statistical Report of the 2007 Population and Housing Census, Federal Democratic Republic of Ethiopia Population Census Commission, December 2008, Addis Ababa.

¹⁴² FDRE Constitution (*Supra* note 1), Article 39.

¹⁴³ The categorization of minorities by the Human Right Council is the one provided as the working classification for the purpose of the report and should not be taken as an authoritative classification of ethnic minorities in Ethiopia.

- f. Communities that have been included in regions other than the ones of their origin/alignment as a result of incongruence in border demarcation between regional states.¹⁴⁴

Under this section the rights of Nations, Nationalities and Peoples of Ethiopia, particularly minorities, to representation in the Federal Government mainly the House of Federation and the House of Peoples Representatives, the right to self-government and the right to develop and promote and culture will be dealt in detail. The justification for selecting these rights is the importance of these rights to ensure the hearing of a minority's voice in the federal government and maintain its separate identity.

2.3.1. The Right to Representation of Minorities

According to Ghai, so far as the exercise of political influence and participation is concerned, the general principle of non-discrimination is not sufficient. As a minority, a group's interests may well be different from those of the majority; and its culture is likely to be marginalized by that of the majority. Its population may be dispersed through the country, and it will not, as a general rule, have adequate number of legislators etc. to influence the formation of government or its policies. Therefore, in order to ensure effective participation, it is necessary that special procedures, institutions and arrangements be established through which members of minorities are able to make decisions, exercise legislative and administrative powers, and develop their culture.¹⁴⁵

Many of the general justifications for minority protection apply equally, or even more forcibly, to participation rights. A major justification is the inherent fairness of minority protection. Members of minorities are entitled, like any other person, to human rights and freedoms, of which participation is an essential aspect. Minorities have the right to

¹⁴⁴ Parallel Reports Submitted to the Committee on Racial Discrimination, By the Ethiopian Human Rights Council, Ethiopia, August, 2009 Available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/EHRC_Ethiopia_CERD75.doc. (Accessed on 20 March, 2010), para.26.

¹⁴⁵ Yash Ghai, Public Participation and Minorities, Minority Rights Group International Report, Available at <http://www.burmalibrary.org/docs/MRG-Yash%20Gai%20report.pdf> (Accessed on 3 April, 2010), p.5.

influence the formulation and implementation of public policy, and to be represented by people belonging to the same social, cultural and economic context as them.¹⁴⁶

To ensure the representation of minorities in the Federal Government, the FDRE Constitution provides each Nation, Nationality and People, including the minorities, is represented in the House of Federation at least by one representative.¹⁴⁷ The Constitution also provides that 20 seats of the House of Peoples representatives are reserved for minority nationalities and peoples.¹⁴⁸ In the subsequent sub-sections the representation of these minorities in these Federal Houses and the modes of representation will be discussed briefly.

2.3.1.1. Representation in the House of Peoples Representatives

In the Transitional period (the period between the down fall of the Derg and the adoption of the FDRE Constitution), the Charter provides that the Council of People Representatives or its successor shall make minority nationalities that require special representation to elect and send their respective representatives. According to this, up on making a thorough discussion in the 89th regular secession of the study jointly presented to it by the election board and the study group established by the Council of People's Representatives, the council decides that the minimum population number of minority nationalities who are eligible for special representation for the Constitutional Assembly shall be ten thousand and the maximum shall be less than one hundred thousand. On the basis of this, members of the council come to agreement to give special representation for twenty two minority nationalities.¹⁴⁹

The FDRE Constitution provides that members of the House of People's Representatives are elected on the basis of universal suffrage by direct, free and fair elections.¹⁵⁰ They are elected from candidates in each electoral district by a plurality of the votes cast. The

¹⁴⁶ Id, p.6.

¹⁴⁷ FDRE Constitution (*Supra* note 1), Art.61 (2).

¹⁴⁸ Id, Art.54(3).

¹⁴⁹ Hagos Wondwossen, The Protection of Minority Nationalities under the FDRE Constitution: An Overview, Available at http://www.federalism.ch/files/FileDownload/918/Hagos_web.pdf (accessed on 22 March, 2010), p.6.

¹⁵⁰ FDRE Constitution (*Supra* note 1), Art.54 (1).

Constitution also ensures the special representation of minority nationalities and peoples.¹⁵¹ As a result, out of the maximum 550 seats of the house, a minimum of 20 seats are reserved for minority nationalities and peoples.¹⁵²

In line with Art.54 (2) of the FDRE Constitution, the 1995 Electoral Law of Ethiopia was proclaimed to ensure the conformity of the Electoral Law of Ethiopia with the FDRE Constitution. According to this proclamation, each constituency was supposed to be made of 100,000 inhabitants.¹⁵³ Notwithstanding this generality, even though the number of their inhabitants is below 100,000, minority nationalities believed to have special representation by the then Council of Representative or its successor, were allowed to elect and send their respective representative.¹⁵⁴ As Hagos provides, those minority nationalities who have a total population number of ten thousand (10,000) or more and less than one hundred thousand (100,000) were identified as eligible for special representation in the House of People's Representatives. On such basis, twenty two minority nationalities were identified for the purpose of representation in the Constitutional Assembly and some other two minority nationalities, namely, Geleb and Chiri, were identified as eligible for special representation in the House of People's Representatives. According to Hagos, twenty four minority nationalities were eligible for special representation in the House of People's Representatives. However, out of these numbers, three minority nationalities namely Dasnech (South Omo Zone), Nao (Keficho-Shekicho Zone) and Mezinger (Gambela Regional State) were not represented.¹⁵⁵

The new Amended Electoral Law of Ethiopia Proclamation No.532/2007(repealing the above proclamation) provides that pursuant to Article 54 of the FDRE Constitution, there shall be constituencies where minority nationalities and peoples whose number is not less than 20 and are believed to require special representation, shall be represented.¹⁵⁶ It also

¹⁵¹ Id, Art.54(2).

¹⁵² Ibid.

¹⁵³ Proclamation to make the Electoral Law of Ethiopia conform with the Constitution of the Federal Democratic Republic of Ethiopia, 23rd February 1995, Article 15(2), Proclamation No.111, Federal Negarit Gazeta, 54th Year, No.9.

¹⁵⁴ Id, Article 15(3).

¹⁵⁵ Hagos, *Supra* note 149, p.7.

¹⁵⁶ The Amended Electoral Law of Ethiopia, 25 June 2007, Article 20(1)(c), Proclamation No. 532, Federal Negarit Gazeta Of The Federal Democratic Republic Of Ethiopia, 13th Year, No. 54.

provides that the number of constituencies shall be determined among other things by taking into consideration of the special representation of minority nationalities and peoples. The proclamation also requires the number of people in each constituency to be proportional. However, this requirement of proportionality is not applicable to constituencies where minority nationalities and peoples are represented.¹⁵⁷ The proclamation vests the power of identifying those minority Nationalities and Peoples eligible for special representation in the House of Peoples Representatives by virtue of Article 54(3) of the FDRE Constitution to the House of Federation.¹⁵⁸

2.3.1.2. Representation in the House of Federation

The House of Federation is composed of representatives of each nation, nationality and people of the country irrespective of its numerical inferiority. Consequently, minority Nationalities and Peoples have the chance to be represented in this house by a minimum of one representative. Each Nation or Nationality or People shall have one additional representative for each one million of its population.¹⁵⁹ In the third term of office of the House of Federation (2005-2010), there were 69 Nations, Nationality and Peoples which have a seat in the House of Federation.¹⁶⁰

The mandate of electing the representatives is vested upon State Councils or such representatives could be elected directly by the Nation, Nationality or People whom they represent.¹⁶¹ According to the commentary on the draft of the FDRE Constitution in a State Council which constitutes more than one Nation, Nationality and People there may be disagreement on the election of the representatives. In such cases it will be the Nation, Nationality or People concerned will directly elect its own representatives to the House of Federation.¹⁶² As indicated above out of 85 Nations, Nationalities and Peoples of the country only 69 have a seat in the House of Federation. This means about 16 Nations,

¹⁵⁷ Id, Article 20(1) (b).

¹⁵⁸ Id, Article 20(1) (d).

¹⁵⁹ *Supra* note 147.

¹⁶⁰ Available at http://www.hofethiopia.gov.et/index.php?option=com_content&id=100&task=view&Itemid=104&lang=en (visited on 17 November, 2010).

¹⁶¹ FDRE Constitution (*Supra* note 1), Article 61(3).

¹⁶² Short Commentary on the Draft of the FDRE Constitution Approved by the House of Peoples Representatives, Addis Ababa, 28 October 1995, p.116.

Nationalities and Peoples were unrepresented. This is not in line with article 61(2) of the FDRE Constitution which provides for representation of each nation nationalities and peoples of Ethiopia in this house. Thus, the representation of each Nation, Nationality and People including national minorities in the House of Federation needs to be effected to ensure the effective participation of all Nations, Nationalities and Peoples in the socio-economic and political affairs of the country. Therefore, the State Councils should take into account the representation of Nations, Nationalities or Peoples in the State while electing the representatives of the House of Federation.

2.3.2. The Right to Self Government

According to Ghai, a particular valued form of participation is self-government, where specific matters of special concern to a minority are delegated for policy or administration to the minority.¹⁶³ The right to self-government implies self-rule by the Nations, Nationalities and Peoples of Ethiopia within the particular territory they inhabit. This right of self-government indicates some degree of political and economic independence at every level of the state system vis-à-vis the federal government.¹⁶⁴ The right to self-government of Nations, Nationalities and Peoples includes the right to establish institutions of government in the territory they inhabited and equitable representation in the Federal and State governments.¹⁶⁵

To ensure the right to self-government of Nations, Nationalities and Peoples the FDRE Constitution has created nine states.¹⁶⁶ However, the members of the federation are not homogeneous. There are a number of Nations, Nationalities and Peoples in each regional state and in some states like the Southern Nations Nationalities Peoples Region, it is estimated that there are more than 56 Nations, Nationalities and Peoples.¹⁶⁷ As a result, in the states, there exist majorities and minorities.

¹⁶³ Ghai, *Supra* note 145, p.12.

¹⁶⁴ Abera, *Supra* note 55, p.118.

¹⁶⁵ FDRE Constitution (*Supra* note 1), Article 39(3).

¹⁶⁶ These include: Tigray, Afar, Amhara, Oromia, Southern Nations, Nationalities and Peoples, Gambella, Somali, Harari, and Benishangul Gumuz regional states. Id, Art.46 (3).

¹⁶⁷ *Supra* note 141.

Table 1 below shows the statistics of National Minorities in the Regional States.¹⁶⁸

Region	Total Population	Native Population	Minority Population	%age of minorities in the total population
Tigray	4,314,456	4,165,749	148,707	3.45%
Afar	1,411,092	1,251,103	159,989	11.34%
Amhara	17,214,056	15,747,800	1,466,256	8.52%
Oromia	27,158,471	23,846,380	3,312,091	12.2%
Somali	4,439,147	4,314,657	124,490	2.8%
Benishangul Gumuz	670,847	379,048	291,799	43.5%
Gambella	306,916	221,415	85,501	27.86%
Harari	183,344	119,279	64,065	34.94%

States adopt their own mechanism of accommodating the rights of national minorities living in their own jurisdiction. The SNNPs and the Amhara National Regional States, in their Constitution, provides for the right of minorities to establish their own nationality self-governments and equitable representation in the state councils.

On the other hand, the Constitution of the Oromia Regional State provides Sovereign power in the region resides in the people of the Oromo Nation and the sovereignty of the people is exercised through their elected representatives and direct democratic participation.¹⁶⁹ It is worth noting that this provision has ignored the existence of non-Oromo ethnic groups, which constitute 12.2% of the region's population as indicated in the above table. Since there is no provision in the Oromia Constitution, which provides for the protection and effective political representation of non-Oromo residents of the

¹⁶⁸ Ibid.

¹⁶⁹ *Supra* note 6.

region, the above provision is a conspicuous denial of the very existence of the 3,312,091 non-Oromo Ethiopians living in the Oromia region.¹⁷⁰ Moreover, Article 5 of the Harari Constitution provides the Harari People is the owner of sovereign power in the Region. This stipulation of the Constitution recognizes the Harari ethnic community, which represents a mere 8.65% of the regional population, as the sole holder of sovereign power. Although article 6 of the Regional Constitution provides that Oromiffa shall serve as an official language of the Region along with the Harari language, there is no other provision in the Regional Constitution which recognizes the right of the Oromo community, which constitutes 56.41% of the Region's population as a partaker of sovereign power in the Region.¹⁷¹

The above illustrations show that there is no uniform mode of accommodating the right to self-government of national minorities among the states. This fact opens the room for states to devise their own form of treating national minorities of their region which in some instances resulted in denial of the basic rights of Nations Nationalities and Peoples of the right to self-government and equitable representation in the regional government guaranteed under Article 39(3) of the FDRE Constitution. Such situations threaten the practical significance of the commitments of the Federal Constitution to the effective protection of Nations, Nationalities and Peoples and left them to relay on the mercy of the states the live in. Thus, the Federal Government should guarantee and oversee that the rights of Nations, Nationalities and Peoples are effectively protected in all members of the Federation as provided under the FDRE Constitution. Otherwise the rights of Nations, Nationalities and Peoples provided under the Federal Constitution will have no significance to the right holders.

¹⁷⁰ *Supra* note 144, Para.34.

¹⁷¹ *Id*, para.37.

