

**Ethiopia's Ethnic Federalism and The Political
Rights of Non-indigenous Regional Minorities:
The Case of Benishangul Gumuz Regional State**

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Acronyms

AEUP	-	All Ethiopian Unity Party
ANDM	-	Amhara National Democratic Movement
BGPDP	-	Benishangul Gumuz People Democratic Party
BGPDUF	-	Benishangul Gumuz People Democratic Union Front
CUD	-	Coalition for Unity and Democracy
EPLF	-	Eritrean People Liberation Front
EPRDF	-	Ethiopian People Revolutionary Democratic Front
FDRE	-	Federal Democratic Republic of Ethiopia
HOF	-	House of Federation
HPR	-	House of People Representatives
NEBE	-	National Electoral Board of Ethiopia
NNP	-	Nations, Nationalities and Peoples
OPDO	-	Oromo People Democratic Organization
PMAC	-	Provisional Military Administrative Council
SPDM	-	Southern People Democratic Movement
TPLF	-	Tigray People Liberation Front

CHAPTER ONE

1. Introduction

1.1 Background of the Study

Ethiopia is a country in which more than eighty ethnic groups exist and twice as many dialects are spoken. Despite its numerous ethnic groups, however, two thirds of its population belongs to the four major ethnic groups (Oromo, Amhara, Somali and the Tigre), which together account for 73.8 percent of the total population. The rest of the population is then constituted by the wide range of diversified ethnic groups with largely smaller population percentage. Hence, in Ethiopia since no ethnic group accounts for the majority of the population (constitutes more than half of the total population), Ethiopia can generally be described as a country of numerical minorities, at least at the federal level.

Even though characterized by a high degree of ethnic diversity and the presence of different ethno-linguistic groups, the country has for the most part of its history neglected the issue of its diversity or at least tried to create a homogenous nation out of its diverse population. The modern Ethiopian state formation that took place in the late 19thc and early 20thc transformed the country from a homogenous Abyssinian character into a mosaic of different ethnic, linguistic and religious groups. Although, the Ethiopian state indeed became a mosaic of various diverse groups, the Ethiopian state's incorporation of these groups on equal and equitable terms have not been an impressive one. This is where the antagonisms and crisis of the state begins.

The 'Question of Nationalities' otherwise termed as the 'National Question' was among the first issues to be formulated by radical university students in their demands for radical socio-political change in Ethiopia. This has since then become one of the salient features of state crisis which has bedeviled the country for decades. The inadequacy of the monarchical government structure to bring about political, economic and social reforms

and most importantly the failure of the imperial as well as the military regimes to formulate appropriate diversity accommodation mechanisms led to the establishment and rise to predominance of ethnic/nationalist movements. Eventually, these movements became successful and re-established the country based on the principle of ethnicity. The Ethiopian People's Revolutionary Democratic Front (EPRDF) which became the new power holder since 1991 mobilized the country solely on ethnic grounds and declared its intentions of a new nation building strategy based on ethnicity and the principle of national self-determination.

The intentions of the EPRDF to do away with the centralizing trend of the past regimes were clear from the very beginning. The first national conference held at Addis Ababa among the various ethnic group representatives and the signing of the Transitional Period Charter which served as an interim Constitution were clear demonstrations to this effect. The emphasis given to the right to self-determination of the various ethnic groups within the country signified the readiness of the government to deal with the long overdue of the country's ethnic diversity.

The new Ethiopian Constitution of 1995 in its article 1 declared the country to be a federal democratic republic. In addition, the Constitution clearly spelt out that ethnic considerations were an undeniable phenomenon. It gave the right to different nations, nationalities and peoples (ethnic groups) of Ethiopia to self-determination up to the point of seceding from the federation. This, as the EPRDF repeatedly stated, is the corner stone of Ethiopia's ethnic federalism.

After the coming into power of the EPRDF government, which heralded ethnic federalism, the ethnic criterion has played the major or even the only role in the re-organization of the country. This can be seen directly from the fact that the 1995 Constitution establishing nine regions that are largely delimited along ethno-linguistic criteria. Indeed it has been attempted to realize a match between territorial autonomy and ethnic identity, so that, an overlap between the two will be obtained with the intention that the formed states will be of a relatively homogenous character. But, practically

speaking this has not been so. This is attributable to the fact that with the existence of more than eighty ethnic groups in the country, only nine regional states have so far been created. But to the dismay of the constitutional drafters, none of the nine regional states are ethnically homogenous. Rather, the creation of the states of the Ethiopian federation gave rise to various regional minorities which by themselves have their own quest to share political power.

The issue of the Ethiopian ethnic federal structure can be seen from two approaches. The first one is the accommodation of diversity at the federal level to which the Constitution seems to have given a wide range of attention. The second one is the issue of federalism at the regional level. From this stance the issue of accommodation of diversity in the regional states has become a real concern, because of the presence of regional minorities which have a competing interest with that of the regional state majority and/or dominant ethnic group.

In this regard, the issue of federalism at the federal level seems to have been given a wide range of attention and can generally be described as a success story, albeit with its own limitations. But, the right of minorities at the regional level has evoked ethnic antagonisms and tensions between the regionally created dominant and/or majority ethnic group and the minorities living amidst them. The formation of the nine regional states gave rise to a new situation of minority/ majority relations in which these regional states have come up with the ventures of an ethnically dominant and/or majority group on the one hand and these regional states being ethnically non homogenous a politically relegated minority group within the region on the other hand.

This approach of forming the Ethiopian regional states has been particularly problematic in states where the population is of a multiethnic character. Especially, the regional state of Benishangul Gumuz is a home to a very diverse population, comprising of indigenous nationalities as well as non-indigenous inhabitants. Balancing the political rights of the two groups within the region by far cannot be said to have an accommodative character, rather, the political empowerment of the indigenous nationalities only proved to have

created a fertile ground for a majority-minority tension to emerge between the two groups.

1.2 Statement of the Problem

Upon the restructuring of the country on ethno-linguistic criteria, the administrative territories of the country has been divided into nine regional states and two chartered cities directly administered by the federal government.

The regional state of Benishangul Gumuz which is one of the nine regional states is located in the northwestern part of Ethiopia. In terms of the population mixture of the regional state, the largest communities are the Muslim Berta and the mixed religion Gumuz who together constitute almost half of the total population. In addition, there are indigenous communities of Shinasha, Como and Mao with a relatively smaller number of populations. The “highlanders” (the non-indigenous peoples) account for about a little less than fifty percent of the total population of the regional state. In this sense, the regional state can appropriately be described as displaying a wide range of ethnic diversity and multiethnic character.

Initially, the regional administration was established by the elites from the five indigenous nationalities under the leadership and dominance of the Benishangul (Berta) elite. However, since 1996 due to disagreement with the Tigray Peoples Liberation Front (TPLF), the dominant role of the Berta elite has been reduced and replaced by the Gumuz elite allied with the Shinasha elite. At this point, the Berta group even threatened to form its own state, though it was not politically realized.

Since, the whole purpose of forming regional states on the basis of ethno-linguistic criteria was to address the issues of ethnic problems of the country, the formation of the regional state of Benishangul is no deviation to this principle. Hence, the formulation of the regional state is intended to serve as a solution to the ethnic demands of the five

indigenous communities. To this end, it is no wonder that these indigenous communities have been made to be the politically dominant ethnic groups within the region.

Even though the regional state is established in favor of the five indigenous communities, there are a number of non-indigenous ethnic groups, which as indicated above, account for nearly half of the total population of the regional state. The highly populous but non-indigenous ethnic groups are the Amhara, Oromo, Tigre and Agew nationalities. Most of these non-indigenous populations are the result of the Derg's forced collectivization and resettlement program of the 1980's.

The relation between the indigenous population and the highland settlers has been a cause for different conflicts and clashes. Speaking of conflicts, ethnic conflicts between the indigenous communities and the settlers have gained a new momentum after the ethnicization of the country's politics. This has been mainly attributed to the tension created as a result of the dominant indigenous communities which consider the regional state to be their property and considers the late comer highland population as infringers of this right on the one hand and the aspirations of the non-indigenous population to have a say and participate on the body politic of the regional state on the other.

The classification undertaken by the regional state's Constitution for the groups of Berta, Gumuz, Shinasha, Como and Mao as the indigenous nationalities of the region with a wide range of self-determination rights while the non-indigenous community is relegated to an inferior position coupled with the political dominance of the indigenous nationalities has led to a severe disagreement between the two communities.

In this regard, with the existence and presence of such a huge number of non-indigenous communities their right to political representation in the respective state council has been appalling. For example, during the 2000 and 2005 elections the question of political representation of the non-indigenous communities was severely contested by the indigenous community. As a result, the non-indigenous community was not represented at all in the former elections and severely underrepresented in the latter. The crux of the

matter that these communities were not allowed to exercise their democratic right to be elected to the regional legislative body was due to the then electoral law of the country which stipulated that a candidate running for political representation in the legislative council should speak at least one of the indigenous languages of the regional state.

It has also been reported that the most serious and frequent discrimination and abuses of human as well as political rights in which eviction, limiting their freedom of movement, destroying their property and other similar cruel activities have been committed against the non-indigenous communities. Therefore, the paper in this regard will try to uncover whether the problem is as a result of the ethnic federalism by which the country is determined to pursue or as result of non genuine and maladministration of it.

The Constitution of the regional state which was later on amended in 2002 classifies Berta, Gumuz, Shinasha, Mao and Como as the indigenous (endogenous) groups of the region by which Article 39 of the state Constitution may be applicable in establishing their own nationality administrations, which, in effect, closed the door to the non-indigenous minorities in aspiring their right to have some sort of semi-autonomous administrative territory. In addition, their demand to be regarded as distinct ethno national groups along side the five indigenous groups of the region was rejected by the House of Federation. Hence, the thesis in this aspect will try to critically analyze the right of self-determination of these non-indigenous regional minorities.

In this regard, the core idea that will be addressed is the right to political participation of regional minorities. The concept of political participation as part of minority rights is premised on two major arguments. The first one is that, the right to political participation and the prevention of discrimination on minorities cannot be effectively ensured, unless the minority itself is actively partaking in the political decision making process which govern the protection of minority rights. The second is that minorities run the risk of being excluded from the political system without special protective measures, particularly in countries with mobilized ethnic nationalism; majorities (and minorities) have been unlikely to vote for parties or candidates of other nationals or ethnic groups other than

their own. Furthermore, a number of approaches to democracy run the risk of permanently excluding minorities. Most obviously, the British style “First-past-the-post” electoral system has the feature of excluding dispersed minorities from representation.

Election, which is by far the only democratic way of assuming power, if not properly versed with appropriate legal measures, might lead to inequitable share of political power among the people. Ethiopia has adopted the “First-past-the-post” electoral system which simply states that one who receives the majority of votes within the electoral district is the winner. In practice this means the one seat in each electoral district is won by the candidate who gets the majority of votes in the district. In a country where the states are organized on an ethnic basis; where none of these states are ethnically homogenous, the use of such an electoral system runs the risk that the one seat in each electoral district will be won by the candidate who represents the interest of the largest ethnic group in the district. This is particularly problematic for minorities that are to be found dispersed, which will eventually make them a minority in every electoral district.

Hence the paper in this regard will try to critically examine the extent in which non-indigenous regional minorities of Benishangul Gumuz are given the right of political participation and equitable representation in the state council and the protection (or relegation) accorded to them by the electoral law of the country.

The Ethiopian Federated states (except for the states of Harari and Southern Nations, Nationalities and Peoples Region (SNNPR)) are of unicameral legislature, thereby creating no mechanism of political presence of minorities through a counter majoritarian upper house especially taking into consideration the fact that the power of judicial review is outside the jurisdiction of the courts. The Benishangul regional state is no exception in this regard. With the existence of such a diverse ethnic composition of the population, it has still a unicameral legislature. Even worse is the fact that it has excluded the non-indigenous communities from the task of interpreting the state’s Constitution through the Constitutional Interpretation Commission. This has further pushed aside the non-

indigenous communities and it generally seems at odds with the accommodation of diversity present at the federal level.

Furthermore, another problem worth reckoning is the criteria for candidature stipulated under the country's electoral law. A person will be eligible for candidature where he/she is versed in the working language of the regional state or the area of his/her intended candidature. This encumbrance as a criterion of candidature is one which completely strikes out even territorially concentrated minorities which aspire for self rule and their right of self-determination because of their inability to speak the local vernacular which might sometimes coincide with the working language of the region or not. Eventually this requirement of being versed with the local vernacular has been replaced with the phraseology of 'knowing the working language.'

Therefore, with respect to the above cited problem, this thesis will try to determine whether the electoral law addresses the needs of regional minorities in Benishangul for equitable share of political power and adequate representation at the regional level.

1.3 Objectives of the Study

The FDRE Constitution has provided for a guarantee in which minority nationalities and peoples have a special representation in the House of Peoples Representatives, one of the two Houses of Parliament with exclusive legislative power. This has also been supplemented with the establishment of the House of the Federation, the second House of Parliament in which every ethnic group is guaranteed at least a seat. This clearly shows the commitment undertaken at the federal level for the accommodation of ethnic diversity.

Based on the founding principles of the FDRE Constitution, regional states are given the power to enact state Constitutions, which all the nine regional states have made use of. Hence, the main objective of this study is to analyze the impact of Ethiopia's ethnic federalism on regional minorities especially with respect to their right to political

participation. The research generally assesses the issue of federalism at the regional level and in particular with respect to regional minorities taking the situation of non-indigenous groups in the regional state of Benishangul Gumuz as a case study. To this end, the study will first try to determine what is meant by the term regional minorities within the context of Ethiopian federalism and the scope of their rights. It will also scrutinize how sufficiently federal is the regional state of Benishangul, especially in light of its inclusion of its minorities.

The research also tries to elucidate how the state Constitution provides for the accommodation of diversity of the different ethnic groups. Particularly, it will be concerned with respect to the rights of these minorities to administer themselves, to develop their own language, to express, to develop and to promote their culture; and to preserve their history in light of minority rights.

The state Constitution's inclusion of the right of non-indigenous regional minorities in ascertaining their political participation in the body politic of the region and its nexus with the electoral law of the country in guarantying their political representation will constitute the central focus of the research and hence will be one of the main themes of the research to be thoroughly examined. It is also the very objective of this thesis to analyze the political practice of the region in light of its protection and political inclusion it offers for its non-indigenous minorities.

1.4 Significance of the Study

In countries like Ethiopia, where more than eighty ethnic groups reside, the adoption of multination (ethnic) federalism may be the best and only solution for the accommodation of diversity and thereby promoting unity. But, even after the country's decade past experiment with federal structure, ethnic conflicts and tensions among different ethnic groups have been a great challenge for the ethnic federalism which the country's political elites determined to pursue.

With the recurrence of ethnic conflicts and the tension that exists between the indigenous and non-indigenous communities of the Benishangul Gumuz regional state, this research would help in identifying mechanisms for reconciling the rights of the different ethnic groups within the regional state and proposing a leeway for an amicable solution under the current federal structure.

Electoral representation, which is the only constitutional way of assuming power in the country, if not treated by taking cognizance of minority rights and appropriate international Human Right standards can create and support the tyranny of majorities (minorities), which will eventually lead to political instability. Therefore, this research will be significant in critically analyzing the extent of the country's electoral law in serving the needs of regional minorities in providing for their political inclusion.

1.5 Research Methodology

The method to be followed in this thesis is by making a general survey of written materials on minorities (especially on ethnic and national minorities) to form a concept upon their definitions, types and extent of their rights under various international Human Right standards, which will eventually be analyzed with respect to the rights of minorities at the regional level.