2.3.3. The Right to Develop and Promote Language and Culture

As Adenno Addis provides, “the survival and flourishing of a group’s culture depends in large part on the validity of its language. Language is not a mere medium of a reality that is located outside it, but is constitutive of that reality. It is not that there is culture and then there is language through which the culture can be communicated. Our language, like our history, is the means through which we attach meaning and give structure to our cultural activities. It is the process by which the significance of a particular activity and relationship with other activities is made clear to us. In this sense, to destroy the language of a group is to destroy its culture”.¹⁷²

According to Addis, there are institutional and practical problems with recognizing the linguistic identities of all groups in polity. It is, for example, impractical, virtually impossible in most situations, to recognize all languages in the polity as official languages. The proposition of equal status for all languages is plausible if only two or three languages are spoken in a nation. But when a nation has 200 languages, as does Ethiopia, it is, to say the least, rather, impractical to think of according equal status to all the languages that are spoken in that nation.¹⁷³ Many countries, especially developing ones, are defined not only multi-ethnically, but also multi-linguistically. And given those circumstances, it is likely to be financially prohibitive and administratively chaotic to give the languages of all groups an official status.¹⁷⁴

Therefore, it is very difficult to give linguistic identity institutional meaning. Some countries have dealt with the issue by giving official status to some. Some seem to select those languages which are spoken by significant minorities. Finland, for example, gives official status to the language of the Swedish minority, which constitutes about 6% of the population, while not according the same status to the language of the Lapps, who are

¹⁷² Addis, *Supra* note 13, p.1270.

¹⁷³ Concerning the number of languages spoken in Ethiopia Addis provides that the number of languages in Ethiopia seems to vary from one observer to another. It is a commentary on the state of research on the country that there is not a definite number. The number seems to vary between forty and eighty. However, it seems vague why did he prefer to say 200, if the number of languages in Ethiopia ranges between 40 and 80.

¹⁷⁴ Addis, *Supra* note 13, p.1271.

said to number about 4000. Likewise Canada recognizes French, but no language of the indigenous peoples.¹⁷⁵ According to Benza, some recognize the use of minority language in public administration, particularly in the courts of law, or its use is limited on a territorial principle, e.g., Faeroe Islands and Greenland in Denmark, Lusatian Sorbs in the Federal State of Brandenburg, Frisians in the Netherlands, the local “Mirandos” in Portugal, and in particular self-administrative regions of Spain.¹⁷⁶ In the Republic of Hungary everybody has the right to use his/her native language. The state shall ensure this possibility for the members of the minorities also. In the criminal processes as well as in the administrative processes the right to use of the own language is ensured by the relevant law. According to Zeller, these provisions contribute to the equal opportunities and equality before the courts and authorities. Nobody can be disadvantaged because of the lack of language knowledge.¹⁷⁷

When we look at the situation in Ethiopia, all Ethiopian languages have equal state recognition.¹⁷⁸ However, Amharic is the working language of the Federal government.¹⁷⁹ States are at liberty to determine their own working languages by their own law.¹⁸⁰ Therefore, there is no room for minority languages to be used in the institutions of the Federal Government. Of course it is difficult to use minority languages in the Federal government given the multi-lingual character of the country. What will be more realistic is to ensure the use of minority languages in their own respective territories. To this effect States take their own formulations. Some States like the SNNPs and Amhara Regional State provide Constitutional guarantee to the use of minority languages in their own nationality administrations and special Zones or Woredas as the case may be. But many others did not have this kind of set up that enable minority Nations, Nationalities and Peoples to use their own language at least in their own areas.

¹⁷⁵ Ibid.

¹⁷⁶ Mojmir Benza, “Rights and Status of Persons Belonging to Minorities and their Implementation: An Attempt at A Comparative Study”, *Human Affairs* 7, (1997), p.104.

¹⁷⁷ Judit Zeller, “The Cultural Freedom of National and Ethnic Minorities in Hungary in the Context of the Minority Act”, *2007 SUBB Jurisprudentia* 158, (2007), p.176.

¹⁷⁸ FDRE Constitution (*Supra* note 1), Art.5 (1).

¹⁷⁹ Id, Art.5 (2).

¹⁸⁰ Id, Art.5 (3).

Apart from the use in government institutions, the other way the language of minorities could be preserved might be by allowing a minority community to have educational instruction in its community conducted in its own language, at least for elementary schooling. Indeed, under the UNESCO Convention Against Discrimination in Education, adopted in 1960, states party to the Convention agree that it is important that minorities are allowed to use and teach their own language.¹⁸¹ Minority education, i.e. instruction in some or in a greater part of subjects is provided in the minority language, exists in some European countries, for example Albania, Austria, Croatia, Czechia, Finland, Germany, Italy, the Netherlands, Poland, Rumania, the Russian Federation, Slovakia, Slovenia, Ukraine, and Yugoslavia. The extent of the education in minority languages in each of the mentioned countries depends on their own situation, recognized minorities and particularly on the number of persons belonging to ethnic minorities or to small nations without their own statehood living on their territories.¹⁸²

In Ethiopia, in terms of visibility and importance, the education system has become the focus for the realization of implicit language policies. The use of local languages in primary education is a prominent feature in the Ministry of Education's Education and Training Policy which states that 'Cognizant of the pedagogical advantage of the child learning in mother tongue, and the rights of nationalities to promote the use of their languages, primary education will be given in nationality languages.'¹⁸³ The interpretation and implementation of decisions regarding language use in education lie effectively at the Regional, Zonal and Woreda levels. Most regions have selected the mother tongue spoken by the majority ethnic group in the region as the medium of instruction for primary education. For example, Tigray Regional State uses Tigrigna, Oromia Affan Oromoo, Amhara Amharic and Somali Regional State uses Somali language. Regions may, however, prefer to use an alternative language. Thus, Afar Regional State has decided to use Amharic as the medium of instruction for primary education. The Southern, Nations, Nationalities and Peoples Regional State (SNNPRS) also use Amharic as the working language of the region. Some examples of decisions

¹⁸¹ Addis, *Supra* note 13, p.1272.

¹⁸² Benza, *Supra* note 176, p.105.

¹⁸³ Federal Democratic Republic Government of Ethiopia Education and Training Policy, Addis Ababa, April 1994.

about language use in primary education taken at Zonal level include Agaw Awi and Oromiya Zones in Amhara Region which uses Awigna and Affan Oromo respectively and Gurage Zone in SNNPRS uses Amharic. Examples of decisions taken at the Woreda level include the use of Amharic in primary education in several special Woredas in the SNNPRS, including Alaba, Burji, Dirashe and Yem.¹⁸⁴

Conditions for cultural activities of persons belonging to ethnic minorities in some European countries, including Albania, Austria, Denmark, Finland, Great Britain, Hungary, the Netherlands, Norway, Poland, Rumania, Spain, Sweden, and Switzerland are not regulated directly by the Constitution; in spite of this, in most of them there are various cultural groups, societies, and other interest organizations which were set up on the ethnic principle. Their activities are promoted and regulated either by generally valid laws on assembly and association or special laws on press, radio and TV broadcasting, or on theatre. Only the state Constitutions or the constitutions of the territorial parts of Belgium, Croatia, Germany, Italy, Portugal, the Russian Federation, Slovakia, and Slovenia contain provisions promoting minority cultural activities.¹⁸⁵

Just as there are differences in the legislative promotion of the cultural activities of persons belonging to ethnic minorities, there are also differences in the form of financial assistance. Generally speaking, in almost every country there is state financial assistance for these activities, the difference being in the amount: it is smaller, even very small in the countries of Western, Northern, and Southern Europe and almost all burdens are on persons belonging to minorities. For instance, there is no state support for the activities of ethnic minorities in France. Similarly, ethnic minorities are not supported in Great Britain, they are rather endured. The proportion of the state's financial assistance to minority cultural activities is much higher in the countries of Central and Eastern Europe.¹⁸⁶

¹⁸⁴ Gideon Cohen, "The Development of Regional and Local Languages in Ethiopia's Federal System", in *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, (David Turton ed.), (2006), p.166.

¹⁸⁵ Benza, *Supra* note 176, p.106.

¹⁸⁶ Ibid.

In Ethiopia, the right of every Nation, Nationality and People to express, develop and promote its culture has got a Constitutional recognition.¹⁸⁷ Minority Nationalities can therefore, exercise their right to promote and develop their culture using this Constitutional provision guaranteed to minorities and majorities alike. However, taking into account their numerical inferiority and political non-dominance minority Nations, Nationalities and Peoples need special affirmative measures of the state to meaningfully preserve and develop their own culture. The FDRE Constitution did not provide special support to minority nationalities that would enable them to enjoy and develop their culture. Although there are recent practical moves towards creating venues enabling Nations, Nationalities and Peoples to express and develop their culture like the Nations, Nationalities and Peoples Day of December 8, the government is expected to do a lot of activities intended to preserve and develop the culture of minority nationalities.

¹⁸⁷ FDRE Constitution (*Supra* note 1), Art.39 (2).

CHAPTER THREE

PROTECTION OF NATIONAL MINORITIES IN AMHARA NATIONAL REGIONAL STATE

3.1. General

The Amhara National Regional State according to article 47 of the FDRE Constitution is one of the nine member states of the FDRE. The region has a total population of 17,214,056.¹⁸⁸ In terms of ethnic composition, the region contains a number of nations, nationalities and peoples. Their number ranges from 3 persons (as in the case of Tsema and Sheko) ethnic groups to millions (in the case of the Amharas). The Amhara is the dominant ethnic group of the region constituting more than 90% the region's population, followed by Agew-Awi (3.46%), Oromo (2.62%) and Agew-Himra (1.39%).¹⁸⁹

The Constitution of the Amhara National Regional State seems to consider this ethnic diversity of the region. This can be referred from the various provisions of the constitution. The preamble of the Constitution begins by saying “we the Peoples of the Amhara National Regional State...” The fourth paragraph of the preamble also reads as “we the Peoples settling in Amhara National Regional State...” These wordings clearly show that the constitution acknowledges the existence of various Nations, Nationalities and Peoples and the constitution is an expression of the will of these diverse Nations, Nationalities and Peoples to live together in the region. The region belongs to the all peoples living in the region not just to a particular ethnic group. The constitution strengthens its commitment of recognizing the ethnic plurality of the region through vesting the sovereign power of the Regional State on the peoples of the region. As a result, the supreme power of the Amhara National Regional State resides in and belongs to the Peoples of the Amhara Region.¹⁹⁰ This provision of the constitution has crucial

¹⁸⁸ *Supra* note 141.

¹⁸⁹ *Ibid.* (The detail of the Ethnic Composition of the Amhara National Regional State is available at Annex 2, p.107 and ff.).

¹⁹⁰ The Amhara Constitution (*Supra* note 2), Article 8(1).

significance to the peoples of the region as the Constitutions of some other regional states vested sovereignty to particular ethnic groups who are dominant either in number or in power.¹⁹¹

In addition to recognizing the existence of various ethnic groups, the constitution also guarantees other important rights to minority ethnic groups which have relative numerical dominance and are territorially concentrated. To this end the constitution of the Amhara National Regional State has established nationality administrations (*Yebihereseb Astedader*) to three ethnic groups in the region. The ethnic groups that have their own Nationality Administration are Agew-Awi, Agew-Himra and Oromo which together represent less than 10% of the total population of the Amhara Regional State. Recently, the Amhara Regional State has created a special Woreda for the Argobas which represents only 0.41% of the regional state's population.¹⁹² In the subsequent sections, we will deal with the various rights of these ethnic groups guaranteed by the Constitution of the Amhara National Regional State.

¹⁹¹ For example, Article 8 of the Constitution of the Oromiya National Regional State provides Sovereign power in the region resides in the People of the Oromo Nation which accounts around 88% of the Regional State's population. On the other hand Article 5 of the Harari Constitution provides the Harari People, which has 8.65% of the total population of the region is the owner of sovereign power in the region. More strikingly, Article 2 of the Benishangul-Gumuz Constitution provide, "Notwithstanding the other peoples inhabiting the Region being recognized, the nations and nationalities that are owners of the Region are Berta, Gumuz, Shinasha, Mao and Komo." However, non-native groups account 43.5% of the total population of the region. Thus, it seems inappropriate to disregard the rights of these peoples and provide that only the native groups are the sole owners of the region.

¹⁹² Proclamation Issued to Provide for the Establishment of Argoba Nationality Woreda of the Amhara National Regional State, 2006, Proclamation No.130, Zikre Hig of the Amhara National Regional State in the Federal Democratic Republic of Ethiopia, 11th Year, No.15.

3.2. The Right to Representation in the Regional Government

According to Weller, full and effective participation in cultural, social and economic affairs is at times considered to be a ‘third generation’ minority entitlement.¹⁹³ The link between effective participation and other types of minority rights is obvious. If minorities are effectively represented in public life and cultural, social and economic affairs, discriminatory standards and practices may be more readily excluded. If, on the other hand, persons belonging to national minorities are systematically discriminated against, they manifestly cannot participate fully in a given society. Similarly, effective participation ensures that representatives of persons belonging to national minorities can participate in public decisions that generate space for the maintenance and development of minority identities. Conversely, persons belonging to national minorities that are enabled fully to develop their identity with other members of the minorities will be better able to contribute to the functioning of a given society, and to seek effective representation within it.¹⁹⁴

3.2.1. Representation in the Regional State Council

The supreme power of the state in the Amhara National Regional State is vested upon the Council of the Regional State.¹⁹⁵ Members of this organ are elected directly by the people on the basis of fair and free elections conducted every five years.¹⁹⁶ The candidate who gets the majority vote in the electoral district will be a member of the Regional Council.¹⁹⁷ However, such kind of arrangement will be detrimental to the national minorities of the region as they will be outvoted by the dominant group of the region (the Amharas). The authors of the constitution seem to understand this fact in advance. That is why the Constitution of the Amhara National Regional State provides the minority

¹⁹³ The initial stage of legal protection of national minorities was focused on the protection from destruction and discrimination while the second stage of development recognized that national minorities must also be given the space to maintain and develop their linguistic, ethnic and religious identity within a diverse society. Mark Weller, “Creating the Conditions Necessary for the Effective Participation of Persons Belonging to National Minorities”, *International Journal on Minority and Group Rights* 10: 265-290, (2004), p.265-266.

¹⁹⁴ Id, p.267.

¹⁹⁵ The Amhara Constitution (*Supra* note 2), Article 46(1).

¹⁹⁶ Id, Art.48(1).

¹⁹⁷ Id, Art.48(2).

Nationalities and Peoples, that are believed to be worthy of special representation, shall be represented in the Regional Council.¹⁹⁸ Accordingly, three National Minorities of the region namely the Agew-Awi, Oromo and Agew Himra Nationalities are represented in the Regional Council of the Amhara National Regional State.¹⁹⁹ Apart from these groups the Argobas have also the right to be represented in the Regional Council.²⁰⁰

Table 2 below shows the representation of National Minorities in the Council of the Amhara National Regional State.²⁰¹

Ethnic Groups	Number of Seats	%
All Groups	294	100
Agew-Awi	17	5.78
Agew-Himra	8	2.72
Oromo	8	2.72
Amhara	261	88.76

¹⁹⁸ Ibid. This guaranteed representation of minority nationalities in the Council of the Regional State of Amhara resembles the method of representation of minority Nationalities and Peoples in the House of Peoples Representatives of the Federal Government as provided under Article 54(3) of the Constitution of FDRE.

¹⁹⁹ Other National Minorities living in the Region are not represented in the Regional Council owing to their numerical minority. Moreover, unlike the three National Minorities, the other minority Nationalities of the region are not territorially concentrated which is one of the defining characteristics of a Nation, Nationality and People as provided under Article 39(5) of the FDRE Constitution and Article 39(7) of the Constitution of the Amhara National Regional State. Territorial concentration of a certain nationality or people has also practical significance in exercising the rights of a given nationality or people to self-government, self-determination and the like. The Constitution of the Amhara National Regional State did not totally close the room for the representation of these other National Minorities. It rather provides that the representation of other Nationalities and Peoples settling in the regional state shall be taken care of with special considerations. The Amhara Constitution (*Supra* note 2), Art.45 (3).

²⁰⁰ This can be inferred from Article 9(2) of Proclamation No.130/2006 which provides the Nationality Woreda Council shall be established in a manner that that would render it to be constituted out of elected members of the Nationality Councils in addition to those elected members of the Regional Council. The Proclamation was issued in 2006 and thus the representation of the Argobas in the 3rd term of office of the Council was not according to this provision. In the current Council, the representation of the Argoba Nationalities will be governed in accordance with Article 9(2) of Proclamation No.130/2006.

²⁰¹ The statistics shows the representation of the Amhara, Agew-Awi, Agew-Himra and Oromo ethnic groups in the Council of the Amhara National Regional State in the Third Term of Office of the Council (2005-2010). (Secretariat of the Council of the Amhara National Regional State, September 2010).

3.2.2. Representation in the Constitutional Interpretation Commission

The Constitutional Interpretation Commission of the Amhara National Regional State is in many ways similar to the House of Federation of the FDRE. Their similarity among other things is attributed to the fact that both institutions are entrusted to interpret the Constitutions. The House of Federation interprets the Federal Constitution while the Constitutional Interpretation Commission interprets the Constitution of the Amhara National Regional State.²⁰²

The procedures followed in submitting issues of Constitutionality for interpretation are also similar in both cases. Moreover, in both the Constitutional Interpretation Commission and the House of Federation Nations, Nationalities and Peoples of the Region in case of the former and Nations, Nationalities and Peoples of the Country in the case of the latter are represented. Of course, in the House of the Federation, all Nations, Nationalities and Peoples of Ethiopia have the right to be represented in the House by one representative and one more representative for every million of its population. But in the Constitutional Interpretation Commission of the Amhara National Regional State the members are recruited from the Woreda and Nationality Councils.²⁰³ As a result, it is only those Nationalities who have their own nationality administration who can be represented in the Constitutional Interpretation Commission.²⁰⁴ In this respect the Constitutional Interpretation Commission of the Amhara National Regional State is limited in its representation of Nations, Nationalities and Peoples compared to the House of Federation of the Federal Government.

²⁰² The FDRE Constitution (*Supra* note 1), Article 61 and The Amhara Constitution (*supra* note 2), Article 70(1).

²⁰³ The Amhara Constitution (*Supra* note 2), Article 70(1).

²⁰⁴ Those National minorities having their own nationality administration are the Agew-Awi, Agew- Himra and Oromo ethnic groups (Article 73(1) of the Constitution of the Amhara National Regional State). Once again, similar to the representation in the Regional Council of the Amhara National Regional State, it is those groups of course along with the majority Amharas who are represented in the Constitutional Interpretation Commission. The Argobas have also recently their own Nationality Administration i.e. the Argoba Nationality Woreda established by Proclamation No.130/2006 and thus have the chance to be represented in the Constitutional Interpretation Commission of the Regional State.

The representation of minority nationalities in the Constitutional Interpretation Commission of Amhara National Regional State is crucial to these minority nationalities as the Commission is vested with the power of interpreting the Constitution of the Amhara National Regional State, the supreme law of the Regional State.²⁰⁵

3.3. The Right to self-government

The administrative level below the regional level in Amhara National Regional State is the Nationality Administration. The creation of this administrative level results from the Constitutional recognition of ethnic diversity of the region. Although the name of the Regional State (Amhara National Regional State) seems to suggest that the Regional State is created for the Amharas, the provisions of the Amhara National Regional State Constitution recognizes the existence of other people living in the region as well.²⁰⁶ Following this recognition, it has developed mechanisms to realize the right to self-determination (in the broad definition of Article 39 of the FDRE Constitution) of these minority groups.²⁰⁷ As one aspect of the right to self-determination, the right to self-government of Nations, Nationalities and Peoples of the Amhara National Regional State, is recognized. This right among other things includes the rights to establish governmental institutions of administrative purposes within the geographical area of its inhabitation as well as obtain an equitable representation in the administrative arrangement of the federal government.²⁰⁸

As a result, the Constitution of the Amhara National Regional State has created Nationality Administration for the Agew-Awi, Agew Himra and Oromo Peoples with in the territory they inhabit.²⁰⁹ The Constitution limits the establishment of Nationality Administration to the Himra, Awi and Oromo. Nonetheless, many other groups are living within the boundaries of the Amhara region. According to Van der beken, the Amhara

²⁰⁵ The Amhara Constitution (*Supra* note 2), Article 9(1).

²⁰⁶ The preamble of the Constitution begins by saying we, the Peoples of the Amhara National Regional State shows the existence of diverse peoples in the region. Moreover, Article 8 of the Constitution also provides the supreme power of the National Regional State resides in the peoples of the Amhara Region.

²⁰⁷ Christophe Van der beken , Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level, *Africa Focus*, Vol. 20, No.1-2, 2007, p.121.

²⁰⁸ The Amhara Constitution (*Supra* note 2), Article 39(3).

²⁰⁹ *Id.*, Art.73(1).

Constitution limits the recognition of ethnic diversity in the region to particular ethnic groups, to those that are considered to be endogenous in the region. Endogenous groups are people who have been living in the region for a long time; they are peoples of the region. It is only for these groups that protective mechanisms (such as the creation of an administrative entity) have been developed. The other groups are regarded as exogenous because they have moved to the region in a more recent past and can therefore be seen as internal migrants or peoples in the region.²¹⁰

However, the reason for the failure to grant Nationality Administration to these other groups should not be attributed to the fact that these groups who have been granted Nationality Administration are endogenous and those who have not their own Nationality Administration are exogenous. Rather, it is related with the fact that whether the group in question is territorially concentrated or not. It seems the reason that dictates the drafters of the Constitution to grant Nationality Administration to the Awi, Himra and Oromo Nationalities in favor of other Nationalities of the region.

The Constitution of the Amhara National Regional State vested the power to establish additional administrative hierarchies, or self-administrative areas within the limit of the Regional State upon the Council of the Amhara National Regional State. In doing so the Council is expected to take in to account the density of the inhabiting population, territorial extent of the region as well as the socio-economic activity of its inhabitants.²¹¹ As a manifestation of this power, the Council has recently established the Argoba Nationality Woreda for the Argobas. The preamble of the Proclamation establishing the Argoba Nationality Woreda provides the need to have self-government of the Nationality as the rational for the establishment of the Argoba Nationality Woreda.²¹²

The Nationality Administrations have their own legislative, executive and judicial organs. These are the Nationality Council, the Nationality Administrative Council and Judicial body of the Nationality Administration respectively.²¹³ The highest political authority of

²¹⁰ Van der beken, *Supra* note 207, p.122.

²¹¹ The Amhara Constitution (*Supra* note 2), Article 49 Sub-Article 3(2).

²¹² *Supra* note 192, Preamble, Para 2.

²¹³ The Amhara Constitution (*Supra* note 2), Article 73(2).

the Nationality Administration is vested upon the Nationality Council.²¹⁴ This organ is accountable to the Council of the Regional State.²¹⁵ The Nationality Council has a number of important powers that are vital to ensure the rights of the Peoples living within the Nationality Administration. The powers of the Council among others include determining the working language of the nationality concerned, ensuring the protection of the rights of the nationality to speak and write in its own mother tongue, develop, preserve, express, enhance and promote its own language as well as maintain and extend due care to its own history.²¹⁶ On the other hand, the Nationality Administrative Council is the highest executive body of the Nationality Administration. Its accountability is to the chief administrator and the council of the nationality.²¹⁷ It has also additional accountability to the Council and Head of the Regional Government.²¹⁸

3.4. The Right to Develop and Promote Language and Culture

According to De Varennes, the issue of language is fundamental in human society. Language plays a central role in terms of economic opportunity and success, as the dominance of one language in a state will be advantageous, in terms of access to and distribution of public resources, to individuals who have greater fluency in the official or majority tongue. He also said that, language is often of essence to the sentiments of the community and culture, of tradition and “belonging”. According to him, any threat to, disrespect of or attack upon its use or existence may arouse strong emotions and constitutes a potential cause of conflict.²¹⁹

As De Varennes provides, the modern state compared to the ancient one, is highly invasive and provides a wide range of services (education, health care, welfare, postal services, etc.) and regulatory mechanisms (i.e. in broadcasting). In this instance, the state has no choice but to use at least one language in the discharge of its duties. According to him, those whose primary language is that used by the state thereby gain an enormous

²¹⁴ Id, Art. 74(2).

²¹⁵ Id, Art. 74(3).

²¹⁶ Id, Art. 74(3)(a) and (b).

²¹⁷ Id, Art. 77(1).

²¹⁸ Id, Art. 77(2).

²¹⁹ De Varennes, *Supra* note 41, p.1.

advantage over others. As a result, language has become highly politicized, being intimately connected to economic and social mobility in today's society. Because of this fact, De Varnees concludes that whilst separation of state and religion has become largely possible, the separation of state and language is no longer a realistic goal in most societies.²²⁰

According to the information provided by the Government of Ethiopia on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination, currently every nation, nationality or people have the right to use its own language within its region. Federal public broadcasting services now have programs in some of the main languages in the country. Regional and community broadcasting services promote broadcasting in minority languages in various regions in the country. Each regional state is empowered to choose languages for instruction in primary schools. Municipalities, Zones, Woredas and districts are also empowered to be involved in such process. Due to lack of resources, absence of writing system and other factors, originally several communities continued to use Amharic as a medium of instruction. Based on the Federal Educational Sector Development program, both the federal and regional governments are committing resources to help communities acquire sufficient capacity to use their own languages as a medium of instruction.²²¹

The FDRE Constitution guarantees equality of languages and provides for the establishment of regional states as constituents of the Federal State. The Constitution empowers these regions to determine their own official working languages. This has resulted in the adoption of the languages of the ethnic groups dominating the regions as working languages in some regions. In other regions, pragmatic considerations have led to the adoption of Amharic as official language. The adoption of the language of a certain ethnic group as official language means that all aspects of the administrative, judicial and other affairs of the region are to be conducted in this language. Accordingly, education

²²⁰ Ibid.

²²¹ Follow-Up: State Reporting, Action by State Party, Information provided by the Government of Ethiopia on the Implementation of the Concluding Observations of the Committee on the Elimination of Racial Discrimination, 24 January 2008, available at: www.bayefsky.com/pdf/ethiopia_cerd_follow_report.pdf (visited on 1 April, 2010), para.10.

must be provided in the language of the region. This is also reflected in access to employment, access to justice, the right to representation, etc. In these and other areas, accessibility is linked to literacy in the language of the dominant ethnic group.²²²

While this is a positive arrangement for the realizations of the rights of the ethno-linguistic groups, which exercise sovereign powers in the regional state, the fate of those communities, which are unable to speak the languages of the dominant and native groups needs to be addressed. Such communities include settler communities, as well as indigenous communities whose languages have been denied the status of official languages. Members of such communities will inevitably face difficulties in the exercise of their human rights due to their illiteracy in the regional working languages.²²³

However the real problem in this regard does not seem to arise because of the adoption of the languages of dominant groups as working languages *per se*. It would be quite impractical to accept all languages and linguistic variants belonging to the numerous nations, nationalities and peoples as working languages. Nevertheless, there are ways of fathoming this challenge by providing for a constitutional and institutional recognition and protection of these languages as minority languages, and by creating an enabling environment by which these communities can utilize their languages at different levels and have access to essential services in their own languages. Such mechanisms would minimize discrimination against minority groups. The other option would be to use Amharic as a *lingua franca* that is used as a working language in all regions and levels of administration in Ethiopia. The advantage can be seen, although to a limited extent, in the regions that adopted Amharic as working languages.²²⁴

According to the parallel report submitted by the Ethiopian Human Right Council to the CERD Committee, the Constitutions of the Regional States provide for the promotion and advancement of the cultures of the dominant ethnic group only. Cultures of minority

²²² *Supra* note 144, para.42.