The Constitutions of selected regional states of Ethiopia and the electoral law of the country is thoroughly analyzed to the extent necessary for the purpose of making a comparative study with that of the Benishangul Gumuz state Constitution.

Interviews are conducted with selected politicians over issues on the implication of ethnic federalism on the regional states; political rights of regional minorities and as well their fair and equitable representation in the state council. Interviews are also conducted with the respective politicians of the regional state.

Furthermore, the issue of political participation of non-indigenous regional minorities will be assessed from data collected from the concerned state council.

1.6 Limitations of the Study

As has been repeatedly stated in the previous sections, Ethiopia is a country where several ethnic, linguistic and religious groups live. In addition to this, none of the nine states (regions) are ethnically homogenous. Rather they are named after and given to the majority and/or dominant ethnic group which exists within the region.

Despite this presence of ethnic diversity, none of the state Constitutions has opted to give a definition (at least inclusion of the term) of regional minorities. This problem also extends to the international arena where no internationally legally binding definition for minorities exists.

The research requires specific and accurate data concerning every regional minority residing in the regional state in which the study is to be conducted. But, where the information provided for by the population census commission regarding each ethnic group is highly contested as being too small in some instances and an exaggerated one in some other scenarios this might make it problematic for formulating watertight conclusions, especially in matters which seriously need numerical considerations. This will particularly be challenging in making an analysis of the electoral constituencies, since the recently declared population and housing census does not include ethnic composition of the different nationalities that are found in each woreda and zones. Hence, this will make it difficult in ascertaining for sure which ethnic group is a majority and which is a minority within an electoral constituency.

Furthermore, the research thesis will only be limited to the status of non-indigenous regional minorities which are present in the Benishangul Gumuz regional state and will only ponder upon their right to political participation. This will particularly focus on their right to political participation in the state council of the region and will not as such be

concerned with the situation at the zonal and woreda levels. It will not be one which will be concerned with the definitional controversies about minorities and international instruments on the definition of minorities. Besides, the research will mainly be concerned in giving a thorough analysis of the respective state Constitution's provisions which have particular relevance to the Benishangul region pertaining to the political rights of the non-indigenous regional minorities and generally the FDRE Constitution.

Finally, the thesis will be limited to the concerns of the non-indigenous regional minorities of the Benishangul Gumuz regional state and will not be concerned about issues of minorities generally present in the country and in each and every regional state of the federation.

1.7 Organization of the study

The thesis is divided into five chapters, each of which have their own sections and sub sections. By way of an introduction to the study chapter one sets the scene by offering the background of the study, statement of the problem, objective of the study, research methodology, significance and limitations of the study.

Chapter two gives a succinct explanation on the notions of federalism, ethnicity and self-determination by which discussions are made as to the approach of the Ethiopian federal structure on the formation of the regional states which has led to the construction of regional minorities.

Chapter three tries to address the issues concerning the distinction between indigenship and non-indigenship and thereby illustrating particularly the status of the non-indigenous communities as minority classification.

Chapter four focuses on the political rights of the non-indigenous regional minorities in the Benishangul Gumuz region and mainly evaluates their right to political participation and adequate representation. In doing so, it takes into consideration the electoral system

and the constitutional design of the region thereby analyzing its capacity to adequately meet regional minority's quest of sharing political power.

Chapter five tries to formulate the way out, by looking into the Federal Democratic Republic of Ethiopia (FDRE) Constitution's provisions and as well analyzing countries experience and taking into consideration international Human Right standards.

The last part of the study, by way of conclusion and recommendations examines alternative ways and mechanisms by which the political rights of the non-indigenous regional minorities in Benishangul could best be protected and their problems be adequately addressed.

CHAPTER TWO

2. Federalism, Ethnicity and Self-determination in the post 1991 Ethiopia

2.1 Introduction

Ethiopia, as a nation, existed for a long period recognized in its history with the ancient civilizations of the Abyssinian, Axumite and the Zagwe empires.¹ Even though the country had a long history of existence, the borders of the present day Ethiopia were mainly demarcated by the end of the 19th century and early 20th century.² The process of centralization of state power begun by emperor Tewodros II in the 1850's marked the beginning of Ethiopia's nation (empire) building. From this time onwards, the subsequent rulers of the country followed on the same path opened by Tewodros and initiated a counter movement to restore central authority.³

The formation of the modern Ethiopian state can be described as involving three processes: the centralization of power, the territorial expansion of the Shewan rulers and the European expansion in pursuit of colonizing Africa.⁴ The nation building strategy employed by many of the Ethiopian rulers was mainly concerned with centralizing state power and conquering and expanding territory which eventually gave the present day Ethiopia its current geographic and demographic shape. Especially, the territorial expansion of Menelik II towards the south, east, and west transferred the relatively homogenous Abyssinian Empire into a mosaic of different ethno-linguistic groups and diversified culture. The making of the Ethiopian empire from the diversified ethno-

¹ Kidane Mengisteab, *New approaches to State Building in Africa: The Case of Ethiopia's Ethnic-Based Federalism*, African Studies Review, Vol. 40, No 3, (Dec 1997), 119

² See generally, Merera Gudina, *Contradictory Interpretations of Ethiopian History: The Need for a New consensus* in David Turton (ed.) *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Curry, Oxford 2006)

³ Before the coming into power of emperor Tewodros the country had been in a non-centralized system of governance on what had been termed as the reign of the Zamana Masafent; Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, (Rev.edn, Addis Ababa Artistic Printing Enterprise, 2007), 16

⁴ Teshale Tibebu, *The Making of Modern Ethiopia 1896-1974*, (Lawrence Vile, NI: The Red Sea Press, Inc, 1995), 37

linguistic groups hence transformed the country from a relatively homogenous nation to a multiethnic nation. The territorial conquest and expansions which resulted in the inclusion of the numerous peoples with several languages, religions, cultures, socio-economic activities and governance structures made them the subjects of domination of what may be called the highland culture defined in terms of religion, culture and language.

The territorial expansion by the end of 19thc was an extremely important phenomenon in the making of the modern Ethiopian state. This is due to the fact that it laid the ground works for the formation of ethnic identity antagonisms and the hegemony of the highlanders. It is also this time of Ethiopian history that brought about a marked controversy in the understanding of the Ethiopian state formation which leads to various formulations by the contending ethno nationalist elites by which they undertook contradictory understanding on the subjects of the different ethnic groups within the empire.⁵

At this time, even though confronted with the vast diversity of cultures in its domain, the imperial regimes simply ignored this reality and pretended that the Ethiopian empire was still Abyssinian.⁶ The different ethnic groups were then made to be subjects of the highland (northerners) administrative rule: their language, culture and history were denigrated. This then became the turning point in the identity politics of the country and gave rise to the formulation of “us” and “them” understanding. Some even contested and described the country as ruthlessly colonial by which they asserted the country to be the “prison house of nationalities.”⁷ This process of nation-building based on the cultural attributes of the dominant highland people continued up to the end of the reign of Emperor Haile Sellassie.

⁵ See, Merera Gudina, *Contradictory Interpretations*, 120

⁶ John Markakis, *Ethnic Conflict in Pre-Federal Ethiopia*, paper presented at the 1st national conference on federalism, conflict and peace building, may 5-7, 2003, 2

⁷ Assefa Fishea, *Accommodation of Diversity*, 15 citing Ernest Gellner, *Nations and Nationalism*, (Oxford, 1983)

Ethnicity, which is now the sole organizing principle of political power, was considered a taboo during this period let alone to be taken as a means of political organization and mass mobilization. But this taboo was resoundingly broken through the struggle of the Ethiopian student movement which came with the most sensitive of issues: “the question of Nationalities.”⁸ The dissatisfaction of the university students quickly transferred into the mass. The imperial regime of Haile Sellassie was soon after met by various uprisings and rebellions which contributed to an increased ethnic consciousness in the country. The popular revolution of 1974 finally deposed the Emperor from power through the machinery of his own military. The downfall of the imperial regime marked the end of Christian theocracy and the state was made a secular one.⁹

The provisional military administrative council (PMAC), otherwise known as the Derg, took advantage of the revolution and ascended to the throne. It was made up of 120 young officers with the slogan *Ethiopia Tikdem* (Ethiopia First). Derg promised the equality of all nationalities, a hallow promise that was far from being realized.¹⁰ With the motto *Ethiopia Tikdem*, Derg committed itself to maintain the established unitary character of the state and proclaimed Ethiopia’s indivisible unity. Promoting ethnic identity was then found to be a threat to the unity of the state; and in the face of various ethnic based armed movements fighting the Derg, the issue was further pushed aside. Derg, which was strongly inspired by the ideas of the Ethiopia student movement, chose the Marxist/Leninist path. For this reason the whole problem the country was formulated and reduced as a class antagonism rather than ethnic/nationalist one.¹¹ It was this stand of the Derg that led to a further strengthening of the ethnic based movements which started armed struggle immediately after 1974.

As a result, the Derg came under increasing pressure from regional and ethnic rebellion movements. The intensification of ethnic (civil) wars in the country, the increasing

⁸ Bahru Zewde, *A History of Modern Ethiopia 1855-1991*, 2nd ed. (Athens, Ohio: Ohio Univ. Press, 2001), 225

⁹ Teshale Tibebu, *The Making of Modern Ethiopia*, 167

¹⁰ Equality at the time meant the end of cultural subordination and the freedom to exercise ones culture, but not the autonomy and self-government of the nationalities. See, Jhon Markakis, *Ethnic Conflict*, 10

¹¹ John Young, *Peasant Revolution in Ethiopia-The Tigray’s People Liberation Front* (Cambridge University Press, 1997), 61

resistance to military rule and the rise of militant regional and ethnic opposition movements compelled it to consider some kind of decentralization and seek a constitutional solution.¹² For this purpose, the Institute of Nationalities was established in which its main task was to draft a Constitution which will reflect the ethnic makeup of the country with viable administrative divisions.¹³ Ethnicity in Ethiopia reached its political maturity generally during the period of Military rule. The major reasons being the growth and politicization of the intelligentsia (especially the leftist ideology), promotion of ethnic-cultural emancipation, the end of divinity and reference to Solomonic dynasty in government power, the proclamations concerning the equality of all groups and the right of nationalities to self-government, the mass literacy campaign and the introduction of local languages, the accounting of linguistic and religious diversity in the population census and the constitutional provisions of autonomous regions.¹⁴

Towards the end of its reign, Derg granted autonomy to carefully selected provinces distressed by ethnic and nationalist strife.¹⁵ But this was an action taken very late in time to reverse the ethnic insurgencies and political instability of the country. Ethnic/nationalist movements were gaining prominence over the Derg.

From among the many ethnic based resistance movements, the one that played the decisive role in the ultimate demise of the Derg was the TPLF. It was established in 1975 by students who were strongly influenced by the Ethiopian student movement and thus by the ideas about the ethnic problem.¹⁶ In the course of the liberation struggle, the TPLF

¹² Mehret Ayenew, Decentralization in Ethiopia: Two Case studies on Devolution of power and Responsibilities to local government in Bahru Zewde and Siegfried Pausewang (eds.) *Ethiopia: The Challenge of Democracy From Below*, Nordiska Afrikainstitutet, (Uppsala and Forum of Social Studies, Addis Ababa, 2002) 134-135

¹³ The institute for the study of Ethiopian nationalities was a political research bureau that did research work under the military regime by which most results from the institutes work have been directly taken over under the post 1991 regime in the restructuring of the country via ethnicity. See Jon G. Abbink, *New configurations of Ethiopian Ethnicity: The Challenge of the South*, Northeast African Studies Vol.5, No.1, (1998), 62-63

¹⁴ Jhon Markakis, *Ethnic Conflict*, 20

¹⁵ For a discussion of the administrative divisions, their powers and boundaries at the time See, Assefa Fiseha, *Accommodation of Diversity*, 43-46

¹⁶ See, Young, *Peasant Revolution*, 61-65

decided to widen its objectives and to extend its actions to areas outside Tigray.¹⁷ For the purpose of achieving this objective, TPLF created the EPRDF which is a coalition of ethnically based parties.

Finally, the ethnic/nationalist opposition movements were successful in overthrowing the much hated and brutal Derg dictatorship that traumatized Ethiopians for 17 years. Up on the fall of the Derg, EPRDF proceeded to assume the state responsibility while the EPLF de facto maintained its rule over Eritrea until they seceded in 1993. The EPRDF proclaimed its intentions of doing away with the past and creating a new mode of state building in which the central agenda is ethnicity. A national conference set up for this purpose in Addis Ababa from July 1-5, 1991 led to the signing of the transitional period Charter in which ethnic diversity and the right to self-determination for all ethnic groups were recognized the core of the new power holder's aspirations.

The EPRDF, made ethnic issues its central agenda during the transitional period which later on embarked by the promulgation of the new Constitution which was built by a marriage of ethnicity and federalism. Ethnic criterion played the major (probably the only) role in the reorganization of the country. This can be seen directly from the fact that the 1995 Constitution establishing nine regional states that are largely delimited along ethno-linguistic lines. Indeed the Ethiopian government has tried to realize a match between regional state delimitation and ethnic identity, which has relatively solved the problem of the different contending ethnic groups. But, on the other side of the spectrum, it has also brought about new and unprecedented ethnic antagonisms and tension especially in the regional states.

Federalism at the regional level, under the current ethnic federal structure is seriously questioned from the perspective of regional minorities. The ethnically diversified character of the country is present at the regional state level as well. None of the ethnically framed nine regional states in the strictest sense can be termed as ethnically homogenous one. This can simply be deduced from the fact that there exists more than

¹⁷ Ibid

eighty ethnic groups in the country but only nine regional states have so far been formed. To this effect, the Ethiopian approach of territorial accommodation of ethnic diversity created a situation by which especially at the regional level the regionally dominant group considers the region as its property, in effect, threatening the right of other ethnic groups, which led to their political relegation.

The point of ethnic diversity accommodation especially for minority groups at the regional level has been a serious anomaly in the federal structure of the country. First, a perfect overlap between the granting of a territorial autonomy has not been achieved, (probably it may never be possible to do so) this raises a legitimate concern for minorities that exist in the regional states. Demands by these regional minorities for equitable and fair representation at the regional state council, economic, social and cultural protection and respect for their rights as a human being (Human Rights protection) has been ever increasing since their formation. Ethnic tension between the majority and/or dominant ethnic group of the regional state with minority groups has become a frequent phenomenon. Hence, reconciling the rights of minorities within regional states with that of the regionally empowered group becomes a must that the federal structure should provide an answer for.

2.2 The post 1991 experience

Ethiopia is a country of a multi-ethnic, multi-linguistic and multi-cultural society with the existence of diverse ethnic, linguistic and religious groups. In this sense, the country can appropriately be described as a mosaic of different cultures and ethno-linguistic groups, although this has not been legally and politically recognized until recently.

The Ethiopian state has now explicitly recognized under its 1995 Constitution the ethnic diversity of its population. This approach of constitutional recognition of ethnic diversity was initiated in 1991 under the Transitional Charter of Ethiopia,¹⁸ and was a response to

¹⁸ See, The Transitional period Charter of Ethiopia, No 1, *Negarit Gazeta* 50th year Addis Ababa, 22nd July 1991

the nation and state building policies of former regimes and the emanation of the political conviction of the new power holders. The Ethiopian government now accepts the notion of ethnic diversity and purports to build the nation using ethnicity as a starting point. This approach was later further institutionalized in the current Federal Democratic Republic of Ethiopia (FDRE) Constitution of 8 December 1994¹⁹.