²²³ *Ibid.*

²²⁴ *Id.*, Para.43. However, the second alternative of using Amharic as a working language in all regions as suggested by the report did not fit with the current Federal system adopted by the Constitution that allows regional states to determine their own working languages. It is also at odd with the right of Nations, Nationalities and Peoples, particularly minorities to use and develop their own languages within the territory they inhabit which is recommended by the report as one of the first alternative.

groups and inter-ethnic cultural values are not given due recognition and no enabling environment for their advancement and preservation has been provided for. Pursuant to the report, this situation puts the cultures of minority groups in a precarious condition that threatens their very existence.²²⁵

However, the Constitution of the Amhara National Regional State tries to create an enabling environment for the development of the culture of at least certain nationalities of the region. Article 39(1) of the Constitution of the Amhara Region provides the right to assert, develop and promote culture is one of the rights of the Nations, Nationalities and Peoples of the region. Article 39(6), on the other hand, provides that the rights mentioned under Article 39(1)-(5) are applicable to the peoples of the Awi, Himra and Oromo, of course, in addition to the peoples of the dominant Amharas.

Thus, the peoples of Amhara, Awi, Himra and Oromo have the right to develop and promote their own culture as guaranteed under Article 39(2) of the FDRE Constitution and Article 39(1) of the Constitution of the Amhara National Regional State. Moreover, the Argobas have got similar right to develop their own language and culture within their Nationality Woreda. The need to grant the right to self-government to the Argobas among other things was to preserve the culture and language of the nationality.²²⁶ To this end the Council of the Argoba Nationality Woreda has been given a wide range of power. For example, the Council has the power to determine the working language of the Nationality Woreda.²²⁷ It is also entrusted with the mandate to ensure the protection of the right of the nationality to speak and write in its own language and develop the same as well as maintain its own history.²²⁸

²²⁵ Ibid.

²²⁶ *Supra* note 192. The other rationales are the need to preserve the tradition and history of the same.

²²⁷ The Amhara Constitution (*Supra* note 2), Article 10 Sub Article 2(1).

²²⁸ Id, Article 10 Sub Article 2(2).

CHAPTER FOUR

THE PROTECTION OF THE OROMO MINORITIES IN ANGOLLELA AND TERA WOREDA

4.1. Introduction

Angollela and Tera Woreda is one of the Woredas found in Amhara National Regional State of North Shewa Zone. The Woreda has 19 Rural Kebeles and one town administered by municipality (Chacha) and one developing town (Kottu). Angollela and Tera Woreda is bordered by Baso and Worana Woreda in the North, Asagirit Woreda and Baso and Worana Woreda in the East, Hageremarim, Kesem Woreda and Oromia Region in the South and Oromia Region in the West. Chacha, located in 110 km distance North of Addis Ababa and 20 km distance South of Debre Birhan (the capital of North Shewa Zone), is the capital of Angollela and Tera Woreda.

The Woreda has a total population of 81,145 and area of 989,000 Hectar or 989km².²²⁹ In the Woreda there are two dominant ethnic groups. The Amharas constitute 88% of the total population of the Woreda while the Oromos account 12% of the Woreda population (around 9737).²³⁰ In North Shewa Zone there are about 39,228 Oromos which accounts 2.13% of the total population of the Zone.²³¹ The Oromos in Angollela and Tera Woreda constitute almost one-fourth of the total number of the Oromos living in North Shewa Zone. The Oromos live in many Kebeles of Angollela and Tera Woreda. Cheki, Ruksi, and Adadi are the Kebeles highly dominated by the Oromos. Significant numbers of the Oromo people also live in other Kebeles such as Bura, Siriti and Chefa.

²²⁹ *Supra* note 141.

²³⁰ Angollela and Tera Woreda Finance and Economic Development Office, April 2010.

²³¹ *Supra* note 141.

4.2. The Right to Representation of the Oromo Minorities in Angollela and Tera Woreda Council and Administrative Council

4.2.1. Representation in the Woreda Council

The Woreda Council is the highest body of state authority within the Woreda. It is accountable to the Nationality Council or to the Regional Council as the case may be.²³² The Council has a number of powers. Its powers include examining and approving the draft economic development, social services, along with administrative working plans and programs of the Woreda concerned, creating a suitable condition in which the resident public is massively inspired and mobilized to engage in development efforts. It also considers and approves its own budget, utilizes any source of revenue of the Woreda concerned, issuing and implementing specific guidelines enabling to ensure peace and security pertaining the Woreda concerned and calling the Woreda's officials including the chief administrator for questioning and thereby inquires into the workings of the executive body (check and balance).²³³ The members of the Woreda Council are directly elected from among the inhabitants of the Kebeles embraced in the territorial area in which the Woreda has been organized.²³⁴ They are accountable to the people electing them.²³⁵

The Council of Angollela and Tera Woreda has 80 members. They are represented from the different Kebeles in the Woreda. The members of the Woreda Council are elected directly by the inhabitants of the Kebele concerned. The number of the representatives from each Kebele depends on the area of the Kebele concerned. As a result, a Kebele which has large area will have more representatives than the smaller one and vice versa. Depending on this arrangement, 17 Kebeles of the Woreda including the towns of Chacha

²³² The Amhara Constitution (*Supra* note 2), Art.86 (1).

²³³ Id, Art,86(2).

²³⁴ Id, Art.85(1).

²³⁵ Id, Art.85(2).

and Kottu have 4 representatives while the remaining 4 Kebeles have each 3 representatives.²³⁶

The Oromo minorities in Angollela and Tera Woreda do not have a special representation in the Woreda Council. They are just represented based on the above criteria of representation based on the area of the Kebele. According to Ato Azmeraw Bekele, Speaker of Angollela and Tera Woreda, there is no special consideration of the numerical minority of the Oromos of the Woreda in the representation of members of the Woreda Council. As a result, the Kebeles where the Oromo minorities are predominantly living have similar number of representation like those Kebeles dominated by the Amharas. According to Ato Azmeraw this is because the Woreda is found in Amhara National Regional State and the representatives of the Woreda Council stand for the Kebele they are representing, not to a particular ethnic group.²³⁷

The participants of the study (the Oromo minorities in Angollela and Tera Woreda) have been asked about whether the Oromo minorities have sufficient representatives in the Woreda Council and the existing system of representation in the Woreda Council is capable of protecting the interest and rights of the Oromo minorities. Out of the 384 respondents all of them answered that the Oromo minorities in Angollela and Tera Woreda do not have sufficient representatives in the Woreda Council. Regarding the impacts of such under representation of the Oromo minorities in Angollela and Tera Woreda Council, the participants provide that it will have an adverse influence in the over all participation of the Oromo people in the affairs of the Woreda. The participants for instance said that under representation of the Oromo minorities in the Woreda Council will result in the voice of the Oromo people remain unheard in the Council. The participants also added that under representation will not enable the Oromo people to significantly influence decisions passed in the Woreda Council in general and in matters pertaining to its interest in particular. They also said that due to their under representation

²³⁶ Office of the Speaker of Angollela and Tera Woreda, October 2010, Chacha.

²³⁷ Interview with Ato Azmeraw Bekele, Speaker of Angollela and Tera Woreda Council, October 18, 2010.

in the Woreda Council, the Oromo minorities have no significant share in the political power and administration of the Woreda.

As far as the solutions to the issue of representation of the Oromo minorities in Angollela and Tera Woreda Council are concerned some of the participants suggest that the representation of the Oromos in the Woreda Council should be proportional to the population size of the Oromo people in the Woreda. Among 384 participants 72 (18.75%) of them favored this as an alternative to ensure the effective representation of the minority Oromos in Angollela and Tera Woreda Council and influence decisions passed within the Council. On the other hand, 312 (81.25%) and the majority of the participants prefer the Oromo minorities to have a reserved seat in the Council of Angollela and Tera Woreda. The opinion of the majority of the participants prefers the option that the Oromos should have a guaranteed representation in the Woreda Council through reserving some seats of the Woreda Council to the representatives of the Oromo people. According to the majority of the respondents, the current method of electing the members of the Woreda Council is not preferable to enable the Oromo minorities adequately participate in the affairs of the Woreda and protect their own special interests. If they are not able to do so they will always be outvoted by the dominant Amharas and cannot defend their own particular requests.

According to the Internal Working Procedure of Angollela and Tera Woreda Council, decisions in every issue should be passed by a simple majority. For example, an issue should be supported by a 50+1 majority of the members Woreda Council to be held as an agenda for the discussion of the Council.²³⁸ Because of this procedural requirement, the representatives of the Oromo minorities will be in trouble to set an issue in to the agenda of the Woreda Council. In the same way deliberations on the agenda will be held provided that such deliberation is supported by the majority of the members of the

²³⁸ Angollela and Tera Woreda Council Members Internal Working Procedure of 2009, Article 8.1.

Woreda Council.²³⁹ Decision after deliberations over the issue is also passed if supported by a simple majority vote of 50+1.²⁴⁰

Such procedural requirements in the Woreda Council are impediments to the effective protection of the interests of the Oromo minorities in Angollela and Tera. They can in no way influence decisions of the Woreda Council. Of course in a Woreda Council dominated by the Amharas, it is inevitable for the Oromo minorities to be outvoted. The representatives coming from the Kebelles dominated by the Oromos (Ruksi, Adadi and Cheki) are 12 accounting 15% of the total of 80 members of the Woreda Council and so that they can not influence the decisions passed in the Woreda Council by a simple majority vote. Moreover, as there is no special representation of the Oromos in the Woreda Council, such representatives can not be taken as the representatives of the Oromo minorities in its strict sense and thus can not sufficiently protect the specific interests and benefits of the Oromos.

4.2.2. Representation in the Woreda Administrative Council

The Woreda Administrative Council is the highest executive body of the Woreda and is composed of the principal heads of various sectoral offices including the Administrator and Deputy Administrator. It is accountable to the Chief Administrator of the Woreda, the Woreda Council and the Council of the Regional Government.²⁴¹ The Woreda Administrative Council has the power to implement policies, laws, regulations, directives, plans and programs initiated and formulated by both the Federal and Regional states throughout the Woreda, collect rural land user fee, agricultural income tax and other revenues, prepare the annual budget of the Woreda, etc.²⁴²

The Administrative Council of Angollela and Tera Woreda is Composed of 12 principal heads of sectors of the Woreda and the Chief Administrator of the Woreda. These sectors include the Woreda Education, Health, Agriculture and Rural Development,

²³⁹ Id, Art. 8.2.

²⁴⁰ Id, Article 18.1.

²⁴¹ The Amhara Constitution (*Supra* note 2), Article 90(1) and (2).

²⁴² Id, Article 91(1).

Administration and Security, Women's Affair, Youth and Sport, Land Administration, Government Communication, Finance and Economic Development, Justice, Administration and Capacity Building Offices. Out of the principal heads of such offices, the head of woreda administration office participate in the Woreda Administrative Council without vote. Regarding the ethnic composition of the Woreda Administrative Council, as the table below, (Table 3) shows 11 members of the Council are the Amharas (84.62%), 1 Tigray (7.69%) and 1 Oromo (7.69%).²⁴³

Position	Ethnicity
Woreda Chief Administrator	Amhara
Woreda Deputy Administrator and Head of Woreda Administration and Security Office	Amhara
Head of Woreda Education Office	Tigray
Head of Woreda Health Office	Amhara
Head of Woreda Agriculture and Rural Development Office	Amhara
Head of Woreda Administration Office	Amhara
Head of Woreda Youth and Sport Office	Amhara
Head of Woreda Land Administration Office	Amhara
Head of Woreda Women's Affairs Office	Amhara
Head of Woreda Government Communication Office	Oromo
Head of Woreda Finance and Economic Development Office	Amhara
Head of Woreda Justice Office	Amhara
Woreda Capacity Building	Amhara

²⁴³ Angollela and Tera Woreda Administration Office, October 18 2010, Chacha.

The Chief Administrator of the Woreda has the power to appoint members of the Woreda Administrative Council including the Deputy Administrator and get the approval of their appointment by the Woreda Council.²⁴⁴ The Chief Administrator of Angollela and Tera Woreda, in appointing members of the Woreda Administrative Council, takes into account the political competence of the individual in the party and his/her educational background. Other factors like ethnic origin of the individual are not considered in the appointment.²⁴⁵ As a result, there is no guaranteed representation of the Oromo minorities in Angollela and Tera Woreda Administrative Council. Of course while the Constitutions of the FDRE and Amhara National Regional State provide for the guaranteed representation of minority nationalities in the House of Peoples Representatives and the Council of the Regional State respectively, they did say nothing about the representation of such minority nationalities in the executive.²⁴⁶

The participants of the study were asked about whether the Oromo minorities have sufficient number of representatives in Angollela and Tera Woreda Administrative Council and all of them (384) answered in the negative. The participants said that this under representation in the Woreda Administrative Council will make the voice of the Oromo minorities to no avail and limit their role of influencing the decisions made in the Council. They also believe that because of under representation of the Oromo minorities in the Woreda Administrative Council, the Oromo people have no proportional share of political power in the administration of the Woreda.

As far as the solutions to the problem are concerned, 137 (35.68%) of the participants preferred the representation of the Oromo minorities in Angollela and Tera Woreda to be proportional to the population size of the Oromos in the Woreda. On the other hand, 247 (64.32%) of the participants opt for the reservation of some of the seats of the Woreda Administrative Council to the representatives of the Oromo minorities. The view of the majority of the participants of the study shows that the representation of the Oromos in

²⁴⁴ *Supra* note 2, Article 93(2) (d).

²⁴⁵ Interview with Ato Sisay Feisa, Head of Angollela and Tera Woreda Administration Office, October 18, 2010.

²⁴⁶ The FDRE Constitution (*Supra* note 1), Article 54 and The Amhara Constitution (*supra* note 2), Article 48.

the Woreda Administrative Council with a single individual dissatisfies the Oromo community and prefers the reservation of some of the positions of the Woreda Administrative Council of Angollela and Tera Woreda to the representatives of the Oromo people. If the first option is applied, the Oromo minorities will have one more additional representative in the Council. If the second alternative is opted, the Oromo minorities will have more additional representatives.

4.3. The Right to Develop and Promote Culture

The right of every Nation, Nationality and People to express, develop and promote its culture is guaranteed and protected under the Constitutions of the FDRE and the Amhara National Regional State.²⁴⁷ The effective implementation of this right requires both the negative as well as the positive obligations of the state. The negative obligation requires the state to refrain from interfering in the enjoyment or exercise of these rights. The positive obligation, on the other hand, requires the state to take some measures intended to the development and promotion of the culture of Nations, Nationalities and Peoples. The state is also required to take measures on other third parties interfering in the right to culture of a Nation, Nationality or People.

Article 13(1) of the FDRE Constitution provides that all Federal and State legislative, executive judicial organs at all levels have the responsibility and duty to respect and enforce the provisions of Chapter three of the Constitution (Articles 13-44).²⁴⁸ The same provision of the Constitution of the Amhara National Regional State also reiterates the same obligation of the organs of the regional state at all levels to respect and enforce the fundamental rights and freedoms incorporated under Chapter three of the Constitution of the Amhara National Regional State. The duty to respect requires non-interference of the

²⁴⁷ The FDRE Constitution (*Supra* note 1), Article 39(2) and The Amhara Constitution (*supra* note 2), Article 39(1).

²⁴⁸ The third Chapter of the FDRE Constitution and the Constitution of the Amhara National Regional State is entitled Fundamental Rights and Freedoms and include individual and group rights enshrined in different international and regional human rights instruments. This third chapter covers One-third of the total provisions of the FDRE Constitution. Among those rights incorporated in the third chapter of the FDRE Constitution and the Constitution of the Amhara National Regional State some of them include, the right to life (Article 15), the right to liberty (Article 17), right of persons accused (Article 20), right to privacy (Article 26), rights of Nations, Nationalities and Peoples (Article 39).

state in the individual's or group's exercise of the fundamental rights and freedoms enshrined under the third chapter of the FDRE Constitution and the Amhara Constitution. It is a negative obligation of the state requiring it to refrain from making an interference that results in the deprivation of rights or preventing exercise of rights by the right holder. The right to express, develop and promote culture of a Nation, Nationality and People is found under the third chapter of the Constitution of the FDRE and the Amhara Constitution. As a result, all organs of the Federal government are under obligation to refrain from interfering in the exercise of the right to culture of a Nation, Nationality or People by virtue of Article 13(1) of the FDRE Constitution. Similarly all governmental organs of the Amhara National State governments at all levels have also the same duty to refrain from interfering in the exercise of the right to culture of a Nation, Nationality or People pursuant to Article 13(1) of the FDRE Constitution and Article 13(1) of the Constitution of the Amhara National Regional State.

In addition to the duty to respect, while Article 13(1) of the Constitutions of the FDRE impose another duty of enforcing the fundamental rights and freedoms of the third chapter upon all organs of the Federal and State governments at all level, Article 13(1) of the Constitution of the Amhara National Regional State impose similar kind of duty on all the organs of the government of the regional state. The duty to enforce requires the state to protect the right holders from interference by non-state actors and provide appropriate remedies when interference occurs.

Article 13(1) of the FDRE Constitutions, while providing the obligations of all Federal and State organs at all levels to respect and enforce the fundamental rights and freedoms incorporated under the third chapter, it says nothing about the obligation to fulfill of the Federal and the Regional State governments. Like wise, Article 13(1) of the Constitution of the Amhara National Regional State has nothing to say about the duty to fulfill of the organs of the regional state.²⁴⁹ Although not part of the provisions of the fundamental rights and freedoms, the provisions of the FDRE Constitution and the Constitution of the

²⁴⁹ However, other provisions of the third Chapter of the FDRE Constitution and the Constitution of the Amhara National Regional State provides about the positive obligation of the Federal and the Regional States respectively. E.g. Article 41(4).

Amhara National Regional State, describing the cultural objectives of the Federal and the State governments respectively, provide that the Federal and Regional governments have the duty to support the growth and enrichment of cultures and traditions.²⁵⁰

As far as international human rights instruments are concerned, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) is the most relevant provision regarding the right of minorities to express their culture. Clearly, this provision prohibits any interference by state and non-state actors in the exercise of minorities' right to culture. But the controversy arises as to whether this provision imposes a positive obligation upon state parties to the ICCPR to take measures aimed at developing and promoting the culture of minorities. The General Comment of the Human Rights Committee on Article 27 also seems to support this. Accordingly, positive measures by States are necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group.²⁵¹

The General Comment of the CESCR (Committee on Economic Social and Cultural Rights) on Article 15(1) (a) of the ICESCR on the right of every one to take part in cultural life is more explicit about the normative content of the right to take part in cultural life and the obligation of the state parties. Regarding the normative content of the right to take part in cultural life the Committee's comment provides that in order for the right to take part in cultural life to be ensured, it requires from the state party both abstention (i.e. non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods).²⁵² The CESCR also provides as one of the obligations of the States, the obligation to fulfill requires States parties to take appropriate legislative, administrative, judicial,

²⁵⁰ The FDRE Constitution (*Supra* note 1), Article 91(1) and The Amhara Constitution (*supra* note 2), Article 112(1).

²⁵¹ *Supra* note 30, para.6.2.

²⁵² General Comment No.21, Right of Every one to take in Cultural Life (Article 15, para.1(a) of the ICESCR), E/C.12/GC/21, Committee on Economic Social and Cultural Rights, Forty-third Session, 2-20 November 2009, para.6.

budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant.²⁵³

The Oromo people of Angollela and Tera Woreda have their own distinctive culture that differentiates them from the majority Amharas of the Woreda. The Oromos have a number of cultural practices celebrated in different circumstances and in different seasons. Among these cultural practices some of them include, ‘Melka’. ‘Chelle’, ‘Korme Biru’, Traditional Horse Race (‘Yeferes Gugis’) and Traditional Music in Workplaces.²⁵⁴ The Oromo people need these and their other cultures to be respected, maintained and transferred to their off springs. This requires non-interference from the state and other parties. In some cases the people may also require some positive actions of the state so that they can effectively develop and express their cultures. This is mainly the concern of Angollela and Tera Woreda Culture and Tourism which is entrusted to undertake and supervise activities related with the cultural practices of the community of the Woreda and preserve as well as promote tourist attraction sites and heritages in the Woreda.²⁵⁵

The participants of the study were asked questions related with whether there are interferences in their right to express their culture. They answered this question in the affirmative. The interferences can be categorized in to two. They could be direct or indirect. The direct interference is the one coming from the Kebelle administrators who disrupt and forbid the celebration of certain cultures of the Oromo minorities of Angollela and Tera Woreda like ‘Melka’ saying that it is ‘Ba’ed Ameleko’. 193

²⁵³ Id, para.48.

²⁵⁴ ‘Melka’ is a cultural practice of the Oromo People in Angolleal and Tera Woreda celebrated around the end of September near a river where the people pray to their creator (Waqeyo) for the good of their cattle, grain, and children and get the blessing of the elders. It is similar to what is now colorfully celebrated annually in Oromia Regional State near Bisheftu Lake (‘Recha’). ‘Chelle’ is another widely practiced culture of the Oromo people in Angollela and Tera Woreda with traditional Oromo foods in July and ask their creator (Waqeyo) to transfer them from the summer to the winter. Korme Biru is an Oromo religious father who serves as an intermediate between the Oromo people and ‘Waqeyo’. The people went to him when a problem occurs onto them, their cattle and their children with their gifts and then ask him to pray for Waqa. After praying to Waqeyo Korme Biru told them his response and what they are expected to do next. Then after the people do what he told them to do and relieve from their problems. ‘Yeferes Gugis’ is also another prominent culture and manifestation of the identity of the Oromos in Angollela and Tera Woreda celebrated during ‘Meskel’. A person who won the race is respected and his horse will also be popular and precious. (A discussion with Oromo elders of Ruksi Kebele, held in October 20, 2010).

²⁵⁵ Interview with Ato Daniel Worku, Angollela and Tera Woreda Heritage Conservation and Supervision and Tourism Development Officer, October 18, 2010.

participants (50.26%) consider this form of interference as one of the interferences by the state in the right to express their culture. One of the indirect interference to the right to culture of the Oromo minorities is attributed to the teachings of the priests of the Orthodox Church which condemn certain cultural practices of the Oromos like ‘Chelle’, ‘Melka’ and ‘Korme Biru’ as ‘Ba’ed Amelekos’ and told them to abandon. This kind of interference is regarded as one aspect of interference to the culture of the Oromos by 124 (32.29%) of the participants of the study. Another indirect interference to the right to culture of the Oromo minorities comes from schools where students are told that some cultures of the Oromo minorities such as ‘Melka’, ‘Chelle’ and ‘Korme Biru’ are not useful and called to advise their parents to throw out such cultural practices. This kind of interference was mentioned as one feature of interference of third parties to the culture of the Oromo minorities of Angollela and Tera Woreda and accounts 67(17.45%) of the respondents.

The discussion with the elder members of the Oromo minority of Angollela and Tera in Ruksi Kebele, also shows that the above mentioned interferences into the culture of the Oromos are rampant and has significant implications in the continuation of the Oromo culture. According to them, because of the direct intervention of the Kebele leaders, the participation of the Oromo community in certain cultural celebration like ‘Melka’ is in decline. Due to the teachings of the Orthodox Church and the schools, the Oromo children have developed negative sentiment and indifference to the Oromo culture. This situation, as they believe, will in the future result in the death of the Oromo culture and assimilation in to the culture of the majority Amharas.

The participants of the study were also asked whether there are some positive measures and supports on the part of the Woreda government in general and the Woreda Culture and Tourism Office in particular that are intended to enhance the development and expression of the culture of the Oromo minorities of Angollela and Tera Woreda. All the participants said no. Ato Daniel Worku, Heritage Conservation and Supervision and Tourism Development Officer of Angollela and Tera Woreda Culture and Tourism Office also admit this allegation and said their office did nothing towards the development and promotion of the Oromo culture. He cites lack of qualified manpower in

the area of culture and tourism, lack of electronic materials used for recording cultural events and little attention given by the Woreda government to the Office of Culture and Tourism as the reasons hindering them to take some positive measures and organize events intended to help the Oromo minorities of Angollela and Tera Woreda preserve, develop, express and promote their culture.²⁵⁶

According to Ato Daniel the failure to take positive measures and supports and unavailability of occasions aimed at developing and promoting the Oromo culture by the Woreda Culture and Tourism Office is conceived by the Oromo minorities as disrespect to the Oromo culture. He explains this situation with an example in which he asked one of the Oromo elder about the intention of their office to promote ‘Yeferes Gugis’ and the Oromo elder replied to it as “do you remember us?, do we have something worth of respect?”.²⁵⁷ This instance has a huge implication as to how the Oromo minorities of Angollela and Tera Woreda feel that they are being discriminated and their culture is disrespected.

Concerning the solutions to the problems related with the direct interferences in the cultural practices of the Oromo people the participants suggested the involvement of the Woreda government through teaching and controlling the Kebele leaders so that the later will not disrupt the cultural celebrations and create fear on the part of the members of the Oromo community. According to the participants, the Woreda government should take measures of preventing the intimidations caused by the Kebele leaders and create favorable atmosphere to the celebration of their cultural practices conducted outside and in mass like ‘Melka’. They believe that unless the Woreda government discharges this activity they are in trouble to express their culture.

Regarding the indirect interferences in the culture of the Oromo minorities from the schools and the Orthodox Church, the participants once again called upon the Woreda government to let such institutions stop their negative teachings concerning the Oromo

²⁵⁶ As far as lack of qualified man power is concerned Ato Daniel said it is only he and his boss (Head of the Angollela and Tera Woreda Culture and Tourism Office) who are currently responsible to all activities of the office and he repeatedly mentioned it as a great impediment to their work.

²⁵⁷ By we he is referring to the Oromo minorities of Angollela and Tera Woreda.

culture that creates a sense of abhorrence and indifference on the part of the Oromo children who are supposed to ensure the continuation of the Oromo culture in the future. Of course, if the Oromo children did not properly know the culture of the Oromo people and to the contrary thought about the negative sides of this culture, they will not have the incentive to sustain their culture and the death of the Oromo culture will be inevitable. It seems wise to be concerned with this taking into account the impact of the teachings of the church and the school in shaping the children.