As it can be gathered from the title of the Constitution, the Ethiopian state is constituted under the Constitution as a federal state. The various units of the Federation, what the Constitution calls states, are carved out along ethno-linguistic lines. As a result, Ethiopia's federation is described or referred to by some as an 'ethnic Federation'²⁰. One of the consequences of the definition of the federation on the basis of ethnicity has been the creation of regional states dominated by particular ethnic groups. The creation of such ethnic based regional states holds serious dangers for the position of ethnic minority groups; groups which differ from the regionally dominant ethnic majority. The danger exists that the members of the regionally dominant ethnic group which consider the region as their property in effect threatening both the universal and group specific rights of ethnic minorities within the region. For sure, this would not have been a problem if all the ethnically organized regional states were inhabited by a homogenous ethnic population. However, the situation is to the contrary. Ethnic minorities live in all Ethiopian regions and this sparks a legitimate concern for the exercise of their fundamental rights. The lack of ethnically homogenous states has lead to inter ethnic tensions and conflicts within the territory of a particular state. The main problem in this regard will then be the mechanism adopted by a regional state in accommodating its internal ethnic diversity as a matter of principle and practice.

Hence, primarily the issue of the rights of ethnic groups within the boundaries of the Ethiopian regional states will be addressed from the angles of federalism, minority rights

¹⁹ See, Preamble of the New Constitution, Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1st Year No.1, Addis Ababa-21st August, 1995, adopted on 8th of December 1994 and came into force 21st August 1995

²⁰ See Generally, David Turton, Introduction in David Turton (ed.) *Ethnic Federalism: The Ethiopian Experience in Comparative perspective* (James Curry, Oxford 2006); See also, Endrias Eshete, *Ethnic Federalism: New Frontiers in Ethiopian politics*, paper presented at the 1st National Conference on Federalism conflict and peace building May 5-7, 2003 Addis Ababa

and adequate share of political power. In this regard, the first section describes some facts during the transitional period in light of the above three standards. It will then be followed by an examination of the ethnic federalism experiment of the country.

2.3 The Transitional Charter: The prelude to ethnic federalism

Attempts by generations of rulers to centralize the Ethiopian state came to an end by the year 1991 when the EPRDF forces established a transitional government in Addis Ababa.

The competing ethno-nationalist claims for an equitable share of power and resources seemed to have gained attention; the transitional period Charter provided for the establishment of local and regional councils for local administrative purposes to be defined on the basis of nationality.²¹ The subsequent proclamation providing for the establishment of national/regional self governments also set forth the same requirement²² which made it crystal clear that the future of the country's restructuring is to be based on ethnicity.²³

Under the Charter, which overtly used ethnic based decentralization formula, the redrawing of the administrative map of the country along linguistic and/or ethnic lines was realized. The Transitional Charter that was signed by 27 representatives of political movements, of which the majority were predominantly ethnic-based,²⁴ provided the political and legal framework for the creation of an 87 seat council of representatives. It incorporated an important principle in its Article 2 which is the right of "nations, nationalities and peoples to self-determination." The article further outlined a nation/nationality based framework for a federal like structure of local governments

²¹ See, The Transitional Period Charter op.cit., Article 13

²² Proclamation No 7/1992, A proclamation to provide for the establishment of national /regional self-governments, *Negarit Gazeta* 51st year No 2 Addis Ababa , 14th January 1992.

²³ For a discussion of the transitional period Charter on the establishment of regional and national self governments See, Assefa Fiseha, *Accommodation of Diversity*, 49-54

²⁴ Yacob Arsano, People's Choice and Political power in Ethiopia: Elections and Representations During Three Regimes in Kassahun Berhanu et.al.(eds.), *Electoral politics, Decentralized governance and constitutionalism in Ethiopia* (Addis Ababa University press, 2007), 169-175

where each unit would administer its own local affairs.²⁵ The Charter's major political program was primarily centered on promulgating a new Constitution and holding of national elections.²⁶ The establishment of the self-government units was realized by proclamation no 7/1992, which laid down the legal basis for the creation of regional self-governments involving 14 regions.²⁷

During the five years of the transitional period, three elections were held: the June 21, 1992 regional and local elections, the June 5, 1994 elections of the constituent Assembly, and the May 7, 1995 elections to the Federal parliament and regional councils.²⁸ Of these major elections, especially the 1994 election to the constituent Assembly was aimed at electing representatives for the purpose of drafting the new Constitution. The EPRDF won a comfortable majority seat in the constituent assembly, which was vested with the power of drafting the new Constitution. Many controversial articles in the draft Constitution such as the right to self-determination including secession, ethnic-based federal structure of government, continued government ownership of land, were all approved without a serious debate.²⁹ The new "national Constitution" was then approved in December 1994 with only a few dissenting voices.³⁰ It proclaimed the country as Federal Democratic Republic of Ethiopia.

²⁵ Tafesse Olika and Aklilu Abraham, Legislation, Institutions and the post 1991 Elections in Ethiopia in Kassahun Berhanu et.al.(eds.), *Electoral politics, Decentralized governance and constitutionalism in Ethiopia* (Addis Ababa University press,2007) 93-94

²⁶ See, The transitional Charter op. cit Article 10,11,12 and 13

²⁷ For a discussion on the creation of the 14 regions of the time see, Merera Gudina, *Ethiopia: Competing Ethnic Nationalism and the Quest for Democracy 1960-2000* (Shaker publishing 2003),122-123

²⁸ Tafesse and Aklilu, *post 1991 Elections*, op. cit.94

²⁹ Merera Gudina, *Competing Ethnic Nationalisms*, 127

³⁰ Merera Gudina, Party Politics and Elections in Ethiopia: 1991-2005 in Kassahun Berhanu et.al (eds.), *Electoral politics, Decentralized governance and constitutionalism in Ethiopia* (Addis Ababa University press,2007), 132

2.4 The New Constitution: Back to the Future

The transitional Charter even though it did not spell the word federalism within it, it was in fact a federation type of arrangement that it employed.³¹ But later on this ambiguity was cleared upon the promulgation of the new Constitution.³²

The country fully transformed from a centralized unitary state to an ethnic federation, which recognizes the rights of nations, nationalities, and peoples to self-determination up to and including secession.³³ The new Constitution was intended to solve the problem of the 'national question' by presenting federalism as a solution.³⁴ Whether this ethnic-federalism formula proved to provide the appropriate solution to the country has however proved to be far from incontrovertible. For instance, scholars like Minasse argue that, the new Ethiopian Constitution instead of resolving ethnic problems to the contrast has exacerbated them and concludes that it brought about a zero sum progress.³⁵ He states that ethnic federations have not been generally successful in large politics except perhaps, when they have been supplemented by other institutional arrangements, by peculiar societal facts or by threat or use of force, to constrain the centrifugal forces inherent in such federations but none of these are present in the current Ethiopian federation which makes it an unstable one.³⁶

Furthermore, the act of drawing regional boundaries based on major ethnic groups, *ipso facto*, creates minority ethnic groups in each region, which are condemned to be

³¹ See, Fasil Nahum, *Constitution For a Nation of Nations: The Ethiopian Prospect*, (The Red Sea Press, Inc. 1997), 44

³² The FDRE Constitution in its Article 1 states that 'this Constitution establishes a federal and democratic state structure. Accordingly, the Ethiopian state shall be known as the federal democratic republic of Ethiopia.

³³ Asnake Kefale and Hussein Jemma, Ethnicity as a Basis of Federalism in Ethiopia: Cases of the Harari National Regional State (HNRS) and Dire Dawa Administrative council (DDA), in Kassahun Berhanu et.al. (eds.), *Electoral politics, Decentralized governance and constitutionalism in Ethiopia* (Addis Ababa University press,2007), 70

³⁴ Ibid

³⁵ See generally, Minasse Haile, *The New Ethiopian Constitution: Its impact upon unity, Human Rights and Development*, 20 *Sulfolk Transnational Law Rev.*1(1996)

³⁶ Id,11

permanent minorities without any hope of obtaining political power.³⁷ Hence, the formation of such type of federation provides added reason for the political parties to form along ethnic territorial units and they begin to advocate the exclusive concerns of their respective constituencies regardless of the consequences upon the national interest.³⁸ And he generally concludes that such type of an ethnic federation is inconsistent with the aim of nation building in peace and tranquility.³⁹

To the contrary, some consider the ethnic federalism experiment as a success story with its own drawbacks. Cognizant of the situation in which the country had been at the time when various liberation movements and ethnic strife were going to engulf the state, the commitment to national self-determination and the establishment of regional governments based on nationality ensured the survival of the Ethiopian state.⁴⁰ They consider that the federal system has served as a conflict regulating device, by creating relatively homogenous states.⁴¹

Surely, one can speak of the ethnic federal experiment to have brought a considerable change towards the accommodation of diversity (especially at the federal level of government) and to this effect it can be said that it is relatively of a success story. But if one looks at federalism at the regional level it is a different story. The relative diversity that may be present at the regional level has not been taken into consideration by the drafters of the Federal Constitution (may be can we say it is something done deliberately?) and has not set any kind of mechanism for regulating tensions that may arise due to the competing claims of the different ethnic groups. In addition to this, the Constitutions of the various regional states, except for few, have not addressed the issue of their diversity. They simply ignored the reality of their population and consider the region to have been inhabited by the majority and/or dominant ethnic group/s only. This

³⁷ Ibid, it is worth noting here that the Constitution only created nine regional states while the country is inhabited by more than eighty ethnic groups.

³⁸ Ibid

³⁹ Ibid

⁴⁰ Assefa Fiseha, Theory Versus Practice in the Implementation of Ethiopia's Ethnic Federalism, in David Turton (ed.) *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* (James Curry, Oxford 2006) 135

⁴¹ Ibid

is seriously at odds with the principle of federalism ‘the accommodation of diversity’. In this regard, federalism at the regional level poses a serious danger to the stability of the federation in general and to the regional states in particular.

2.4.1 Federalism as a Solution

As a matter of political principle, federalism refers to the constitutional diffusion of power so that the constituting elements in federal arrangement share in the process of common policy making and administration as of right, while the activity of the governments is conducted in such a way as to maintain their respective identities.⁴² As a legal concept, federalism refers to constitutional sharing of powers and functions between the federal and the constituent governments, each being independent and supreme within its allocated spheres and acts in a coordinated way.⁴³ In contrast to other types of government, a federal government is a government wherein both the federal and constituent authorities enjoy equal status and are in no way subordinated to one another but rather, both authorities will be subjected only to their Constitutions. In Daniel Elazar’s apt expression, the essence of federalism is “values of unity in diversity” or “self rule plus shared rule.”⁴⁴

Although federalism in its initial form (the American and Swiss models) was not designed to regulate conflicts based on ethnicity or other identity differences, it is today conceived as one of the best devices to mute conflicts among groups and between the central state and sub national communities.⁴⁵

Federalism is not as such to be regarded as a value embedded in a democratic society; it is rather an instrument to be used for a society in unfavorable circumstances, situations

⁴² Daniel J. Elazar, *Exploring Federalism*, Tuscaloosa (1987),6;12, See also, Charles D Tarlton, *Symmetry and Asymmetry as Elements of Federalism : A Theoretical Speculation* , The Journal of Politics Vol. 27, No 4(Nov 1965), 863

⁴³ Ibid

⁴⁴ Elazar, *Exploring Federalism* ,*op. cit.*12

⁴⁵ Donald Horowitz, ‘Ethnic Conflict Management for Policy Makers ’in Joseph Montville (ed.) *Conflict and Peacekeeping in Multiethnic states*, (New York : Lexington Books 1997), 235

unfavorable to constitutional democracy.⁴⁶ Especially, federalism is widely accepted as the best alternative solution in deeply divided societies with a wide range of ethnic diversity. To this extent, federalism offers an optimal institutional framework for accommodating diversities.

Understood in this sense, the advantage of the Federal system is that it operates to avert the dangers inherent in governments by a remote control.⁴⁷ The essence of federalism is the reservation of control over local affairs to the localities themselves by which the federal qualities of the society are articulated and protected.⁴⁸

The more diversified the society, the greater is the necessity of providing some means for articulating the diversities; for these diversities are nothing less than tensions and as tensions they demand and require means of administration.⁴⁹ Federalism, in this regard, is the best solution to address the diversities within a society, which require certain instrumentalities for their expression and protection.⁵⁰

But generally, what is more important is not the simple adoption of federalism or providing for the right of self-determination up to the point of secession within the Constitution while the component units are being overwhelmed by the central government or in a situation where the country is declared federal but in effect it is operating under a unitary character. What is more important is giving recognition to the vitality of the principles of federalism. Whether a country is federal or not may best be determined by looking at the way in which its institutions are operating but not merely by checking its Constitution against a list of the characteristics of a federal Constitution.⁵¹

Taking federalism as the best option then the next issue is what is its applicability in societies of multi-ethnic, multi-linguistic and multicultural character? How best suited is

⁴⁶ Endrias Eshete, *Ethnic Federalism*, 4

⁴⁷ Charles, *Federalism*, op. cit. 865

⁴⁸ Ibid

⁴⁹ William S. Livingston, *A Note on the nature of Federalism*, Political Science Quarterly, vol.67, Issue 1 (March 1952), 88

⁵⁰ Id, 90

⁵¹ See Id, 91

Federalism to these societies? Hence, the next section is devoted to making some analysis in this regard.

2.4.2 Federalism Vis-a-Vis Ethnicity

The question of ethnic diversity has mainly been ignored in states nation building strategy because ethnicity was considered as a threat to effective state integration.⁵² Even if it was given recognition, it was considered as something that will wither away as modernization progresses.⁵³

But the outcome was the reverse. Ethnic consciousness has been increasing in recent years rather than decreasing, no particular classification of multiethnic states has proven immune from the impact of ethnicity.⁵⁴ Nor has the level of economic development helped to this effect, rather, the increased social mobilization and communication appear to have increased ethnic tensions and have become conducive to group based demands including secession.⁵⁵

Recent developments for instance in Africa show the tendency of states adhering to a constitutional approach to accommodating ethnic identity. A case in point may be that of the recent experiences of South Africa and Ethiopia by which they employed decentralized form of governance and affirmed the right of ethnic groups to their own languages and cultures.⁵⁶

In this regard, federalism provides for a favorable ground by dispersing political power and by limiting the authority of the central government to come up with a solution for the different ethnic groups. A constitutionally mandated diffusion of power allows normative disagreements among the subunits so that each community may live by its own standards and according to its own values, while retaining membership in the wider national

⁵² Walker Connor, *Nation building or Nation Destroying?* World Politics, vol.24, No 3 (Apr.1972),319

⁵³ Ibid

⁵⁴ See Id,332

⁵⁵ Ibid

⁵⁶ Alemante G.Selassie, *Ethnic Federalism: Its promise and Pitfalls for Africa*, 28 Yale. J. Int l, (2003), 54

community.⁵⁷ A federal system thus aims to provide a mechanism for uniting different communities within the framework of an overarching political system which still allows each community to maintain its fundamental integrity.⁵⁸

But on the other side of it some scholars argue that federal systems of government are inherently fragile even without adding ethnicity into the mix.⁵⁹ Since members of ethnic groups are, or perceive themselves to be, united by common languages, cultures, and myths of common descent, they constitute affective communities.⁶⁰ For this reason, ethnic groups are characterized by providing unconditional blind support and loyalty for the political community of their ethnic members who view themselves as an extended family.⁶¹ Thus, it is argued that because ethnic federalism fosters and reinforces the political, social and psychological separation of ethnic groups, it limits the ability of the national government to promote the common good, to forge national consensus, or to be otherwise effective.⁶²

As strong as these arguments however, there are a number of reasons for the applicability of federalism. Federalism as a political concept and federations in the form of institutions seem to provide ‘the closest institutional solution’ combining shared rule for some commonly shared purposes and self rule for other purposes of regional interest in the context of accommodating ethnic tensions.⁶³ The reason is that there are double pressures calling on the one hand for larger political organizations, which are able to meet and entertain the quest of all in exercising their shared values.⁶⁴ While, on the other side, there is pressure for smaller self-governing political units established not only to guarantee expression to various forms of diversity but also in some cases resulting from

⁵⁷ Id,58

⁵⁸ Ibid

⁵⁹ See, Id, 56

⁶⁰ Alemante describes affective communities as groups of people who function together because of a ‘personal’ or emotional ‘connection’ to one another. Hence, they are characterized by notions of group membership, personal loyalty, emotional connection, and a tendency to exclude others. See Id,58

⁶¹ Jerome Wilson, *Ethnic Groups and the Right to Self-determination*, 11 Conn .J. Int’l L. (1996) 433,439

⁶² Alemante, *Ethnic Federalism*,86-87

⁶³ Assefa Fiseha, *Federalism, Diversity and the Regulation of Conflict in the Horn*, (Inter Africa Group, 2008)

⁶⁴ Ibid

ethno-linguistic dissatisfaction with the present organization and operation of the “nation-state”.⁶⁵ Federalism, in this regard, should be employed as a means for managing ethnic conflicts. In situations where there is tension between those who want to maintain existing status quo and other forces that would like to restructure the state and even secede, federalism presents a possible solution in accommodating both interests.⁶⁶ Hence, the federal idea came to be attractive to many not only for the purpose of accommodating diversity but also as a means of containing inter-ethnic tensions.