Besides ensuring non-interference in the exercise of the right to culture of the Oromo minorities of Angollela and Tera Woreda, the participants of the study believe that the Woreda government, particularly the Woreda Culture and Tourism office is required to take some positive measures aimed at developing and promoting the Oromo culture. According to the participants such measures include organizing occasions that are helpful to effectuate the development and promotion of the Oromo culture at the Woreda level, attending and recording the cultural rituals of the Oromos and establishing cultural centre for the Oromo people in the Woreda capital, Chacha. In the discussion with the elders of the Oromo people, such elders believe that if properly undertaken, these measures will help them to meaningfully exercise their constitutional right to express, develop and promote culture.

4.4. The Right to Trial in One's Own Language

According to Fernand De Varennes in circumstances where the number of speakers is so low as to make it non-discriminatory to operate exclusively in one language in court or before administrative tribunals, there may be situations where a state must take other steps to compensate the highly prejudicial effects of the state's linguistic preference upon some individuals. Even in the case of a person having little or no knowledge of the language used in court proceedings, it is obviously not unreasonable, for practical and financial reasons for a state not to conduct its court proceedings in a language which is not widely used or known in the state. At the same time, there is no denying that the burden or disadvantage for a person in such a situation is exceptionally high. De Varennes suggests that as with any other balancing of interests between the individual

and the state, in assessing what is reasonable, one must ask whether there may not be a less onerous measure capable of being adopted by the state which will lessen the individual's burden or disadvantage.²⁵⁸

Article 19(1) of the Constitutions of the FDRE and Amhara National Regional State also guaranteed the rights of persons arrested to be informed the reasons of their arrest and any charge against them. Article 14(3) (a) of the ICCPR also provides the same right. Article 20(2) of both Constitutions also provides the right of persons accused to be informed with sufficient particulars of the charge brought against them. Therefore, the effective implementation of these constitutional rights may to the minimum require an interpreter to the accused or arrested persons who have little or no knowledge of the working language of the court or the police station. Article 14(3) (f) of the ICCPR provides that the right of the accused to have the free assistance of an interpreter if he cannot understand or speak the language used in court as a minimum guarantee.

The participants of the study have been asked questions related with the impacts of the Woreda court's working language (Amharic) on the litigants of the Oromo minorities who cannot speak and listen Amharic. All of them replied that the Woreda court's application of Amharic as the working language has a disadvantage to the Oromo minorities in court proceedings. They mentioned the failure of the Oromos to directly express what they feel to the judge as one of the disadvantages to the Oromo litigants which is an easy task to the Amharas. In the same way the participants mention that the Oromo litigant is also unable to directly know what the judge feels because of the language barrier which makes the Amhara litigant more advantageous.

Angollela and Tera Woreda court has recently begun to solve problems related with language on the litigants of the Oromo in court proceedings through an interpreter. Previously, the Court had no interpreter of its own and it was the parties to the proceeding who were required to bring an interpreter with their own expense.²⁵⁹ The participants of the study were asked whether the Woreda court's attempt to solve the

²⁵⁸ De Varennes, *Supra* note 41, p.182.

²⁵⁹ Interview with Ato Derege Dagne, President of Angollela and Tera Woreda Court, October18, 2010.

problems of the Oromo parties to the proceeding using an interpreter is sufficient. Out of the 384 participants 321(83.59%) responded that this is not a sufficient means of addressing the problem. The remaining 63 participants (16.41%) answered the court's effort of addressing the problems through an interpreter is sufficient. Even these participants recommend that the court should have additional interpreters, at least one in the bench and the problem cannot be effectively dealt with the existing one interpreter of Angollela and Tera Woreda Court. Such participants add their personal experiences which show that they were forced to testify in Amharic (a language which they do not have adequate knowledge and are not fluent) with out the help of the interpreter when the only interpreter is engaged in interpretation in the other bench of the court. Because of this, the participants said that they are not able to convey what they exactly want to communicate to the court because of lack of proficiency in Amharic which they believe had a negative repercussion in the out come of their case.

Ato Dereje Dagne, president of Angollela and Tera Woreda Court, also acknowledges that the Woreda court's attempt of resolving the problem with a single interpreter is not sufficient way to tackle the problem taking into account the number of benches of the court and the number of the Oromo litigants.²⁶⁰ According to Ato Dereje, the lack of sufficient interpreters becomes a serious challenge to the court in rendering justice to the Oromo minorities of Angollela and Tera Woreda and caused delay of justice because when the interpreter is needed in two benches at a time one of them will be forced to wait until he finished the interpretation in the other bench. Ato Dereje Bacha, an interpreter and photo copier of Angollela and Tera Woreda court also shares the concern of Ato Dereje Dagne and he is unable to effectively undertake his work of interpretation given the number of benches of the court and his additional task of photo copying. He believes this causes a trouble to the Oromo parties of the proceeding in the litigation of their cases and their right of access to justice.²⁶¹

²⁶⁰ Ibid. According to Ato Dereje, the Court has a total of four benches. Three of them are civil benches while the remaining one is the criminal bench.

²⁶¹ Interview with Ato Dereje Bacha, Interpreter and Photo Copier of Angollela and Tera Woreda Court, October 18, 2010.

The participants recommended that the current Woreda court's solution of addressing the language difficulties of the Oromo minorities through the use of a single interpreter should be replaced by appointing bilingual judges and prosecutors. According to such participants if the judges and prosecutors are bilinguals (fluent both in Amharic and Affan Oromo) the Oromo minority litigants can express their exact feelings directly to the prosecutor or the judge in their own language (Affan Oromo) and this will let them to litigate their cases effectively. The participants further said the interpreter cannot exactly transmit their words and emotions to the judge or the prosecutor. The participants said no matter how accurate the interpretation is, the words are not ours, nor is the style or the emotion. They also add that as perfect interpretations do not exist, no interpretation will convey precisely the same meaning as the original words of the Oromo parties of the proceeding.

4.5. The Right to Education in Mother Tongue

In Angollela and Tera Woreda there are 42 formal primary level schools, 4 alternative basic education centers and one high school. Among the 42 formal primary level schools 17 are primary full cycle (1-8) schools while the remaining 25 are first cycle primary schools. The education coverage of the Woreda is about 80%. The medium of instruction in all these schools except Chacha High School is Amharic. This is true in all schools of the Woreda including those schools found in the Kebeles highly dominated by the Oromo minorities.²⁶² Because of this the children of the Oromo minorities are not thought in their mother tongue (Affan Oromo rather they are instructed with a language unfamiliar to them (Amharic) and thus did not get the benefits of instruction in mother tongue at their childhood. As The Hague Recommendations Regarding the Education Rights of National Minorities provide the first years of education are of pivotal importance in a child's development.²⁶³ Fernand De Varnnes also said that children are not simply linguistic blank slates when they enter a school. In probably the closest thing possible to world-wide unanimity, it is recognized that instruction in the mother tongue is, at least at

²⁶² Interview with Ato Yirgalem Alene, Head of Angollela and Tera Woreda Education Office, October 18 , 2010.

²⁶³ The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Note, 4 *Int'l J. on Minority & Group Rts.* 199,(1996-1997), p.203.

the initial levels of education, the most effective way to instruct pupils. In other words, to educate children in a language with which they are less familiar is unfavorable to them. According to Varennes, such disadvantage can, as has been shown in a number of occasions, be discriminatory when it affects a sufficiently large group of people.²⁶⁴

The right to education in mother tongue is guaranteed in a number of international instruments explicitly or implicitly. For example, as De Varnees said Article 27 of the ICCPR appears to be part of a long-established and continuous legal continuum that the right for linguistic minorities to use their language amongst themselves must necessarily include the right to establish, manage and operate their own educational institutions where their language is used as the medium of instruction to the extent deemed to be appropriate by the minority itself.²⁶⁵ Article 30 of the Convention on the Rights of the Child also recognizes a child belonging to a minority has the right, in community with other members of his or her group, to enjoy among other things his or her own language. One way in which a child can enjoy its language is through instruction in schools. Article 5(1)(c) of Convention Against Discrimination in Education also requires states parties to the Convention to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the policy of each state, the use or teaching of their own language. Though not a binding instrument, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities also urges states to take appropriate measures so that persons belonging to such minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.²⁶⁶

We did not find similar provisions of national laws pertaining to minorities' right to education in mother tongue. Neither the FDRE Constitution nor the Constitution of the Amhara National Regional State provide with the right of Nations, Nationalities and Peoples to education in mother tongue. However, both Constitutions guarantee the right

²⁶⁴ De Varennes, *Supra* note 41, p.193.

²⁶⁵ *Id.*, p.158.

²⁶⁶ Article 4(3) of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities to this effect provides that states should take appropriate measures so that, wherever possible persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

of Nations, Nationalities and Peoples to develop their language and culture. Therefore, it may be argued that the right to develop one's culture and language cannot be meaningfully exercised without recognizing one's right to instruct its children in their mother tongue. This is because of the significant role of education in the development of a certain language and the transfer of culture from one generation to the other. In Ethiopia, it is only the Ministry of Education's Education and Training Policy of 1994 which explicitly provides 'cognizant of the pedagogical advantage of the child learning in mother tongue, and the rights of nationalities to promote the use of their languages, primary education will be given in nationality languages.

Despite the existence of this policy, primary education is not offered to the children of the Oromos in Angollela and Tera Woreda in their mother tongue. The participants of the study have been asked about whether the instruction of the children of the Oromo minorities, particularly elementary students, has a negative impact on their educational carrier. Out of the 384 participants 363(94.53%) answered "Yes" and the remaining 21(5.47%) said "No". Those participants who said yes explained their answer based on what their children told them about their education. Accordingly, the children told them that they did not properly understand what they are thought and faced problems to communicate with their teachers. According to the participants, the problem is wide and serious among students of grade one.

On the other hand, those participants who said no reasoned their answer by the fact that the teacher who thought their children is bilingual. According to such participants, since the teacher of their children is aware of both languages (Amharic and Affan Oromo) she assists them with their mother tongue (Affan Oromo) when they are unable to understand in Amharic. The participants of the study who said the instruction of their children in Amharic has a negative impact on the children's academic performance, some students are forced to drop out while some others went to the neighboring schools of Oromia region to get education with their mother tongue (Affan Oromo). In this instance, even students who were above grade one; will be turned back in to grade one to be aware of the Latin alphabet (English alphabet).

Ato Yirgalem Alene, Head of Angollela and Tera Woreda Education Office, also completely agrees with the allegation of the majority of the participants. Ato Yirgalem said the Woreda education office knows the difficulty of instruction in Amharic upon the academic performance of students of the Oromo minorities. He also said that the teachers and directors of schools constantly report to the Woreda Education Office about the difficulty of instruction of the students of the Oromo minorities in Amharic and their inability to communicate with such students which in turn hamper the smooth functioning of the learning-teaching process. Further more, the report also show that their students are forced to drop out and repetition since they did not acquire the required knowledge because of the existing language barrier. According to Ato Yirgalem, teachers who cannot understand Affan Oromo are not willing to work within schools found in Kebeles dominated by the Oromos anticipating the language problem and communication difficulties they will face there. Those teachers who are already assigned to work in such schools also continuously apply to the Woreda Education Office for transfer to other schools found in Kebeles dominated by the Amharas where they did not face problems of communication with their students.

According to Ato Yirgalem, apart from the teachers and directors of the schools, the Oromo minorities, mainly those found in Ruksi Kebele, also claim to the Woreda Education Office about problems related with instruction of their children in a language unfamiliar to them (Amharic) even this year. Ato Yirgalem also said that his Office is aware that for the reason that the instruction of the children of the Oromo minorities is in Amharic, some students are obliged to go into the adjacent schools of Oromia region to get education in Affan Oromo while some others are forced to drop out or fail.²⁶⁷ According to him, in addition to the Woreda Education Office, the problem is also brought to the attention of the Woreda Administrative Council and the Council which will provide solutions after deliberation over the issues. The directors of schools found in Kebeles dominated by the Oromos also said that the instruction of the children of the

²⁶⁷ For example in the 2009/10 Academic Year drop out rate in schools of Ruksi, Michire, Dodote, Adadi and Cheki where the student's mother tongue is Affan Oromo is 9.3% while in those schools in which the student's mother tongue is Amharic the drop out rate is 7.4%. In the same way the repetition rate in the case of the former is 7.3% while in the case of the latter it falls in to 5.5% for the same Academic Year. (Angollela and Tera Woreda Education Office, October 2010).

Oromos in Amharic has caused a serious problem in the smooth functioning of the teaching-learning process of the school. According to W/rit Alemtsehai Getachew, Director of Adadi Primary Full Cycle School, there is communication difficulty between students and teachers (a majority of who can not understand Affan Oromo) in the school.

The problem of communication is more difficult with students of grade one. W/rit Alemtsehai also said the teachers who did not know Affan Oromo are not willing to teach students of grade one owing to the communication difficulties with them. According to her the drop out and repetition of students is also high in the school and she receives continuous complaints from those teachers who did not understand Affan Oromo about the problems of communication with their students which they believe hinders the students from acquiring the required knowledge and skills.²⁶⁸

The teachers of Adadi Primary Full Cycle also share the concerns of the school director. W/rit Yemisrach is a teacher in the school. She did not have knowledge of Affan Oromo. For her communication with the students is very difficult. What makes the problem more complicated is that she teaches students of grade one where communication with them for Amharic speaking teachers is difficult. She tried to communicate with the students through symbols and drawing pictures. She also tries to communicate through students who are relatively better in Amharic. But according to Yemisrach, such attempts of communication are not sufficient to effectively undertake education. Even it cannot be said that there is adequate communication with the students. She also believes that the language barrier has a negative impact on the understanding and result of the students.²⁶⁹ W/ro Debabish Tsegaye is also another teacher of grade one students in Adadi School. She can speak and listen to Affan Oromo though she is not said to be fluent. Although she is better than the Amharic speaking teachers in communication with the Oromo students, her knowledge of Affan Oromo did not enable her to successfully carry

²⁶⁸ Interview with W /rit Alemtsehai Getachew , Director of Adadi Primary Full Cycle School, October 20, 2010.