Similarly, ethnic grouping or the formation of ethnic based politics is not as such something to be ridiculed; it can indeed have positive contributions if properly applied. For instance, an individual is more easily recognized and understood by others in his or her own community than in another.⁶⁷ Ethnic inequalities that have long colored the community might find a redress in such a re-grouping, the right to being recognized of the distinctiveness of particular people and their right to self-rule in their homeland will be recognized. In addition, if appropriately managed, ethnic affiliation especially in countries which are deeply divided along ethnic lines enhances citizen’s capacity to cooperate with one another more readily.⁶⁸

With the above stipulations in mind, federalism carved along ethnicity looks like the right institutional arrangement to promote the values embedded in a community and an effective means to address the problem of ethnic inequalities.⁶⁹ It also offers the best institutional framework, short of independent statehood, for aggregating the interests of the members of an ethnic group and for promoting democratic governance. Hence, a federal system carefully constructed along ethnic lines will not merely be a failure by the simple fact that it is an ethnic one but rather it will be subject to failure if it is not genuinely federal.⁷⁰

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Alemante, *Ethnic Federalism*, 72

⁶⁸ See Id, 68-82

⁶⁹ Ibid

⁷⁰ David Turton, *Introduction Op. Cit.*,29

2.5 Federalism in Ethiopia: Its application

It has been noted above that federalism was introduced in Ethiopia, at least implicitly, in 1991 when the EPRDF came to power and launched the idea of self-determination for the nationalities, up to and including secession by devolving political, administrative and economic power to ethnically defined regional states.

The federalization of Ethiopia which was introduced after a long period of attempted centralization in the country was received with both hope and skepticism from the international community and political groupings within the country.⁷¹ Certain Western academics considered “ethnic federalism” as innovative, giving room for thinking differently about ethnicity in the political evolution in Africa, while others saw it as inherently divisive and a fertile ground for disintegration.”⁷² But during the country’s years of federalization, the Ethiopian state has neither disintegrated nor eradicated conflicts between ethnic groups in the country. Instead, the most prevalent political development during this period is the consolation of a centralized party rule along with the formalization of a federal system, a development which implies an apparent paradox and which is at odds with the principle of federalism.⁷³

Three aspects are at least worth to study in the Ethiopian model of federalism under this section: primarily the legal and institutional arrangements of the Ethiopian federation followed by an analysis of how the concept of ethnicity is addressed under the Constitution and finally an examination of the arrangement of the states in the light of the formation of a dominant and dominated ethnic groups.

⁷¹ Lovise Aalen, *Ethnic Federalism in a Dominant party State: The Ethiopian Experience 1991-2000*, Bergen: Chr. Michelesen Institute, (2002), 1

⁷² Ibid

⁷³ See Ibid, even though Lovise’s report is about the first 10 years in the history of the federalization of the country the facts continue to remain the same up until now.

2.5.1 The Federal Structure

The federal Constitution defined the country's structure as a multicultural federation based on ethno-national representation. It stipulates that the country is of a 'federal and democratic state.'⁷⁴ In line with the federal tradition, the respective powers of member states and the federal government are distributed by the federal Constitution.⁷⁵ The federal government, with a bicameral parliament, is entrusted with the responsibility on national defense, foreign relations, monetary policies and foreign investment and the establishment and implementation of national standards on health, education, science and technology.⁷⁶ The states have all powers not given expressly to the federal government alone or concurrently to the federal government and the states.⁷⁷ Since the Constitution does not provide for a list of concurrent powers, one has to go through the whole body of the text in search of such powers before articulating the reserved powers of the states.⁷⁸

Formally speaking, the relationship between member states in the federation horizontally can be described as a symmetrical one because member states are constitutionally guaranteed equal rights and powers.⁷⁹

The Constitution instituted a bicameral parliament, the House of People's Representatives (HPR) and the House of the Federation (HoF).⁸⁰ The highest authority in the federal state is that of the HPR while the HoF, a non-legislative house is vested with authority to interpret the Constitution.⁸¹ It is composed of representatives from nations, nationalities and peoples of Ethiopia.⁸² It is also entrusted with the task of determining issues related to the rights of ethnic groups to self-determination including secession,

⁷⁴ See Article 1 of the FDRE Constitution

⁷⁵ Article 51 and 52 of the FDRE Constitution

⁷⁶ See, Ibid

⁷⁷ Article 52 of the FDRE Constitution

⁷⁸ Assefa Fiseha, *Theory Versus Practice*, 133;

⁷⁹ Article 47(4) of the FDRE Constitution

⁸⁰ Article 53 of the FDRE Constitution

⁸¹ See Articles 62, 83 and 84 of the FDRE Constitution

⁸² Article 61(1) of the FDRE Constitution

finding solutions to disputes between states and ascertaining the division of joint federal and state revenues and the federal subsidies to the states.⁸³

Regarding the multiethnic character of the country, it can generally be argued that the Constitution adequately recognizes this character. This can be discerned from the following instances. The preamble of the Constitution begins with the wordings “we, the nations, nationalities and peoples of Ethiopia.”⁸⁴ It also vests upon all sovereign power in the nations, nationalities and peoples of Ethiopia.⁸⁵ All Ethiopian languages are accorded equal recognition and members of the federation may by law determine their respective working languages.⁸⁶

The Constitution establishes nine regional states that are largely delimited along ethnolinguistic criteria.⁸⁷ States of the federation are to be formed on the basis of the settlement patterns, language, identity and consent of the people concerned.⁸⁸ The Constitution also provides for a guaranteed representation for minority nationalities and peoples by stipulating that at least 20 seats are reserved for these minority nationalities and peoples out of the maximum number of 550 seats in the HPR.⁸⁹

The Constitution is declared to be the supreme law of the land. It stipulates that any law customary practice or a decision of an organ of state or a public official which contravenes the Constitution shall be of no effect.⁹⁰

For the purpose of amending the Constitution, it is stated that other than the rights specified in chapter three, amendment may only be effected when the HPR and the HoF, in a joint session approve a proposed amendment by a two-third majority vote; and when two-thirds of the councils of the member states of the federation approve the proposed

⁸³ Article 67 of the FDRE Constitution

⁸⁴ Preamble of the FDRE Constitution

⁸⁵ Article 8(1) of the FDRE Constitution

⁸⁶ Article 5(1)(3) of the FDRE Constitution

⁸⁷ See Article 47 of the FDRE Constitution

⁸⁸ Article 46(2) of the FDRE Constitution

⁸⁹ Article 54(3) of the FDRE Constitution

⁹⁰ Article 9(1) of the FDRE Constitution

amendment by majority votes,⁹¹ articles of the Constitution dealing with ‘fundamental rights and freedoms’ follow an additional stringent requirement for the purpose of amendments.⁹² Hence, generally speaking the procedure for approving amendments to the Ethiopian Constitution is a very rigid one.

Having said this about the federalization of the country and its federal structure, now let us turn our attention to the most thorny issue in a federal arrangement; self-determination. Hence, the following section is devoted to the discussion of self-determination in its content and context. The Ethiopian modality of its application will also be assessed.

2.6 Self-determination

The content and holders of the right to self-determination has been the subject of controversy among scholars. But generally speaking, self-determination apart from the process of decolonization has two applications namely external and internal self-determination. The first one is concerned with the right to be applied to colonial situations in which territorial divisions of the state will be effected in forming an independent nation. Internal self-determination is, on the other hand, concerned with the right of peoples within a state to choose their political status, the extent of their political participation and the form of their government.⁹³ It is with this right of self-determination under the Ethiopian context that this section will be concerned with.

2.6.1 Subjects of self-determination: Nations, Nationalities and Peoples

The FDRE Constitution has adopted the language ‘Nations, Nationalities and Peoples’ (NNP) as a standard expression to designate ethnic groups. A NNP for the purpose of the Constitution has been defined as ‘a group of people who have or share a large measure of a common culture or similar custom, mutual intelligibility of language, belief in a

⁹¹ Article 105 (2) (a) and (b) of the FDRE Constitution

⁹² See, Article 105(1) (a),(b),& (c) of the FDRE Constitution

⁹³ D. Raic, *Statehood and The Law of Self-determination*, (2002), 238-240

common or related identities, a common psychological makeup, and who inhabit an identifiable, predominantly contiguous territory'.⁹⁴

From this definition one can discern that to be regarded as a NNP (ethnic group) both subjective and objective criteria should be met.⁹⁵ The subjective criteria are belief in common or related identity and psychological makeup, while the objective ones are language, culture and territory. But the problem is the Constitution or other subsidiary laws have not expressly pinpointed the list of groups, which qualify as NNP and those which do not. Practically speaking, if one looks at the composition of the HoF it may be possible to check indirectly which groups qualify as NNP, because the HoF is composed of representatives of each ethnic group. But this shall not mean that every NNP (ethnic group) in the country has a representative in the HoF and ethnic groups in the country are only those, which are now present in the HoF.

2.6.2 The context or content of self-determination in the FDRE Constitution?

The Constitution can be said to have adopted three modalities in the exercise of the right to self-determination.⁹⁶ These are the right to secede (external self-determination)⁹⁷, the right to promote ones language, culture and history (cultural self-determination)⁹⁸ and right to self government and regional autonomy (political self-determination).⁹⁹

The right of every NNP in Ethiopia to the unconditional right to self-determination, including the right to secession has been included so that if the federal government abuses the rights of these constituent units, then they will be entitled to reassert their

⁹⁴ Article 39(5) of the FDRE Constitution

⁹⁵ Generally speaking Article 39(5) simply lumps together many factors together in designating Nations, Nationality and Peoples but a closer look at the requirements reveals that some of them need factual determination while some simply are to be deduced subjectively upon the wishes of the specific group. See, Abate Nikodimos Alemayehu, *Ethnic Federalism in Ethiopia: Challenges and opportunities*, (Master Thesis Fall 2004) Available at www.jur.lu.se/esaay_masterth.nsf/pdf. as accessed on December 28, 2008, 55-57

⁹⁶ See, Fasil Nahum, *Constitution For a Nation of Nations*, 53,154

⁹⁷ Article 39(2)and (4) of the FDRE Constitution

⁹⁸ Article 39(2) of the FDRE Constitution

⁹⁹ Article 39(3) of the FDRE Constitution

powers of sovereignty by withdrawing from the federation.¹⁰⁰ This right is not even subject to derogation during national emergency.¹⁰¹

The right to promote one's language, culture and history seems to have been framed for the purpose of ending the cultural of domination of the highlander's culture. This also goes out to the Amharic language which has been serving as the lingua franca of the country.

The third and most important aspect of self-determination is that of the political one. The core of political self-determination is having equitable and fair representation in the state as well as in the federal government. By far this is the most important aspect of the right to self-determination in multiethnic societies like that of Ethiopia. The Constitution has guaranteed that every NNP has the right to full measure of self-government which includes the right to establish institutions of government in the territory it inhabits and to equitable representation in state and federal government.

2.6.3 The problem with the exercise of the right to self-determination

As stated earlier every NNP (ethnic group) is guaranteed the right to self-determination without any conditions attached to it.¹⁰² Though, at face value, this guarantee seems to provide a wide range of rights, in its application it is bundled with a lot of problems and practically speaking it is far from being realized. For example, can an ethnic group assert itself as NNP in a region in which it is a minority and exercise the right to political self-determination while it has its own mother state? It is also interesting to note here that, can an ethnic group assert itself as a NNP outside of its mother state while it has been considered as a NNP within its own regional state? What about ethnic groups that do not have their own mother states?

¹⁰⁰ Assefa Fiseha, *Theory Versus Practice*, 132 But See, Matthew J. Mc Cracken, *Abusing Self-Determination and Democracy: How the TPLF is looting Ethiopia*, 36 Case W. Res. J. Int'l L. (2004)

¹⁰¹ Article 93 of the FDRE Constitution

¹⁰² Since article 39(1) states that 'Every Nation, Nationality and People in Ethiopia have the unconditional right of self-determination.....' one may argue that there is no prima facie condition requirement for the exercise of such right. Rather a mere demand for its exercise is sufficient.

The answers to these questions are not as such easy to formulate. Apart from seeking to find an answer from the FDRE Constitution, one has to also look at the political context of the country which seems to have a far reaching impact on the federal structure. This situation can be tackled from two angles. Constitutionally there are two mechanisms employed to protect the rights of different ethnic groups residing in the country. The first one is, as has been described in the preceding paragraphs, the right of the different ethnic groups to the unconditional right of self-determination including the right of secession. But from political point of view, the EPRDF, apart from its commitment in the secession of Eritrea, does not seem to be in favor of secession. Hence one may argue here that politically speaking secession is not an option to an ethnic group.

The second one is the constitutional right of an ethnic group (NNP) within the so formed states to establish, at any time, its own state.¹⁰³ This also from a political point of view is not something favored by the ruling party. This can be discerned from the fact that a number of ethnic groups have demanded that they be granted the status of statehood (especially ethnic groups of the Southern Nations Nationalities and Peoples regional state) but this has also fallen on the deaf ears of the government.¹⁰⁴ No separate regional state has been established other than the nine regional states under the federal Constitution.

In addition, the House of the Federation, which is entrusted with the task of constitutional interpretation, has not been able to come up with decisions for the purpose of protecting such rights of ethnic groups which may help as a '*stare decisis*.' Therefore, one may safely conclude here, the political atmosphere is one which suggests that the competing interests of different ethnic groups residing in the different parts of the regions is to be entertained only within the context of the so formed nine regional states.

¹⁰³ See, Article 47(2) of the FDRE Constitution

¹⁰⁴ A number of ethnic groups have demanded to the HoF that they be given separate regional states other than what they already are in. To this effect one can mention the demands by the Sidama and the Berta ethnic groups.

The regional states have been constitutionally designed as a place in which the different ethnic groups (NNP) are to profess their diversity. This is mainly attributable to the political commitment of the government to address the problem of ethnicity in the country. The formation of the regional states is hence an answer to the call of appropriate ethnic accommodation. To this effect, the formation of the regional states was intended to solve the problem of ethnic rivalries and competing interests. To this end, the Ethiopian federative arrangement can be viewed as a success and at the same time as a serious problem from the perspective of the different ethno-linguistic groups.

It can be termed as a success story in the fact that it has put an end to the serious civil war in which the country had been engaged for decades, which at times made some to think that the country was at a serious risk of fragmentation. On the other side, it has been a problematic approach mainly due to the problems that are arising out of the issues of federalism at the regional level. This is due to the fact that ethnic homogeneity could not be achieved in the regional states. Some regions are multiethnic let alone being ethnically homogenous. Hence, addressing the issue of diversity at the regional level is something that has to be taken seriously if the country is determined to pursue the federal arrangement it has adopted.

Many of the regional states except for quite a few have not taken (may be they have intentionally ignored?) their diversified population into account. The case of the regional state of Beneshangul Gumuz is no deviation to this presupposition. A case in point could be the issue of the non-indigenous minorities present in the region by which they were not represented (underrepresented) in the electoral history of the country in the state's legislative council. This has been mainly attributable to the lack of adequate mechanisms of accommodating diversity and guaranteed representation mechanism by the regional state's Constitution. Practically speaking, the right to self-determination guaranteed under the federal Constitution for the different ethnic groups (NNP) irrespective of their place of residence and territorial location has been rendered impossible. In this regard, the electoral law of the country played its own role especially in the regional state of

Benishangul by which it exacerbated the segregate mentality of indigenous and non-indigenous identities.

The federal Constitution, in this regard, has not formulated any mechanism by which it regulates tensions that may arise in the exercise of the right to political self-determination between the different ethnic groups within a given state. One may be tempted, at this point, to ask whether this is a simple oversight by the constitutional drafters or is it a move purposely taken so that nine regional states are formed whatever their respective consequences may be.

Furthermore, as has been repeatedly stated in the preceding paragraphs, the purpose of carving out nine regional states was in the first place for fulfilling the right to self-determination of the ethnic group inhabiting a given state. But practically, where the state is of a heterogeneous ethnic makeup, this has resulted in the creation of a majority and/or dominant ethnic group by which the dominant section considers itself to be the only vanguard of the region. This has not only resulted in the creation of minority ethnic groups within a given regional state but the minority ethnic group will lose its constitutionally guaranteed right of self-determination in favor of the majority and/or dominant ethnic group.

Seen in this light, the right to political self-determination stipulated in the Constitution under the current political context and its practical application seems to suggest that it will only apply to an ethnic group where that ethnic group is found inhabiting only in one of the nine regional states in which it either is a majority or the dominant ethnic group.¹⁰⁵ This is the core problem facing minorities at the regional level in asserting their political rights.

¹⁰⁵ Here I am not concluding that no ethnic group has so far exercised the right to political self-determination outside its own regional state. The Amhara regional state in this regard might be of a good experience, by which it has created 'Nationality Administrations' for its Oromo and Agew nationalities, in which they are a minority within the regional state. But the practice seems to suggest that regional minorities are relegated to an inferior position in which their political rights are severely curtailed.

CHAPTER THREE

3. Indigenous peoples and non-indigenous regional Minorities: Conceptual and Theoretical Framework

The concept of minority rights has a wide range of applications ranging from ethnic, religious, linguistic and national minorities to the rights of indigenous peoples and other non-nationals. In this chapter, an attempt will be made to see the rights of indigenous peoples with that of the non-indigenous ones from the perspective of minority rights. In doing so it will ponder upon issues of indigenship and non indigenship, and the respective interests and competing rights of the two groups. For the purpose of elucidating the main issue, a general survey of minority rights will be made followed by the specific issues of the rights of indigenous peoples as well as the non-indigenous ones. This will also in the final section be supplemented with a discussion of regional minorities.

3.1 Minority Rights: A General Survey

Minority issues can only occur in pluralistic societies, defined as societies in which significant diversity and dissimilarities exist.¹⁰⁶ Minority problems involve tensions between the state, on the one hand and religion, nationality, ethnicity, or culture, on the other.¹⁰⁷ In this case, the situation may take two forms. The first one is the case in which the state is one serving only the purpose of majorities and repressing minorities, while the second situation is the case by which the state is unwilling to protect minorities on an impartial basis.¹⁰⁸

¹⁰⁶ Asbjorn Eide, *Minority Situations: In Search of Peaceful and Constructive Solutions*, 66 Notre Dame L. Rev. (1990), 1321

¹⁰⁷ Ibid

¹⁰⁸ See, Ibid

Minority rights were first recognized in international relations, as specific solutions to transboundary conflicts. It was afterwards that they were transferred to the domestic level.¹⁰⁹

Despite the long history of the discussion on the protection of minorities, the clarity of relevant international legal standards on minorities remains unsatisfactory.¹¹⁰ This is mainly attributed to the fact that there exists no binding definition on the concept of a minority as the holder of minority rights. Even though there is no binding definition in the international arena, an attempt has been made by different scholars to determine its scope of application and its right holders.

Considering the defining elements of minority the most widely accepted definition of a minority is that put forward by the United Nations Special Rapporteur Francesco Capotorti, who contends that a minority is a 'group', numerically inferior to the rest of the population of a state, in a non dominant position, whose members being nationals of a state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and who maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religions or language.¹¹¹ This definition of a minority illustrates that persons belonging to such minority groups have the right to self-determination along with their majority population, as they are to be integrated as constituents of the people in their state of residence. Conceptually, persons belonging to ethnic, religious or linguistic minorities meet the criteria for consideration as people in the context of the right to internal self-determination.¹¹² The effective realization of minority rights could be possible and more secure with the normative basis of the right to self-determination.¹¹³ Subsequently, Deschnes added to the above definition one

¹⁰⁹ Asbjorn Eide, *Minority Situations*, 133

¹¹⁰ Jungwon Park, *Integration of Peoples and Minorities: An Approach to the Conceptual Problem of Peoples and Minorities with Reference to Self Determination under International law*, 13 Int'l J. on Minority and Group Rts. (2006), 69

¹¹¹ Francesco Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, UN Doc. E/CN.4/Sub.2/384/Rev.I.1979, paragraph 568

¹¹² Jungwon Park, *Integration of Peoples and Minorities*, 93

¹¹³ Ibid

important factor, namely that the minority's aim is to achieve equality with the majority in fact and in law.¹¹⁴

Even though it is not the purpose of this chapter to engage in the controversies of accurate definition for minorities, it will be worth commenting on the requirement that the group be numerically inferior has often been questioned as misleading because a numerical majority may be found at an inferior position than that of a numerical minority. There is no common legal or practical international standard used to distinguish marginalized groups from the rest of the population. Despite the repeated use of the UN Human Rights committees approach across a range of national and international instruments, no regional or international consensus has been reached establishing a universally acceptable notion of what constitutes a minority. On the other hand, minority rights group international asserts that regardless of its demographic makeup, a group that is disempowered may be classified as a minority.¹¹⁵ Therefore, as most commentators on the subject agree, the focus should be more on the non dominant character of the group in which minorities are seen as the subordinate elements of the state.¹¹⁶

Minorities are frequently the subjects of discrimination in a number of situations like the justice system, workplace, education and political representation. In order to eliminate such discrimination, states have resolved to adopt special measures in favor of minorities, arising out of the need to place minorities on an equal footing with the rest of the population.¹¹⁷

Seen in this light, one of the main sources of protection is that stipulated under the international covenant on civil and political rights (ICCPR). Articles 27, provides as follows:

¹¹⁴ Shane Daray, *The Rights of Minorities in States of Emergency*, 9 Int'l J. on Minority and Group Rts. (2002), 346

¹¹⁵ Stephanie Kodish, *Balancing Representation: Special Representation Mechanisms Addressing the Imbalance of Marginalized Voices in African Legislatures*, 30 Suffolk Transnat'l L. Rev. (2006-2007), 21

¹¹⁶ See, Id, 347

¹¹⁷ Id, 345

*In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*¹¹⁸

This article clearly provides for the recognition in international law of the existence of minority groups, and most importantly, for the protection of the indispensable rights of these groups to maintain their existence. Article 27 of the ICCPR is still the main universally accepted provision which has a legally binding effect upon contracting parties offering an all round protection for minorities.

One fundamental precondition for the implementation of minority rights is the possibility for the minority to organize itself as a particular group and to defend its particular interests as a group through its independent organization including the pleading of its own case in the political sphere through a specific party representing the minority.¹¹⁹

The concept of minority rights is also a multifaceted one. This may take one of the following three forms. Under the first category are minority groups which describe themselves as 'nations' and which mobilize along nationalist lines to gain self government. These are minorities in which their ultimate objective is attaining or exercising external self-determination or attaining a status of statehood for themselves. Others aspire for the right of internal self-determination by which they want to exercise their right of local or regional self autonomy for the purpose of maintaining their identity. This may include indigenous peoples who have long been subject to grave discrimination and marginalization by the existing form of government and other minorities which battle with the central government (state) for the protection of their linguistic, cultural or

¹¹⁸ International Covenant on Civil and Political Rights, 999 U.N.T.S.171, Entred in to force 23 March 1976, Article 27

¹¹⁹ Hans- Jaoachim Heintze, *Implementation of Minority Rights through the Devolution of Powers-The Concept of Autonomy Reconsidered*, 9 Int'l J. on Minority and Group Rts. (2002), 325

religious rights. The other angle of minority rights is one which arises as a result of minority protection itself. As the issue is one which will be dealt with in the subsequent sections, it will be worth mentioning here that this category of minority rights are concerned with situations in which as a result of ethnic (minority) rights accommodation a given ethnic group might become a dominant and repressive one within a given territory thereby rendering the rights of other ethnic groups (minorities) impossible to exercise.

Many countries in the world are now dealing with their minority nationalities in one way or another through some form of autonomy or self government coupled with territorial autonomy.¹²⁰ Recognition of the minority language either as declaring it as a co-official language or making use of it in the education and public affairs sector and cultural autonomy of the minority groups for the manifestation of their cultural heritage is becoming an accepted norm.¹²¹ Democracy is flawed without special protection of minorities. Ensuring participation in governance guarantees this protection. Special representation ensures that minority involvement in the country's political system focuses on the needs of historically repressed and disadvantaged groups.¹²²

Proportional representation and guaranteed electoral seats to this effect have also been formulated as one mechanism of protecting the rights of minority groups.¹²³ This has been formalized in many parts of the world by legislative representation, by which, it has been taken as a means of people to express their will through representatives who bring their constituencies concerns and aspirations to partake in government decision and actions.¹²⁴

Therefore, generally speaking, the right applicable to minority groups are those applicable to all human beings but especially the right to be free from discrimination, the

¹²⁰ Will Kymlicka, *Western Models of Multination Federalism: Are they Relevant for Africa?* in David Turton (ed.) *Ethnic Federalism: The Ethiopian Experience in Comparative perspective* (James Curry, Oxford 2006), 34

¹²¹ *Ibid*

¹²² Stephanie Kodish, *Balancing Representation*, 20

¹²³ *Id*,94

¹²⁴ *Id*,1

right of expression, the right to an affirmative action , and the right to self-determination and the right to participate in government actions are the core of its modalities.

With the above statement as a background to minority rights protection, now let us consider the notion of indigenship and non indigenship.

3.2 The Concept of indigenusness

History tells us that indigenous peoples were ones which were severely subjugated in different parts of the world. The Red Indians and the Aborigines are the best examples to this effect. This triggered the international community to devise a scheme for the protection of indigenous peoples. Asbjorn Eide argues and tries to define them in the following manner: Indigenous peoples are those which are culturally very different from the dominant section of the country in which they live, not only in dress, religion, language, and cultural practices but also in their way of life and in their use of natural resources.¹²⁵ The process of ensuring indigenous peoples special rights is still under way.¹²⁶ These indigenous peoples have, to a large extent, maintained their own culture and consider others as intruders and carriers of an entirely different culture.

Furthermore, the notion of ‘indigenship’ in international law has been associated with the vestiges of colonialism. Martinez Cobo’s definition of indigenous peoples is the most frequently cited one in this regard. He labeled indigenous peoples as descendants of pre-colonial societies which consider themselves distinct from other people who prevail on the territories they reside and are non dominant in the region by now.¹²⁷ In addition, he states that indigenous peoples have one thing in common, that is, ‘they share a history of injustice.’¹²⁸ They have been denied the right to participate in governing process of their own territories and resources. Conquest and colonization have attempted to steal their

¹²⁵ Asbjorn Eide, *Minority Solutions* , 1320

¹²⁶ Ibid

¹²⁷ See, Kamrul Hossain, *Status of Indigenous Peoples in International Law*, Miskolc Journal of International Law, Vol. 5 No. 1(2008), 11

¹²⁸ Id, 10

dignity and identity as indigenous peoples as well as their fundamental right of self-determination.¹²⁹

Kymlicka, in this regard, describes indigenous peoples as peoples whose traditional lands have been overrun by settlers, and who have then been forcibly, or through treaties, incorporated into states run by people they regard as foreigners.¹³⁰ While other minority nationalities dream of a status like nation states, with similar economic and social institutions and achievements, indigenous peoples typically seek something rather different which is the ability to maintain certain traditional ways of life and beliefs while nevertheless participating on their own terms in the body politic of the state.¹³¹ In addition to the autonomy needed to work out that sort of project, indigenous peoples also typically require from the larger society a respect and recognition to begin to make amends for indignities because they suffered for decades as second class citizens.¹³²

Indigenous peoples are, in many instances, classified as both minority and indigenous at the same time, although indigenous rights as developed by inter-governmental organization is far more extensive, stronger and detailed than minority rights.¹³³ This was due to the fact that the protection of minority groups was thought to be sufficient to protect indigenous peoples. However, this approach proved inadequate because indigenous peoples are subjected to additional problems not shared by other minorities. Therefore, it is possible to identify a body of law that may be termed specifically 'indigenous rights' as distinct from the rights that apply to persons belonging to racial, linguistic, religious and other minorities at least in the international level.¹³⁴

¹²⁹ Id ,24

¹³⁰ Will Kymlicka, *Federalism and Secession: At Home and Abroad*, 13 Can. J. L. & Jurisprudence, (2000), 208

¹³⁰ Ibid

¹³¹ Ibid

¹³² Ibid

¹³³ Kamrul Hossain, *Status of Indigenous Peoples in International Law*, 24

¹³⁴ Ibid

Describing it succinctly, the rights of indigenous peoples in the above manner, what is then meant by non-indigenous peoples? And what are their respective rights? This is then the main issue that will be dealt under in the following section.

3.3 Non-indigenous peoples and their rights

The term non-indigenous is one which is formulated in this paper for the purpose of describing the rights of peoples which are not indigenous to a given territory. Hence, there will not be as such a defining element for this people, but rather they can be described by the method of defining them through exclusion. This means, they are peoples which fall outside the ambit of the definition of indigenous peoples.

Non-indigenous peoples are those which consist of groups that have moved into the territories of the indigenous ones through migration, in need of a better living standard and securing jobs or groups which have moved in to this territories in exercising their freedom of movement or descendants of groups which were on these territories for the reason of colonization or groups that were forced to move.¹³⁵ A case in point could be the resettlement and villagization program under taken by the Ethiopian government in the 1980's.