²⁶⁹ Interview with W /rit Yemisrach A Teacher of Adadi Primary Full Cycle School, October 20, 2010.

out the teaching-learning process as desired. As Debabish said Amharic speaking teachers are very much in trouble to effectively communicative with the students.²⁷⁰

The problem of communication between the Oromo students and their teachers is very serious in Ruksi Primary First Cycle School. According to Ato Yeashitila Asferi, the Director of the School, the teaching-learning process is impeded by the language barrier existed between the Oromo students and teachers who did not understand Affan Oromo. Because of this the number of students drop out in the school is very high. When the school asked their families why the student dropped out they replied that the student did not understand what he/she is educated. Since the Kebele is found near the border of Oromia region, as Yeshitila said, a number of students went to the nearby schools of Oromia region to attend their education in a language they understand. The Oromo community constantly requests the school to let their children learn in their mother tongue. According to Ato Yeshitila, the school also asked this question of the Oromo community to the Woreda Education Office. But as Yeshitila believes, the Woreda Education Office did not yet provided adequate response to the demands of the Oromo community.²⁷¹ W/ro Tigist Bogale also agrees with the idea of the school director and she is in trouble to effectively teach her students of grade one due to her inability of Affan Oromo, the only language the students understand. Because of the difficulty of communication with her students, the students are unable to properly understand what she teaches them. According to Tigist, this in turn has resulted in the low performance of the students and high numbers of students drop out.²⁷²

The personal observation of the writer also reveals that the teachers, particularly Amharic speaking teachers are in trouble to communicate with their students and thereby effectively undertaking the teaching-learning process. In a situation where communication is very difficult, it will be unwise to think of successful teaching-learning process and the students get the desired knowledge and skills from their teachers. In the

²⁷⁰ Interview with W/ro Debabish Tsegaye, A Teacher of Adadi Primary Full Cycle School, October 20, 2010.

²⁷¹ Interview with Ato Yeshitela Asferi, Director of Ruksi Primary First Cycle School, October 21, 2010.

²⁷² Interview with W /ro Tigist Bogale, A Teacher of Ruksi Primary First Cycle School, October 21, 2010.

observation, the writer has witnessed that the students of grade one are even in trouble to repeat what their teachers told them to say again.

The majority of the participants of the study, who said the instruction of the Oromo children in Amharic has a negative consequence upon the education carrier of the students, suggest the instruction of the children in their mother tongue (Affan Oromo) as a solution to the existing problem of communication between the Amharic speaking teachers and the children of the Oromo minorities of Angollela and Tera Woreda. Those participants who respond the instruction of the children in Amharic does not have an impact also said so because there are teachers who are bilingual (know Amharic and Affan Oromo). The directors of the school also suggest the provision of the education in Affan Oromo as the only way out. The head of the Woreda Education Office also recommend the instruction of the children of the Oromo minorities of the Angollela and Tera Woreda in their mother tongue if education is said to be provided to the Oromo children meaningfully. The head also said that currently the Woreda Education Office has a plan to prepare texts in Affan Oromo and the transfer of Affan Oromo speaking teachers in consultation with the Oromia Nationality Administration of the Amhara National Regional State and according to Ato Yirgalem, it will be tried to provide education in Affan Oromo in at least two primary schools, in the coming two or three years.

CHAPTER FIVE

CONCLUSION

The study was concerned with the protection of Oromo minorities of Angollela and Tera Woreda and specifically with the rights to representation in the Woreda Council and Administrative Council, the right to promote and develop culture, the right to trial in their own language and the right of the Oromo minorities to be taught in their mother tongue.

The Oromo minorities of Angollela and Tera Woreda Council did not have special representation in the Woreda Council. This makes them unable to effectively influence decisions passed in the Council, particularly those pertaining to their interests. To have effective say in the affairs of the Woreda and influence decisions passed concerning their peculiar interests, the Oromo minorities should have special representation in the Woreda Council.

It is in such kinds of circumstances that minorities need special kind of measures to protect their interests and the usual democratic process failed to provide. Such special measures include granting minorities veto powers in matters of special concern to them and are crucial of enabling them live as minorities. As a result, the Oromo minorities of Angollela and Tera Woreda should be entitled veto powers to enable them exert influence in the decisions of the Woreda Council, particularly in issues pertaining to their interests. As Kristin Hernand provides, veto powers may not grant full autonomy in the matter but still provides a level of negative autonomy in that certain decisions can be prevented from taking effect.²⁷³ These interests could include issues related with the culture of the Oromos, the right of the children of the Oromo minorities to be thought in their own mother tongue and the like. Decisions in such kinds of issues must be left to the Oromo minorities themselves and the majority should not be allowed to decide. Because allowing the majority to decide in such occasions will be undemocratic and will have the

²⁷³ Kristin Henrard, "Participation, Representation and Autonomy in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions", *12 Int'l J. on Minority & Group Rts.* 133, (2005), p.140.

effect of perpetuating the will of the majority Amharas over the minority Oromos. As Steven Wheatley provides, a democratic system of government must be tolerant of the political expression and activity of minorities and must take their interests into account where decisions are likely to impact upon them.²⁷⁴

Thus, the Internal Working Procedure of the members of the Woreda Council needs to be reframed in such a way that it takes into account the special interests of the Oromo minorities of the Woreda. Setting agendas and passing decisions in issues of particular importance to the Oromo minorities should not be left to the usual process of decision making by majority vote. In other issues of common interest and concerns of the Woreda in general, following the usual democratic process of majority vote may not be undemocratic and unacceptable.

As Ato Azmeraw, speaker of Angollela and Tera Woreda Council suggest, the fact that the Oromo minorities live in the Woreda found in Amhara National Regional State should not be a reason to deny them special representation in the Woreda Council. Rather, as provided under Article 39(3) of the FDRE Constitution, the right to self-government of a Nation, Nationality or People include the right to establish institutions of government in the territory it inhabits and to equitable representation in state and federal governments. Therefore, the Oromo people of Angollela and Tera Woreda have the right to establish institutions of government in the Kebeles they inhabit and equitable representation in one of the level of administration of the Amhara National Regional State (the Woreda Council of Angollela and Tera Woreda). Such equitable representation should be the one that enables the Oromo minorities of Angollela and Tera Woreda to have effective say in the affairs of the Woreda and deciding on their own fate by themselves.

The Oromo minorities of Angollela and Tera Woreda have not equitable representation in the Woreda Administrative Council. For the Oromo minorities, to have adequate representation in the Woreda Administrative Council, the Woreda Administrator should take into account the nationality of the candidates of the Council. This is because

²⁷⁴ Steven Wheatley, "Democracy in International Law: A European Perspective", *51 Int'l & Comp. L.Q.* 225, (2002), p.239.

representation in the executive branch of the government is as important as representation in the legislative organ of the government and thus should not be left unanswered. Article 39(3) of the FDRE Constitution which provides the right of Nations, Nationalities and Peoples to be equitably represented in the Federal and State governments for the stronger reason applies to the same right of equitable representation in Woreda Administration. Therefore, it can be argued that the Oromo minorities of Angollela and Tera Woreda have the right to fair and equitable representation in the Woreda Administrative Council. As Mark Weller provides, minorities should be entitled special representation in the executive, particularly in the areas of special concern to them such as culture and linguistic affairs, education and the media.²⁷⁵

The Constitutions of the FDRE and the Amhara National Regional State requires all state organs of the Federal and State governments at all levels to respect and enforce the fundamental rights and freedoms of individuals and groups enshrined under the third chapter of both constitutions. As part of the fundamental rights and freedoms, these state organs at all levels have the duty to respect and enforce the right to express, develop and promote culture of a Nation, Nationality or People. The failure to do so is a violation of the duty to respect and enforce incorporated under Article 13(1) of the FDRE Constitution and the Constitution of the Amhara National Regional State (ANRS). The treaty bodies of the international instruments ratified by Ethiopia such as the Human Rights Committee of the ICCPR and the CESCR of the ICESCR also provide that the State parties to the Covenants are under obligation to refrain from interfering on the right to express culture of minorities and are also required to protect them from the interference of third parties in their enjoyment of the right to culture and failure to do so is a violation of the obligation to respect and protect the right to culture of minorities enshrined under both Covenants.

Therefore, the acts of disrupting and forbidding some cultural practices of the Oromo minorities of Angollela and Tera Woreda such as ‘Melka’ by the Kebele leaders is a violation of the duty to respect as provided under Article 13(1) of the FDRE Constitution and the Constitution of the Amhara National Regional State (ANRS) of the right to

²⁷⁵ Weller, *Supra* note 193, p.268.

express culture of the Oromo people guaranteed under Articles 39(2) of the FDRE Constitution and Article 39(1) of the Amhara Constitution respectively. Furthermore, the Woreda administration is also in violation of its duty to enforce provided under Article 13(1) because of its failure to take appropriate measures to prevent the culture of the Oromo minorities from the criticisms and condemnation of schools and the Orthodox Church. Moreover, the acts of the Kebele leaders and the abstentions of the Woreda administration are also violations of the duty to respect and protect of Ethiopia under takes in the two Covenants (ICCPR and ICESCR) which become integral of part of the law of the land upon ratification by virtue of Article 9(4) of the FDRE Constitution.²⁷⁶

As the General Comments of the Human Rights Committee (HRC) on Article 27 of the ICCPR and the General Comment of the Committee on Economic, Social and Cultural Rights (CESCR) on Article 15(1)(a) of the ICESCR clearly provide the State parties to the Covenants are under obligation to take positive actions to enable minorities develop and promote their own culture. As a result, Angollela and Tera Woreda Culture and Tourism Office was supposed to take some positive measures aimed at enabling the Oromo minorities of the Woreda and its failure is therefore a violation of Ethiopia's obligation to fulfill the rights guaranteed under the ICCPR and the ICESCR. It would also be better if a person who knows the culture and language of the Oromo minorities is assigned in the Office of the Woreda Culture and Tourism Office. This is because a person holding this position will have an important role in the preservation of the culture of the Oromo minorities and can also easily communicate with the community and facilitate the development of their culture.

The right of the parties to the proceeding to be tried in a language they understand is a basic human right. This right is more vital to the accused in criminal proceedings because his/her proficiency of the working language is critically important in his/her ability of defending himself/herself. The statement of the accused is decisive to the judge's

²⁷⁶ Ethiopia has ratified the International Covenant on Civil and Political Rights on 11 June 1993, available at, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en). It also ratifies the International Covenant on Economic, Social and Cultural Rights on the same day. Available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (visited on 30 October 2010).

determination of his guilt or innocence. Where the accused has no knowledge of the court's language he/she should be entitled to have an interpreter free of charge to the minimum. This right as provided under Article 14(3) (f) of the ICCPR is a minimum guarantee and should not be in any way compromised. Because any attempt to compromise means nothing than denial of the right itself.

When examined in light of this the practice in Angollela and Tera Woreda court falls below the minimum standard. This is due to the fact that the court has a single interpreter to three civil benches and one criminal bench and is entrusted with additional task of photo copy service. As a result, the Oromo accused or an Oromo party to a civil dispute who need the service of the interpreter may not receive assistance and will be tried in a language he/she cannot speak or understand (Amharic). This will negatively affect the ability of a member of the Oromo minority in Angollela and Tera Woreda who is accused of a criminal case or a party to a civil dispute. Hence, it is likely that he/she will be denied of his right to defend his/her case appropriately and his/her right to be informed of the particulars of the charge as guaranteed under Article 20(2) of the FDRE Constitution and the Amhara Constitution and Article 14(3)(a) and (f) of the ICCPR, which is an integral part of the law of Ethiopia pursuant to Article 9(4) of the FDRE Constitution.

Therefore, in order to appropriately implement the right of the Oromo litigants and particularly the accused persons of the Oromo minorities in Angollela and Tera Woreda to be informed about the particulars of the case and to have an interpreter free of charge, the Woreda court should at least have one interpreter in each bench or to have an interpreter assigned only to the criminal bench of the court. This is because the right of the accused to be aware of the particulars of the case and his right to defend himself properly requires to the minimum competent translator. Moreover, the unfortunate and the layman accused is challenged by the prosecutor equipped with the state machinery and who is a lawyer. In addition to such imbalances of power, he/she should not be disadvantaged by his incompetence of the court's working language (Amharic).

The above solution suggested by the writer could only serve from the perspective of the right of accused persons of the Oromo minorities of Angollela and Tera Woreda. However, as this is a right guaranteed to all accused persons who cannot understand or do not know of the working language of the court (Amharic), this could serve as a solution to similar cases that may occur in relation to accused person/party to a civil dispute other than the Oromos. In other words, the solution did not only concern the right of the Oromo minorities of Angollela and Tera Woreda as a group. As a group, the Oromo minorities want their language (Affan Oromo) to be used in the proceedings of the Woreda court. To this effect the likely solution will be the one proposed by the majority of the participants of the study i.e. assigning bilingual judges and prosecutors. This solution is similar to what is practically taking place in social courts of the Kebeles which are dominated by the Oromos. In such Kebeles, even though the parties to the proceeding are required to submit their charges in Amharic, oral litigation is conducted in a language the parties understand. Consequently, the party who cannot speak or listen to Amharic can litigate in his own language of Affan Oromo. Moreover, the judges of the social courts will read the decision written in Amharic in Affan Oromo where the litigant is unable to understand.²⁷⁷ This practice of the social courts bestows the Oromos who cannot understand Amharic the chance to effectively litigate their cases in their own language. This was possible because the judges of the social courts are bilinguals and it will be better if this is applied in the Woreda court too.