The term exogenous groups have also been formulated in describing these people. In this regard, Getachew describes exogenous groups as groups that live in states to which they are not indigenous but into which they moved over the last one hundred fifty or so years.¹³⁶ By this, he identifies indigenous groups as those groups that are believed both legally and politically to be the owners of the territories in which they are found.¹³⁷ Indigenous groups possess a distinct cultural and/or linguistic identity which markedly

¹³⁵ For more on the distinction on four of these groups as minority classification in the context of Ethiopia See, Tsegaye Regassa, *Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism at the State Level*, Mizan Law Review, Vol. 3, No. 1 (March 2009), 58-61

¹³⁶ Getachew Assefa, *Federalism and Legal Pluralism in Ethiopia: Reflections on their Impacts on the Protection of Human Rights in Girmachew Alemu and Sisay Alemahu(eds.) The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects*, Ethiopian Human Rights Law Series, Vol.2 (Dec.2008), 9-10

¹³⁷ Ibid

differentiates them from the non-indigenous groups. There are two scenarios here. The first one is non-indigenous groups which are found in the territories of the indigenous peoples having kin nationalities in the neighboring states/regions. In this case, these same non-indigenous peoples might be termed as indigenous groups in their own region as they are found inhabiting their natural place of residence. But, as they are found outside of their mother states, they are found occupying a non dominant position and termed as non-indigenous.

The second situation is these non-indigenous groups might also be found in the territories of the indigenous ones in an overwhelming numerical majority and as well in a dominant position relegating the indigenous people to a status of minority. It is with the former group of non-indigenous classification in general that this paper wishes to make an analysis, especially with respect to the existence of a hegemonic rule exercised by the indigenous people over the non-indigenous ones. While in the case of the former the indigenous groups are found in a dominant position relegating the non-indigenous ones to a status of a minority, regardless of the fact that they are numerically inferior or not, in the situation of the later the indigenous ones are found occupying the status of a minority because the non-indigenous ones are found in a dominant position.

At a first glance, this seems at odds with the notion of indigenship and even minority rights. But the rise of minority protection has somehow resurrected the formulation of not giving adequate attention to the non-indigenous groups because of the over emphasis of the rights of a relegated ethnic group (may be of an indigenous one). These gave rise, in the first place, to the assertion that the indigenous group considers itself to be the only owner of a given territory and the only group entitled to exercise a right over it. Secondly, in countries like Ethiopia where the formation of states is based on a dominant and/or majority ethnic group by which indigenous (a case in point are the regional states of Beneshangul Gumuz and Gambella) groups have also benefited made the non-indigenous groups to occupy a position of minority status as there was no

adequate guarantee put in place for minorities and individual groups who happen to find themselves in ethno regions not named after or do not include their ethnic groups.¹³⁸

Taking in to consideration the dichotomy of indigenhsip and non indigenhsip in the manner prescribed in the preceding two sections, the following subsequent parts will first deal with the concept of minority under the Ethiopian context followed by the issue of non-indigenous regional minorities in the context of the regional states.

3.4 The scope of the rights of minorities under the FDRE Constitution

The enormous divergence in the numerical sizes of the various ethnic groups of Ethiopia, together with the lack of a majority at the country level, would obviously lead to the assumption that no ethnic or linguistic group can be considered as a majority at the federal level in the country.¹³⁹ But, this is when speaking of numerical foundations only.

Apart from employing the term minority nationalities, the FDRE Constitution has not defined the term minority and, in addition, did not identify which groups qualify as minorities and which do not. Rather, it simply stated the defining criterion for an ethnic group in Article 39 as “nations, nationalities and peoples.” It defines ethnic groups (nation’s nationalities and peoples) as “a group of people who have or share a large measure of a common culture or similar custom, mutual intelligibility of language, belief in a common or related identity, a common psychological makeup, and an identifiable, predominantly contiguous territory.¹⁴⁰ This seems to signify that the Constitution subscribed to the primordial ideas of ethnicity.¹⁴¹ Since the whole population of the country is seen as composed of nations, nationalities and peoples as defined above, it means that every citizen must belong to an ethnic group and define themselves along

¹³⁸ See, Id

¹³⁹ Aberra 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),104-105

¹⁴⁰ Article 39(5) of the FDRE Constitution

¹⁴¹ See, Lovise Aalen, *Ethnic Federalism and Self-determination for Nationalities in a Semi-Authoritarian State: The Case of Ethiopia*, 13 Int’l J. on Minority and Group Rts.(2006), 246-247

ethnic lines.¹⁴² The Constitution also seems to have taken the presumption that ethnic groups live in geographically concentrated areas, that the so formed regional states are inhabited by ethnic groups that are homogenous and have the same interest and are equated with political units even though these assertions are very far from the reality of the Ethiopian society.¹⁴³

The lack of majority at the federal level and the relative ambiguity created by the term “minority nationalities and peoples” by the FDRE Constitution triggers one to make some analysis on the issue of definitional aspects of minorities in light of the Constitution at the federal level. Hence, the subsequent section is devoted to making some considerations in this regard.

3.4.1 The Issue of Definition

Neither ethnic nor linguistic minorities have been defined specifically under the 1995 FDRE Constitution. Other than setting the standard criteria of designating nation, nationality or people, the Constitution has not made any reference to the exact number of person’s belonging to such a formulation. Form this, one may argue that all nations, nationalities and peoples of Ethiopia are entitled to enjoy equally all the rights guaranteed by the Constitution regardless of their numerical size.¹⁴⁴

But during the transitional period the term “Nation” or “Nationality” was defined in proclamation No 7/92 as referring to a “people living in the same geographical area and having a common language and a common psychological makeup of identity.”¹⁴⁵ The proclamation defined ‘minority nationality’ as a nationality or people which cannot

¹⁴² Id, 247

¹⁴³ Ibid

¹⁴⁴ Aberra Dagafa ,*National Minorities*,101-102

¹⁴⁵ Proclamation No 7/1992, Article 2(7)

establish its own woreda self government because of the small number of its population.¹⁴⁶

Later on, Article 54(3) of the new Constitution inserted the term “minority nationalities or peoples” without defining what is meant by the term. After the adoption of the Constitution, the term minority nationality was defined in proclamation 111/1995 as “a community determined by the council of representatives or its successor to be of a comparatively smaller size of population than that of other nations/nationalities”.¹⁴⁷

When one articulates the definitions given under the preceding proclamations in light of the Constitution Article 54(3), it seems that ‘minority nationality’ refers merely to those particular ethnic groups that do not have sufficient number to make up a constituency so as to have their own representatives in the House of Peoples Representatives. Thus, as per Article 15(2) of proclamation 111/1995 since each electoral constituency is made up of 100,000 inhabitants, when the number of a certain ethnic group is below such a requirement it may be considered as a ‘minority nationality’ and accordingly, the HPR may permit such group to have special representation in the HPR.¹⁴⁸ But now since proclamation no 111/95 has been replaced by proclamation 532/2007 it will be worth mentioning the adjustment it has brought with respect to minority ascertainment. Unlike its previous counterpart, the new electoral proclamation has not ascertained an electoral constituency on a fixed number of population but rather it states that the number of constituencies are to be determined based on the population of the country.¹⁴⁹ Meaning electoral constituencies now do not have a fixed numerical value but rather considerations are made generally taking into account the population size of the country..

¹⁴⁶ Id, Article 2(6); Cf Proclamation No 11/1992, A Proclamation to provide for the Establishment of the National Regional and Woreda Councils Members Election Commission, *Negarit Gazeta*, 51st Year, No. 6, 8th February 1992, Article 2(5) defined minority in a similar way

¹⁴⁷ See, Proclamation No 111/1995, A proclamation to make the Electoral Law of Ethiopia Conform to the Constitution of the Federal Democratic Republic of Ethiopia, *Negarit Gazeta*, 54th Year, No. 9, 23rd February 1995 Article 2(3)

¹⁴⁸ See, Aberra Dagafa , *National Minorities*, 101-102

¹⁴⁹ See, Proclamation No 532/2007, The Amended Electoral Law of Ethiopia Proclamation, Federal Negarit Gazeta, 13th Year, No. 53, Addis Ababa, 25th June 2007, Article 20(1) (b)

So from this, it can be discerned that there is no minimum numerical requirement for an ethnic group to be considered as a minority. Because for one thing, this proclamation has not defined what is meant by minority nationalities and secondly, it has left the issue of determining the numerical size of an electoral constituency based on the population size of the country rather than putting a predetermined figure. But one can make a careful deduction from the wordings of this article that, a minority nationality is one which cannot establish its own electoral constituency. It can be argued here that the proclamation addressed the issue of ascertaining minority nationalities in a different modality than its previous counterpart. It states that minority nationalities believed to require special representation shall be determined in advance by the House of Federation based on clear criteria.¹⁵⁰ However, it is not possible as of now to articulate what is meant by 'clear criteria' since the proclamation has not yet been practically tested in an election.

From this one may argue that a nation, nationality and people should refer only to those groups that can form their own electoral constituency and this would in effect mean minority nationalities are within the emblem of nation, nationality or people. While the former can exercise the right to self-determination, the later are not capable of such a right of self government due to their numerical inferiority other than through the mechanism of special representation.

In a similar fashion, if we see the situation of the HoF groups that may be considered as a minority are those which are not represented by an additional member because of their inability to fulfill the requirement of an additional one million population.¹⁵¹ Hence, an ethnic group that constitutes less than one million people could also be considered as minority. Practically speaking, for example, as per the 1994 population and housing census of Ethiopia some 80 ethnic groups were identified but the members of the house of federation at the time were 64 only.¹⁵² Hence, the constitutional guarantee that each nation, nationality or people shall at least be represented by a single member is something that has not been put into practice. Hence, the practical limitation that every ethnic group

¹⁵⁰ Id, Article 20 (1) (d)

¹⁵¹ Assefa Fishea, *Accommodation of Diversity*, 275

¹⁵² See, Aberra Dagafa , *National Minorities*, 96-100, 134-135

is not represented in the house, that every decision is to be taken on a majority basis¹⁵³ and the absence of veto powers for minority nationalities, even in matters strictly affecting their rights, makes the house under a question mark with respect to accommodating the rights of minorities.

Having said these with respect to definitional issues of minorities, now let us turn our attention to the issue of political participation of minorities at the federal level.

3.4.2 The right to political participation of minorities at the federal level

At this juncture, if one looks at the issue of minorities at the federal level in light of a bargaining power for their political rights, the guaranteed seat for them will in effect play no role. In the Ethiopian scenario, four ethnic groups (Amhara, Oromo, Somali, and Tigre) together form an overwhelming majority. If we see the case of the HPR, elections to the house are conducted by means of general and direct elections under the first past the post electoral system.¹⁵⁴ However, Article 54(3) of the Constitution provides for a guaranteed representation for minority nationalities and peoples by stipulating that at least 20 seats are reserved for these minorities out of the maximum number of 550 seats. In accordance with the Constitution, unless otherwise provided, “all decision of the house shall be by a majority vote of members present and voting”.¹⁵⁵ The quorum requirement will be fulfilled upon the presence of more than half of the members of the house.¹⁵⁶ In effect, combined presence of the four big nationalities in the house will suffice even to go about constitutional amendment let alone protecting the rights of these minorities.

This also applies to the House of the Federation in which it has been designed to serve a majoritarian purpose. Like in the preceding analysis, all decisions of the house require the approval of majority members present and voting. The quorum requirement is the

¹⁵³ Article 64 (1) of the FDRE Constitution

¹⁵⁴ See Article 54(2) of the FDRE Constitution

¹⁵⁵ Article 59(1) of the FDRE Constitution

¹⁵⁶ Article 58(1) of the FDRE Constitution

presence at a meeting of two thirds of the members of the house.¹⁵⁷ Unlike the HPR in the HoF, there is no guarantee seat to minority nationalities. Rather, each nation and people will have at least one member and will additionally be represented by one additional representative for each one million of its population.¹⁵⁸ The larger the population size of an ethnic group the higher the representation it will secure in the house and the higher is the risk of minorities being engulfed by the populous ethnic groups in the decision making process.

3.5 Regional Minorities: General Overview

Ethiopia is a country in which eighty ethnic groups exist and a place where twice as many dialects are spoken. Despite its numerous ethnic groups, however, two-thirds of the over seventy million population belongs to the four major ethnic groups (i.e. the Oromo, Amhara, Somali and Tigre).¹⁵⁹ Hence, in Ethiopia since no ethnic group account for the majority of the population, the country can appropriately be described as a country of numerical minorities.

The Constitution of 8 December 1994, which became effective in August 1995 created a federal state structure. This has resulted in the dividing up of the Ethiopian territory into nine regional states.¹⁶⁰ The ethnic criterion has played an important role in the creation of these regional states, whose borders was delimited based on an ethno-linguistic standard.¹⁶¹

With the existence of more than eighty ethnic groups in the country, only nine regional states have been created. Not surprisingly, none of the nine regional states are ethnically

¹⁵⁷ Article 64(1) of the FDRE Constitution

¹⁵⁸ Article 61(1)

¹⁵⁹ Federal Democratic Republic of Ethiopia Population Census Commission, Report of the 2007 population and Housing Census, Addis Ababa (Dec.2008), according to the report the four ethnic groups account for 73.8% of the total population

¹⁶⁰ The formed nine regional states are Tigray, Afar, Amhara, Oromia, Somali, Benishangul Gumuz, Gambella, Harar and the state of the Southern Nations, Nationalities and Peoples. The cities of Dire Dawa and Addis Ababa are Chartered cities administered directly by the federal government.

¹⁶¹ Article 46 of the FDRE Constitution

homogenous.¹⁶² The Ethiopian federal system seems to have taken the assumption that every ethnic group is found inhabiting a territorially defined geographical area.

Since the main objective of restructuring the country after 1991 was to address the issue of nationalities or 'the national question', ethnic groups (at least the major ones) were assigned with specific regional states by which they are able to exercise their right of self-determination. In the process, the issues that arise from sub-national ethno-cultural diversity were overlooked.

Even though it has been attempted to realize a match between territorial autonomy with that of ethnic identity, thereby creating homogenous states, the outcome was not as expected. All regional states of the Ethiopian federation, to a lesser or greater extent have an ethnically diverse population. This situation can easily be deduced from the fact that though there are more than eighty ethnic groups, only nine regional states have so far been formed. The ethnic diversity that characterizes the federal level is also present at the regional level. Therefore, one may conclude that a perfect match between ethnic groups and territorial autonomy has not materialized (may be it is impossible to do so?) as the drafters of the Constitution wished. Rather, the act of drawing regional boundaries based on the major ethnic groups gave rise to the creation of minority ethnic groups in each of these regions.

In terms of numerical superiority and political dominance of an ethnic group, the nine regional states can be classified in the following manner. In the first category are the Tigray, Afar, Amhara, Oromo and Somali states in which the Tigre, Afar, Amhara, Oromo and Somali ethnic groups respectively are dominant numerically as well as politically.¹⁶³ In the second category is the state of the southern nations, nationalities and peoples by which it is created as an amalgam of different ethnic groups in which there exists no numerical majority but with respect to political dominance it is contended that not all ethnic groups within the regional state are active and have equitable share of

¹⁶²Tsegaye Regassa, *State Constitutions a Preliminary Observation*, available at <http://camlaw.rutgers.edu/statecon/subpapers/regassa.pdf>. As accessed on march 16, 2009.

¹⁶³ See generally, Christophe Van der Beken, *Ethiopia: Constitutional Protection of Ethnic Minorities at the regional level*, Afrika Focus, Vol. 20, Nr. 1-2, (2007)

government power, rather the political arena is controlled by few of them. In the third category is the regional state of Harar by which many refer to it as an anomaly in the Ethiopian federation.¹⁶⁴ The Harari regional state is formed, for the Harari (Adere) ethnic group. What is surprising in this regional state is the Harari's are the ones which are a numerical minority. However, they are made to occupy the key political positions thereby making them politically dominant over other ethnic groups within the region. In the fourth category are the multiethnic regional states of Benishangul Gumuz and Gambella. In the case of the former, the name of the region refers to the politically dominant ethnic groups of Berta and Gumuz.¹⁶⁵ While no single ethnic group is a numerical majority in the region, the politically dominant indigenous nationalities numerically added together constitute a majority over other ethnic groups. In the case of the later the name Gambella does not have an ethnic correlation within members of the ethnic groups residing in the region. It is rather accorded a territorial name other than that of an ethnic one. In this region also, the two ethnic groups of Anuak and Nuer constitute a numerical majority over other ethnic groups and are also the politically dominant ones.

It is from the above modalities of regional state formations that the concept of regional minorities emanates. Thus, minority status at the regional level is a result of an ethnic group's numerical majority as well as political dominance or the presence of political dominance only irrespective of numerical foundations. In one way, regional minorities under the Ethiopian context may be described as those groups which differ from the regionally dominant ethnic group. This dominance may be expressed in terms of political hegemony and/or numerical majority of an ethnic group. For example, the Amhara, Tigre, Afar, Somali and Oromo ethnic groups are the numerical majority as well as the politically dominant groups in their respective regions. In case of Harar, the numerical minority is the politically dominant section of the society, while in Benishangul and Gambella there is no single numerical majority, though the indigenous nationalities are the politically dominant sections. From this emanates the notions of non-indigenous regional minorities which literally refers to groups (ethnic) which are not indigenous to

¹⁶⁴ Lovise Aalen, *Ethnic Federalism in a Dominant party State*, 90

¹⁶⁵ It is worth noting here that there are five indigenous Nationalities identified in the region. These are the Berta, Gumuz, Shinasha, Mao, and Como.

the region and at the same time are not the politically dominant ethnic identities present and as well are numerically inferior compared to the indigenous nationalities.

Even though it is difficult to talk about minority/majority relations at the federal level, clearly at the regional level it is a different story. For one thing, especially with the exception of few, the regional states are carved in favor of the majority ethnic group. Hence, an Amhara who belongs to a majority in his own mother state will find himself being reduced to a minority status in Oromia region and vice-versa.

This problem, in the first place, has not been dealt within the Constitution and what is worse; the exercise of government power in the regional states has been an exclusionary one for these minorities. The dominant (majority) ethnic group considers itself to be the owner of the regional state while other ethnic groups are relegated to a status of second class citizens. This situation has been described as a condition of creating 'local tyranny.'¹⁶⁶

The degree in which these regional minorities are denied of their rights varies from being marginalized economically to the extent of political relegation. The issue is then, what is the extent of the right to self-determination under the Constitution and its power of inclusion of all ethnic groups with respect to regional minorities. The following chapter will deal with the issues, particularly with respect to the political rights of regional minorities present in the regional state of Benishangul Gumuz.

¹⁶⁶ Assefa Fiseha, *Theory Versus Practice*, 136

CHAPTER FOUR

4. The Political Rights of non-indigenous Minorities: An assessment of the Benishangul Gumuz Regional State

Benishangul Gumuz is one of the nine federated states of the Ethiopian federation. The regional state is located in the western part of Ethiopia bordering Sudan from a classic frontier zone. It has a total area of 50,380 square kilometers with a population size of 670,847 inhabitants.¹⁶⁷ It is currently administratively divided into three zones of Assosa, Metekel and Kamashi.

The region can generally be described as a sparsely populated one in contrast to other regional states of the country. Most of its territory is characterized by unhealthy and warm climatic conditions which at time led it to be considered as the “corridor of Death” by anthropologists.¹⁶⁸ Due to its topographic and climatic conditions, the region has been one which has been secluded from the central arm of government.¹⁶⁹ The hot low land areas of the Ethiopian Empire including Benishangul were very much neglected by the central government¹⁷⁰ and speaking of neglect they are the most under developed areas in contrast to the highland areas of the country.

With respect to the ethnic composition of the region, not only it is inhabited by different ethnic groups, it is also a home of different culture and ethno-linguistic identities. In this sense, the regional state can appropriately be described as a multiethnic state within a multiethnic country. The region’s native identities are the Berta (173,743), Gumuz (141,645), Shinasha (50,916), Mao (12,744) and Como (6,464) with their respective population sizes indicated in brackets. These groups have been identified as the

¹⁶⁷ Population data provided are based on the summary and statistical report of the 2007 Population and Housing Census.

¹⁶⁸ Alfredo Gonzalez-Ruibal and Victor M. Fernandez Martinez, *Exhibiting Cultures of Contact: A Museum for Benishangul-Gumuz, Ethiopia*, *Stanford Journal of Archaeology*, Vol.5 (2006), 67

¹⁶⁹ Id

¹⁷⁰ Teshale Tibebu, *The Making of Modern Ethiopia*, 173

endogenous (indigenous) nationalities of the regional state, as per its Constitution.¹⁷¹ As has been stated, the region is also inhabited by a large number of non-indigenous populations, in which most of them migrated from highland areas of Ethiopia. The non-indigenous populous nationalities include the Amhara (142,557), Oromo (89,346), Agew (30,137), Tigre (4,559), Fedashe (2,051), Kembata (1,787), Hadiya (1,691), Somalie (1,515) and Gurage (1,268), each of which are found territorially concentrated in some areas and scattered in others within the region.

Initially, after 1991, the regional administration was established by the elites from the five indigenous nationalities under the leadership and dominance of the Berta (Benishangul) political elite.¹⁷² The dominant role of the Berta ethnic group was due to its close co-operation with the TPLF and EPLF during the times of armed struggle against the Derg.¹⁷³ The Berta controlled key administrative and political offices like presidency of the region until 1996. However, after 1996, due to the disagreement of the Berta ethnic group with the TPLF, the dominant role of the Berta's was reduced and replaced by the Gumuz.¹⁷⁴

But generally speaking, the political power actors are the indigenous nationalities, irrespective of the particular ethnic group exercising a dominant character. Hence, the non-indigenous groups are by far relegated to an inferior position with respect to their political power ambition, regardless of their high numerical presence.

The implementation of the post 1991 EPRDF government's program of ethnic regionalism has intensified local ethnic rivalries (both among the indigenous nationalities as well as within the indigenous and non-indigenous groups) in the region and to this effect the regional government remains weak.¹⁷⁵ Even though there is a long history of

¹⁷¹ Article 2 of the Benishangul Gumuz Constitution

¹⁷² Berhanu G Balacha, *Divide and Rule: Ethnic Federalism in Benishangul Gumuz Region of Ethiopia*, available at, [www.ethiopolitic.com/pdfiles/divide and rule Dec 21.2007.pdf](http://www.ethiopolitic.com/pdfiles/divide%20and%20rule%20Dec%2021.2007.pdf). As accessed on June 14,2009,1

¹⁷³ Id

¹⁷⁴ For more on the nature of the disagreement and the quest of the Berta nationality at the time See, Elena A. Baylis, *Beyond Rights: Legal Process and Ethnic Conflicts*, 25 Mich. J. Int'l. L. (2003-2004), 562-565

¹⁷⁵ John Young, *Along Ethiopia's Western Frontier: Gambella and Benishangul in Transition*, *The Journal of Modern African Studies*, 37, No. 2 (1999),321

conflicts between the indigenous and the non-indigenous communities of the region,¹⁷⁶ after the implementation the national self determination principle by the EPRDF ethnic conflicts have intensified in a manner which have not been existent before.¹⁷⁷

The history of the highland population (non-indigenous communities) as they are sometimes referred to, which settled in the region is not as such a recent phenomenon, but rather they have a long history of existence.¹⁷⁸ But, despite their long history of existence, the present practice of ethnic exclusivism seems to suggest that there is what seems to be settling the scores of the past by the newly empowered indigenous nationalities.¹⁷⁹

The ethnic composition of the region was marginally diversified due to the previous regimes policy of peasant villagization and re-settlement programs from drought struck areas of the country. This state sponsored re-settlement programs, as they were conducted without the prior consent of the settlers and the host community is believed to have resulted in animosities and violent clashes among the host communities and the settled families.¹⁸⁰

The now governing political atmosphere in the region seems to imply that the factors that lead to the diversification of the region have not been taken into consideration. The indigenous nationalities consider the region as their own territory by which other nationalities are considered as intruders and foreigners.

The core of the disagreement between the indigenous nationalities and the non-indigenous population takes up various forms; ranging from political representation, resource competition, civil service administration and at times to religious conflicts.

¹⁷⁶ Id, 324-325

¹⁷⁷ See, Wolde-Selassie Abute, *Gumuz and Highland Settlers: Differing Strategies of Livelihood and Ethnic Relations in Metekel, Northwestern Ethiopia.* Faculty of Social Sciences, (University of Goettingen, Germany, PhD dissertation 2002), 245-249

¹⁷⁸ Young, *Along Ethiopia's Western Frontier*, 324-325

¹⁷⁹ Wolde-Selassie Abute, "Gumuz and Highland Settlers, 249

¹⁸⁰ Belay Kassa, *Resettlement of Peasants in Ethiopia*, 27Journal of Rural Development (winter 2004), 225

However the competing interest of the two in the light of the current political atmosphere tilts in favor of the former. This is mainly attributable to the fact that the constitutional guarantees provided under the FDRE Constitution and as well in the regional state's Constitution have not been seriously and positively implemented in protecting the rights of these non-indigenous disempowered minorities. Especially, the regional state's Constitution gives a constitutional guarantee by which the indigenous nationalities are considered to be the owners of the regional state, relegating others to a second-class citizenship.

The regional state's accommodation of diversity, especially, with respect to its politically disempowered regional minorities has not been an impressive one. For one thing, due to the electoral law of the country which was apparently considered necessary to protect the interests of Ethiopia's long suffering indigenous peoples¹⁸¹ has resulted in non representation and under representation in various elections after the post 1991 era. This has resulted in a bitter resentment amongst the non-indigenous communities of the region. These being issues at a glance for the non-indigenous minorities of the region, let us in the subsequent section first look at the regional state's Constitution structure and its ability to accommodate its diversified population.

4.1 Constitutional Design and Recognition of Ethnic Diversity in Benishangul

The regional state of Benishangul is of a multiethnic character. The presence of diverse ethno-linguistic groups either as the indigenous nationalities or the various migrants and settlers as the non-indigenous groups at best require the region to consider its diversity at a constitutional level.

The Ethiopian regional states have been endowed with the competence to adopt their own Constitutions.¹⁸² To this end, all regional states have effectively used their constitutional autonomy and adopted their own Constitutions. All of these regional states written their

¹⁸¹ Young, *Along Ethiopia's Western Frontier*, 335

¹⁸² Article 52 (2) (b) of the FDRE Constitution

Constitutions since 1995 and revised them in 2001 and afterwards. The Benishangul Gumuz region is no exception to this. The regional state first adopted its Constitution in 1996 and then revised it in 2002. The main purpose of revision (one can say for all of the regions) was to provide for the separation of powers and accountability of government organs.¹⁸³ Hence, with respect to ethnic diversity of the region, the revised as well as the former Constitution provided for a similar undertaking, save for small variations.

The state's Constitution under its preamble begins with the statement "We, the nationalities and peoples' of the region of Benishangul..."¹⁸⁴ which shows the presence of different ethno-linguistic groups in the region and the attention given by the Constitution of its constituent's ethnic diversity. One of the thorny issues in constitutional design, with respect to the accommodation of diversity is the status where the sovereignty of the people resides. Since the Federal Constitution has daringly stated that nations, nationalities and peoples of Ethiopia are the bearers of sovereign power,¹⁸⁵ one indeed expects that the regional state to provide for the same standard. The regional state's Constitution states that "the peoples of the Benishangul Gumuz Regional state shall be the ultimate authority of the Regional State."¹⁸⁶ This seems to suggest that the Constitution is adequately aware of its diverse population and bestows sovereign power in all peoples of the region rather than to give it to the so identified indigenous nationalities.

The regional state is organized in administrative divisions of regions, council of nationalities and administrative hierarchies.¹⁸⁷ Again the Constitution reiterates that, the administrative hierarchies to be established in the regional state are to be delimited on the basis of settlement pattern, language, identity and consent of nations, nationalities or peoples found in the region.¹⁸⁸ The predicament at this point is whether this right pertains to all ethnic groups or whether it is only limited to those indigenous to the region? As

¹⁸³ Preamble to the Benishangul Gumuz Constitution

¹⁸⁴ Ibid

¹⁸⁵ Article 8 of the FDRE Constitution

¹⁸⁶ Article 9(1) of the Benishangul Gumuz Constitution

¹⁸⁷ Article 45(1) of the Benishangul Gumuz Constitution

¹⁸⁸ Article 45(2) of the Benishangul Gumuz Constitution

Van Der Beken succinctly put it, the answer to the question can only be speculative, because, so far, no administration of nationalities has been established.¹⁸⁹ This is premised in the argument that, as per article 39 of the regional state's Constitution, only the indigenous nationalities of the region are entitled to exercise the various aspects of the right to self-determination.¹⁹⁰ A contrary reading of the same article leads to an assumption that non-indigenous groups are not entitled to such a right? In order to address the issue, the assertion should be seen in light of the constitutional provisions of the region, which will be addressed in the subsequent section.

Members of the regional state council are elected by the people for a term of five years.¹⁹¹ The members of the regional state council shall be the representative of the people as whole.¹⁹² The number of members of the regional state council shall be on the basis of the size of the population (whether this has pragmatically materialized or not, especially with respect to non-indigenous minorities, will be addressed later on) and special consideration shall be given to minority indigenous nationalities of Mao and Como.¹⁹³

Like its federal counterpart, the state's Constitution makes the regional state council a majoritarian house. It states that "unless otherwise provided for in the Constitution, all decisions of the regional state council shall be passed by majority vote of the members."¹⁹⁴ But, regardless of the multiethnic character of the region, the Constitution has not opted to provide a formula for representation of ethnic groups of the region in an upper house which may serve the purpose of a counter majoritarian balance for minorities.

¹⁸⁹ Christophe Van Der Beken, *Ethiopia: Constitutional Protection of Ethnic Minorities*, 128-129

¹⁹⁰ See, Article 39 of the Benishangul Gumuz Constitution; also see, Id, by which the author argues that the Benishangul Gumuz Constitution does not provide for mechanisms for the representation of exogenous groups in the administration of nationalities

¹⁹¹ Article 48(1) of the Benishangul Gumuz Constitution

¹⁹² Article 48(3) of the Benishangul Gumuz Constitution

¹⁹³ Article 48(2) of the Benishangul Gumuz Constitution

¹⁹⁴ Article 56 (1) of the Benishangul Gumuz Constitution

It instead created a Constitutional Interpretation Commission, which is mandated with the role of deciding on matters of constitutional issues or questions of interpretation.¹⁹⁵ To the disappointment of the non-indigenous groups, they are not entitled to have a representation within the commission. The commission is composed of 20 members by which each indigenous nationality sends 4 of its members.¹⁹⁶ Hence, at this point one can carefully discern that even though all peoples of the region are entitled to sovereign power of the region, when it comes to the task of interpreting the Constitution which is the manifestation of their sovereignty, it will only be the privilege of the indigenous nationalities.