Article 16 of the protocol to the International Convention on the Protection of National or Ethnic Minorities or Groups, applicable to the states members of the Council of Europe, which provides the ethnic group's language shall be used in administrative and judicial proceeding when such language is used by at least 6% of the residing population could also serve as international experience to consider Affan Oromo (which is used by 12% of the population of Angollela and Tera Woreda) make a language used in the proceedings of the Woreda Court along with Amharic.²⁷⁸

²⁷⁷ Interview with Ato Teshome Tadesse, a Judge in the Social Court of Adadi Kebele, October 21, 2010.

²⁷⁸ Article 16 of the Protocol to the International Convention on the Protection of National or Ethnic Minorities or Groups, Applicable to States Members of the Council of Europe, Available at, <http://www.unesco.org/most/lnngo7.htm> , visited on 22 October 2010.

The right of minorities to educate their children in their mother tongue is not provided under the Constitutions of the FDRE and the Constitution of the Amhara National Regional State. Although the Constitutions of the FDRE and the Amhara National Regional State did not directly provide for the right of Nationalities to educate their children in their mother tongue, it can be argued that the right of Nations, Nationalities and Peoples to develop and promote their own language cannot be effectively implemented without ensuring the right of the children of such Nations, Nationalities and Peoples to educate their children in their mother tongue. Because one way the development of a language will be effectively ensured is through using it in education.

The Ministry of Education Policy and provides that primary education will be provided in the nationality language.²⁷⁹ The policy also left the discretion of deciding the medium of instruction to the nationalities themselves. The Oromo minorities of Angollela and Tera Woreda, pursuant to the policy are entitled to make decisions on the language of instruction in primary schools. As the majorities of the participants (94.53%) of the study suggest, the instruction of their children in Affan Oromo is their preference. Thus, as a means to implement the right of nationalities to determine the medium of instruction, the state is required to provide the children of the Oromo minorities' education in their mother tongue as provided under the Education and Training Policy. The policy also provides that the language of teacher training for kindergarten and primary education will be the nationality language used in the area. As a result, the state is also under obligation to assign teachers who are trained in Affan Oromo to schools found in Kebeles of the Oromo minorities of Angollela and Tera Woreda.

International instruments ratified by Ethiopia recognize the right of minorities to use their language in education. Examples include Article 30 of the Convention on the Rights of the Child (CRC) that provide the rights of a child belonging to a minority to use his or her

²⁷⁹ Federal Democratic Republic Government of Ethiopia Education and Training Policy, Addis Ababa, April 1994. the policy reads as 'Cognizant of the pedagogical advantage of the child learning in mother tongue, and the rights of nationalities to promote the use of their languages, primary education will be given in nationality languages.'

own language.²⁸⁰ One area the child of a minority uses its language is in education. Thus, it can be argued that the children of the Oromo minorities of Angollela and Tera Woreda are entitled to use their mother tongue in education and fulfilling this obligation lies on the shoulder of the state party to the Convention Ethiopia. Moreover, Article 29(1)(c) of the CRC provides that states parties to the Convention are required to direct the education of the child among other things to the development of his/her own identity, language and values and doing so inevitably require the instruction of children in their mother tongue which can be easily achieved by providing the child education in his/her mother tongue. Article 28(1) of the same Convention also requires states parties to the Convention to take measures intended to reduce drop-out rates. As a party to the Convention, this provision is binding on Ethiopia and the latter should take measures aimed at reducing drop-out rate of students in the schools found in the Kebeles inhabited by the Oromo minorities of Angollela and Tera Woreda by providing education to the children of these minorities in their mother tongue. Because, their inability to understand the language of instruction (Amharic) was mentioned by the teachers and directors of the schools and the head of the Woreda Education Office as one of the major reasons for the drop out of students in these schools.

Article 27 of the ICCPR that guarantees the right of persons belonging to minorities to use their language in community with other members also includes minorities' right to use their language in Education. Article 5(1) (c) of the UNESCO Convention Against Discrimination in Education that provides the right of minorities to carry out education in their own language is also another important provision. However, Ethiopia is not a State party to the UNESCO Convention Against Discrimination which explicitly guarantees the right of minorities to conduct education in their own language. Thus, the writer want to emphasize that the Ratification of the Convention will be significant in providing guarantee to minorities right to education in mother tongue, which did not get explicit recognition in the Constitutions of the FDRE and the Amhara National Regional State.

²⁸⁰ Ethiopia has ratified the Convention on the Rights of the Child (CRC) on 14 May 1991, Available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (visited on 23 October 2010).

This solution of course needs some positive measures of the state like assigning Affan Oromo speaking teachers and preparing books in Affan Oromo. Therefore, the moves of Angollela and Tera Woreda Education Office to transfer Affan Oromo speaking teachers and prepare books in this language in consultation with the Oromia Nationality Administration of the Amhara National Regional State so that the children of the Oromos get education in their mother tongue are appreciated and should be made true as soon as possible. The Woreda Education Office, even after providing primary education to the students of the Oromo minorities of the Woreda in their mother tongue (Affan Oromo), it should assign a supervisor who understands Affan Oromo, to oversee how is the teaching-learning process in the schools instructed in Affan Oromo going.

The response of the Ethiopian Government to the CERD Committee said that every primary school child in Ethiopia now enjoys the right to learn in his or her own mother tongue.²⁸¹ If that is the case, the primary schools of Angollela and Tera Woreda found in the Kebelles dominated by the Oromo minorities of the Woreda should not be an exception and the children of the Oromo minorities should be instructed in their mother tongue.

The Constitution of the Amhara National Regional State provides nationality administration for the nationalities of Oromo, Agew-Awi and Agew-Himra. Apart from the Constitution, the Arooba nationality has get its own nationality administration through Proclamation No.130/2006. This can be mentioned as a positive move by the Amhara National Regional State to protect ethnic minorities of the Regional State. However, the Oromo nationalities are living in other Zones of the Regional State. The Oromos of Angollela and Tera Woreda are one instance of the case in point. Therefore, the Amhara National Regional State should take in to account the situation of nationalities found in such circumstances through its constitution or proclamation. Otherwise, the protection of ethnic groups in Amhara National Regional State will not have full picture. Providing protection to the Oromo minorities found in their nationality administrations while ignoring the situation of Oromo minorities found in the Woredas of

²⁸¹ *Supra* note 221, para.31.

other Zones in huge number and territorially concentrated like the Oromo minorities of Angollela and Tera Woreda, does not make sense.

The Oromo minorities of Angollela and Tera Woreda should not be left without protection because they simply happen to live outside the Oromia Nationality Administration of the Amhara National Regional State. What must be taken into account is whether the Oromo minorities of Angollela and Tera Woreda need special protection that enables them to participate in the affairs of the Woreda significantly and decide on matters affecting their particular interests and essential to their continuity as Oromo. This requires the Amhara National Regional State not to treat Woredas that are fully dominated by the Amharas in the same manner as those Woredas like Angollela and Tera where a significant number of minorities live. The latter should be treated differently and the regional state should take appropriate measures to this effect. These measures among other things include enacting legislations or taking practical steps intended to ensure the equitable representation of the Oromo minorities in the Woreda Council and Administrative Council and providing procedural guarantees aimed at protecting the Oromo minorities from the simple majority vote on issues of special concern to them like the right to express and develop culture and the right to education in mother tongue. In addition, special attention should be paid to the rights of the Oromo minorities in court proceedings court proceedings and this may require to the minimum providing the accused with an interpreter free of cost or to use the Affan Oromo in court proceedings along with Amharic. Otherwise, the administration of justice will be in danger. The same kind of attention should also be paid to ensure the instruction of the children of the Oromo minorities of Angollela and Tera Woreda in their mother tongue. If these measures are taken, the Oromo minorities can be protected effectively although living in a Woreda dominated by the Amharas.

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Annex

Annex I

Questionnaire

General Directions

Dear respondents, I am a Second Year Student of the Graduate Program of Addis Ababa University Law Faculty in the Human Rights Stream. By now, I am doing my LL.M Thesis on the Title “The Protection of National Minorities in Amhara National Regional State: The Case of Oromo Minorities in Angollela and Tera Woreda”. The purpose of this questionnaire is to collect data intended to serve as an input to the research on the above named title. Therefore, I kindly request you to provide your proper answers either by circling the letter to those closed questions or providing your detail responses to those open ended questions as the case may be.

Thank You!

A. On issues of the right to representation of the Oromo Minorities in Angollela and Tera Wored Council and Administrative Council

1. Do you think that the Oromos have sufficient representatives in Angollela and Tera Woreda Council and Administrative Council? A/ Yes B/No
2. If your answer to the above question is ‘No’, what impact does it have on the Oromo people?
3. What do you think is the better way for the effective representation of the Oromos in the Woreda Council and Administrative Council?
 - A. Proportional representation in relation with the total number of the Oromos in the Woreda
 - B. Reserving some seats of the Woreda Council and positions in the Woreda Administrative Council to the representatives of the Oromos

B. On issues of the right to express, develop and promote culture of the Oromo minorities

4. Are there interferences on the right to express your culture? A/ Yes B/ No
5. If your answer to question No. 4 is 'Yes' , from where are such interferences coming and what impacts did such interferences have on the right to express your culture?
6. Did the Woreda Culture and Tourism prepare stages and occasions that are intended to let you promote your culture and take measures towards the development of your culture? A/ Yes B/ No
7. If your answer to question No. 6 is 'No', please explain its impacts on your right to develop and promote your culture?

C. On issues of the right to trial by one's own language

8. Did the fact that the working language of the Woreda Court is Amharic impacts on the Oromo party of the proceeding that can not speak and listen to Amharic? A/ Yes B/ No
9. If your answer to question No.8 is 'yes', please explain the possible impacts.
10. Do you think that the Woreda Court's attempt of dealing with the problem using an interpreter sufficient? A/ Yes B/ No
11. If your answer to question No. 10 is 'No' please suggest what you think is an appropriate solution.

D. On issues of the right of the Oromo children to be thought in their own mother tongue

12. Did the instruction of your children in Amharic have an impact on their academic performance? A/ Yes B/ No
13. What seems the opinion of your children about their instruction in Amharic?
14. If your answer to question No. 12 is 'Yes' do you think that the instruction of your children in their mother tongue will solve the problem? A/ Yes B/ No

15. If your answer to question No. 14 is 'Yes' what should be done to provide education to your children in their mother tongue?

Annex II

Ethnic Composition of the Amhara National Regional State

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

Ethnic Group	Number	%
All Groups	17,214,056	100
Affar	3,317	0.02
Agew-Awi	595,721	3.46
Agew Hamyra	238,540	1.39
Alaba	3,622	0.02
Amhara	15,747,800	91.48
Anyiwak	6,251	0.04
Argoba	69,978	0.41
Ari	1,479	0.01
Arborie	317	0.00
Bacha	47	0.00
Basketo	29	0.00
Bench	289	0.00
Berta	5,214	0.03
Bodi	280	0.00
Brayle	1,895	0.01
Burji	135	0.00
Bena	215	0.00
Chara	287	0.00
Dasenech	182	0.00
Dawuro	1,738	0.01
Debase/Gewada	117	0.00
Derashe	152	0.00
Dime	109	0.00
Dizi	18	0.00
Donga	400	0.00
Fedashe	48	0.00
Gamo	157	0.00
Gebato	67	0.00
Gedeo	123	0.00
Gedicho	28	0.00
Gidole	66	0.00
Goffa	939	0.01
Gumuz	13,074	0.08

Guragie	3,054	0.02
Guagu	32	0.00
Hadiya	277	0.00
Hareri	74	0.00
Hamer	23	0.00
Irob	2,117	0.01
Kefficho	86	0.00
Kembata	210	0.00
Konta	7	0.00
Komo	53	0.00
Konso	19	0.00
Kore	83	0.00
Koyego	7	0.00
Kunama	983	0.01
Karo	11	0.00
Kusumie	7	0.00
Malie	300	0.00
Mao	49	0.00
Mareko	648	0.00
Mashola	60	0.00
Mere	82	0.00
Me'enite	14	0.00
Messengo	122	0.00
Mejenger	53	0.00
Mossiye	34	0.00
Mursi	19	0.00
Murle	12	0.00
Nao	26	0.00
Nuwer	239	0.00
Nyanegatome	173	0.00
Oromo	451,221	2.62
Oida	88	0.00
Qebena	30	0.00
Qechem	11	0.00
Qewama	5	0.00
Shekecho	32	0.00
Sheko	3	0.00
Shinasha	414	0.00
Sidama	1,166	0.01
Silte	1,078	0.01
Somalie	5,708	0.03
Surma	70	0.00
She	19	0.00
Tigray	37,083	0.22
Tembaro	69	0.00

Tsemay	3	0.00
Upo	8	0.00
Welaita	379	0.00
Werji	415	0.00
Yem	11	0.00
Zeyese	18	0.00
Zelmam	10	0.00
Other Ethiopian National Groups	12,898	0.07
From different parents	726	0.00
Eritrean	114	0.00
Djiboutian	4	0.00
Somali an	35	0.00
Kenyan	18	0.00
Sudanese	278	0.00
Other foreigners	633	0.00