Furthermore, this seems to be seriously at odds with the accommodation of diversity in a federal system. Particularly, the regional state's Constitution attitude towards the establishment of nationality administrations and the task of interpreting the Constitution which is the manifestation of an ethnic group's belongingness and promotion of common values amongst themselves seriously puts under question its extent and willingness to accommodate its diversified population.

4.2 The Notion of Self-determination under the Benishangul Gumuz Constitution

The realization of the right to self-determination (internal) has taken up two forms under the Ethiopian context. The first one is the creation of the regional (state) boundaries under the ethnic based criteria. For this purpose, nine regional states have been established. The second approach is the formulation of territorial autonomy for the different nations, nationalities and peoples within a specific regional state. This has been realized in what has been called the "administration of nationalities"¹⁹⁷ in which an ethnic group will be granted territorial autonomy to be realized via special zonal or woreda administrations.

¹⁹⁵ Article 71(1) of the Benishangul Gumuz Constitution

¹⁹⁶ Ibid

¹⁹⁷ The Administration of Nationalities for example has been made applicable in the Amhara regional state for the Agew and Oromo regional minorities found within the region

The Constitution of the regional state of Benishangul differentiates between what are termed as “indigenous nationalities” of the region and “other people’s” living in the region. Article 2 lists Berta, Gumuz, Shinasha, Mao and Como as the indigenous groups.¹⁹⁸ It is important to note here that none of the ethnic groups of the region constitute a numerical majority, unlike that of other regional states (Amhara, Oromo, Tigray, Afar, and Somalie) in which an ethnic group is a numerical majority compared to the other inhabitants of the region. The three indigenous nationalities of Berta, Gumuz and Shinasha taken together account for 54.6% of the total population while the Mao and Como each have a few thousand members and are in relation to the other indigenous nationalities, not only tiny in number, but are also politically subservient.

To the contrast, the non-indigenous groups of Amhara, Oromo and Agew nationalities together account for 39.07% of the total population. In an overall calculation the indigenous nationalities together account for 57.46% of the population while the non-indigenous groups account for 42.54% of the regional state’s population.

In realizing the right to self-determination of the different ethno-linguistic groups of the region, the Benishangul Constitution has adopted the mechanism of establishing separate “administration of nationalities”.¹⁹⁹ However, as per the stipulation of the Constitution the establishment of the administration of nationalities has not yet taken place.²⁰⁰ However, a separate proclamation has been enacted to determine the organization, powers and functions and internal working procedures of nationalities council and their offices.²⁰¹ But, because its implementation has evoked serious disagreements within the state’s council it has not yet been realized.²⁰²

¹⁹⁸ Article 2 of the Benishangul Gumuz Constitution

¹⁹⁹ See, Articles 74 and 75 of the Benishangul Gumuz Constitution

²⁰⁰ Christophe Van Der Beken, *Federalism at the Regional Level; Unity in Diversity in Ethiopia’s Multi-Ethnic Regions*, Paper Presented at the 17th International Conference of Ethiopian Studies,(2009), (unpublished), 5

²⁰¹ Proclamation No. 73/2008, Benishangul Gumuz Regional state proclamation enacted to determine the organization, powers and functions and internal working procedures of nationalities council and their offices, No.4 Year 13, Nov. 1, 2008 Assosa

²⁰² Interview with Ato Birhanu Ayehu, Legal advisor to the speaker of the House of Benishangul Gumuz, Assosa, December 28, 2009

The regional state is organized in region, council of nationalities, and administrative hierarchy's modality, even though the state council may otherwise organize other administrative hierarchies and determine their powers by law.²⁰³ As per this arrangement the administration of nationalities is an administrative hierarchy coming after the regional state council.²⁰⁴ It comprises of the council of nationalities (legislative), administration council (executive) and nationalities administration judicial organ (judiciary).²⁰⁵

The council of nationalities is the supreme political power of the administration of nationalities without prejudice to the powers and functions given to the house of people's representatives and house of federation.²⁰⁶ It is comprised from members to be elected from among members of the woreda council under special conditions including members of the regional council.²⁰⁷ It is accountable to the regional council²⁰⁸ but is entrusted with the wide range of powers.²⁰⁹ Especially, in relation to an ethnic group's wish of identity manifestation and protection, it is stated that the council of nationalities can determine its working language²¹⁰ and is also vested with the power to protect the rights of nationality to speak and write, to develop, preserve, express, promote and expand its language as well as to preserve its historical heritage.²¹¹ But, with such powers conferred upon it, it is not allowed to exercise genuine legislative competence. It is merely entrusted with the task of issuing implementation directives consistent with the regional laws, regulations and directives.²¹² In addition, even though budget is to be allocated to the council by the regional council, it has the power to evaluate and approve its plan and budget based on the allocation rendered.²¹³

²⁰³ Article 45(1) of the Benishangul Gumuz Constitution

²⁰⁴ Article 74(1) of the Benishangul Gumuz Constitution

²⁰⁵ Article 74(2) of the Benishangul Gumuz Constitution

²⁰⁶ Article 75(2) of the Benishangul Gumuz Constitution

²⁰⁷ Article 75(1) of the Benishangul Gumuz Constitution

²⁰⁸ Article 75(3) of the Benishangul Gumuz Constitution

²⁰⁹ See, Article 75(3)(a)-(h) of the Benishangul Gumuz Constitution

²¹⁰ Article 75(3)(a) of the Benishangul Gumuz Constitution

²¹¹ Article 75(3)(b) of the Benishangul Gumuz Constitution

²¹² Article 75(3)(c) of the Benishangul Gumuz Constitution

²¹³ Article 75(3) (d) of the Benishangul Gumuz Constitution

The nationalities administration council which is the executive body of the administration of nationalities is composed of the chief administrator, deputy chief administrator and heads of executive departments in the administration.²¹⁴ It is made to be accountable to the regional executive council.²¹⁵ It is vested with the power to draw up the annual budget and submit it to the council of nationalities for approval,²¹⁶ formulate the economic and social development policies of the administration²¹⁷ and ensuring the overall observance of law and order within the precincts of the territory.²¹⁸

Concerning judicial powers, administration of nationalities will have high courts and first instance courts in which the appointment of judges is to be conferred by the regional council upon recommendations submitted to it by the council of nationalities²¹⁹.

The preceding paragraphs demonstrate that the administrations of nationalities are granted with considerable degree of constitutional autonomy. The extent of the right of self-determination to be exercised within the administration of nationalities ranges from cultural manifestations of one's heritage, linguistic protection of nationalities to the extent of exercising political self-determination via its own territory through its own administrative hierarchies.

The point worth considering at this junction is then, given the ability of the administration of nationalities to provide a room for adequate exercise of political rights of an ethnic group/s, is the administration of nationalities applicable to the non-indigenous groups? And are they at least constitutionally guaranteed this right?

Even though, one cannot speak for sure whether the applicability of the administration of nationalities is only limited to the indigenous nationalities of the region because it has not

²¹⁴ Article 78(3) of the Benishangul Gumuz Constitution

²¹⁵ Article 78(2) of the Benishangul Gumuz Constitution

²¹⁶ Article 79(1)(c) of the Benishangul Gumuz Constitution

²¹⁷ Article 79(1)(d) of the Benishangul Gumuz Constitution

²¹⁸ Article 79(1)(e) of the Benishangul Gumuz Constitution

²¹⁹ Article 75(3)(g) of the Benishangul Gumuz Constitution

yet been implemented,²²⁰ one can take a calculated guess by a careful construction of the various provision of the state's Constitution.

Article 2 clearly creates distinction by stating that the indigenous nationalities of the region are the Berta, Gumuz, Shinasha, Mao and Como. The wording of the same article in the Amharic version qualifies these indigenous groups as the owners of the regional state. It should also be recalled that it is the Amharic version of the Constitution that has the final legal authority.²²¹ Hence, at this point one may wonder by what is meant by “owners” of the regional state? Can an ownership right be as such granted to a regional state in conditions where the region is of multiethnic character? It is also surprising that, where it has been overstated that the core problem concerning regional states under the current ethnic federal structure is the assumption that the dominant ethnic group considers the state as its sole property, to the contrary the Benishangul Gumuz Constitution boldly gives constitutional support for such an undertaking.

Having said this about Article 2 of the Constitution, let us now look into its implications for the exercise of the right to self-determination of the non-indigenous minorities. Article 39 of the Benishangul Gumuz Constitution which seems to have been framed under the auspices of Article 39 of the federal Constitution unequivocally states under its heading as “rights of the indigenous nations, nationalities of Benishangul Gumuz”. Similarly, the Amharic version under it heading provides “the rights of the owners of the Benishangul Gumuz”. From this one can safely conclude that, the various self-determination rights stated under Article 39 of the regional state's Constitution are to extend only to the indigenous nationalities.

Therefore, the administration of nationalities which is a mechanism employed for the purpose of realizing the various aspects of the right to self-determination, to the dismay

²²⁰ However, special woreda Mao-Como has been established specifically for the small numbered indigenous communities of Mao and Como ethnic groups. The Pawe special woreda which was created specifically for the non-indigenous communities was recently abolished by the regional state council opining that it has no constitutional basis.

²²¹ Article 121 of the Benishangul Gumuz Constitution

of the non-indigenous groups is made to serve the rights of the indigenous nationalities only under the regional state's Constitution.

In this regard, the Constitution severely curtails the right of the non-indigenous minorities in the exercise of their right to self-determination and their aspirations of autonomous or semi autonomous territorial entity even in cases where they are found territorially concentrated. One is also tempted here to say that the regional state Constitution severely curtails the right of the non-indigenous groups which is stipulated under Article 39 of the federal Constitution. Because, there is no distinction made between indigenous and non-indigenous ethnic groups under the federal Constitution in the exercise and enjoyment of the right to self-determination. Hence, at this point it is possible to challenge the constitutionality of the regional state's Constitution with respect to the right to self-determination in accordance with the federal Constitution.

Practically speaking, some even contend that, it is not possible to realize the administration of nationalities in Benishangul.²²² Because, even the five indigenous nationalities, especially the Gumuz are found territorially scattered by which it is impossible to carve out a homogenous administration, this should also be seen in light of the non-indigenous population in which they are found everywhere within the regional state.²²³

4.3 The Right to Political Participation and Adequate Representation of the non-indigenous Minorities in Benishangul Gumuz

The concept of political participation, as part of minority rights, is premised on two major arguments: The first one is that, the right to political participation and the prevention of discrimination on minorities cannot be effectively ensured, unless the minority itself is actively partaking in the political decision making process, which govern the protection

²²² Interview with Ato Birhanu Ayehu, Legal advisor to the speaker of the House of Benishangul Gumuz, Assosa, December 28, 2009

²²³ Ibid

of its rights.²²⁴ Secondly, minorities run the risk of being excluded from the political system without special protective measures; especially in countries with mobilized ethnic nationalism majorities (and minorities) have been unlikely to vote for parties or candidates other than their own ethnic groups.²²⁵ Furthermore, a number of approaches to democracy run the risk of permanently excluding minorities. Most obviously, the British style ‘first past the post’ electoral system has the feature of excluding minorities from representation within an electoral district.²²⁶

The Ethiopian federal system’s attempt to create ethnically homogenous sub national units has been frustrated by the existence of regional minorities scattered and/or concentrated in every regional state. The regional state of Benishangul Gumuz, as has been demonstrated in the previous sections, is no exception to this impractical reality of creating ethnically homogenous units. Despite the multiethnic character of the region, the political representation of non-indigenous groups in the regional state council is appalling. For example, in 2001 elections no representative from the non-indigenous groups was elected for the regional council and national parliament.²²⁷ Despite the fact that, in Assosa town 67% of the inhabitants and in Assosa zone 43%, in Metekel zone 50% and in Kamashi zone 20% are from the non-indigenous groups, they have not been represented in zonal and regional government structures, regardless of their citizenship rights.²²⁸ By the year 2005, there were 99 representatives in the regional parliament. The three populous indigenous nationalities held the lion’s share of seats in the regional parliament: the Berta had 41 seats, the Gumuz 35 and the Shinasha 11, the Mao and Como each held two seats. The leftover seats were taken up by the non-indigenous groups, Amhara occupying 4 seats, Oromo’s 2, Agew 1, and the Tigrayan’s 1 seat only.²²⁹

²²⁴ Florian Bieber, *Balancing Political Participation and Minority Rights: The Experience of the former Yugoslavia*, available at www.netrouz.com/filedownload/florian/pdf. as accessed on December 28, 2008

²²⁵ Ibid

²²⁶ Ibid

²²⁷ Berhanu, *Divide and Rule*, 4

²²⁸ Ibid

²²⁹ Interview with Ato Seifedin Harun Sosa, Speaker of the House of the Benishangul Gumuz regional state, Assosa, December 28, 2009

The plight of the non-indigenous minorities in the Benishagul Gumuz is simply evident from the above numerical foundations. In addition, these non-indigenous groups are severely curtailed in the exercise of their democratic right to be elected in the regional legislative body, due to the electoral law of the country at the time, which stipulated that for an individual to be elected as a member of the regional state council he/she has to be proficient in one of the indigenous languages of the region.

The issue of political representation of the non-indigenous groups and the stipulation of the electoral laws created a bitter resentment amongst the non-indigenous groups in which they petitioned to the House of the Federation. They even asserted that they be repatriated to their former place of residence as most of them were made to settle in the region due to the Derg's policy of forced collectivization and resettlement program.²³⁰ To this issue we now turn.

4.3.1 The Demand for Adequate and Equitable Representation

The demand for adequate representation and the right to share political power by the non-indigenous minorities in the region has been a slow but a rising process since the restructuring of the country based on ethnicity as a whole after 1991. This increasing claim of the non-indigenous groups reached its peak when the electoral law of the country provided for the criterion of language as a fundamental pre-requisite for political candidature of an individual. The issue in brief involved a tension between the region's indigenous groups (Berta, Gumuz, Shinasha, Como and Mao) and that of the highlanders (Amhara, Oromo Agew and Tigray nationalities).²³¹

The point of contention at the time was a decision by the regional state and the national election board, that for a person to be a candidate for a national or regional election he/she should be able to speak at least one of the indigenous groups' languages of the

²³⁰ Getachew Assefa, *Federalism and Legal Pluralism in Ethiopia*, 12-14

²³¹ Assefa Fiseha, *Constitutional Adjudication in Ethiopia*, 1 *Mizan Law Review*, (June 2007), 23

region.²³² Particularly the Berta political party at the time insisted that in the Bambasi Woreda (district) of the Assosa zone opposition candidates of the non-indigenous groups should not be allowed to run for office for none of them are versed in the Berta language. The party then subsequently petitioned to the national electoral board that they be cancelled out from the election. The board gave its decision based on the direct application of Article 38 of the proclamation and banned those running for office as they cannot speak the local vernacular.²³³

Those groups affected by the decision petitioned to the House of Federation that the decision of the board violated their constitutional right to be elected which is granted to every citizen without any discrimination. They strictly claimed that the wordings of Article 38(1) (b) of the proclamation are contradictory to the stipulation under Article 38 of the federal Constitution, which grants every citizen the right to be elected without any discriminatory precondition attached to it. Hence, they demanded that since the criterion of language is contradictory with the provision of the Constitution, it be declared unconstitutional, null and void. This was the issue in which the house considered for decision. But, the following were also the reliefs sought by the non-indigenous groups.

1. They demanded that they be fairly and equitably represented in the regional and national administrative organ hierarchies. It is interesting also to note that the petitioners claimed to be recognized as distinct ethno national groups in the region along with the five indigenous groups. Accordingly, they asserted that their right to self-determination under Article 39 of the federal Constitution be respected.
2. They asserted that they be given a special administrative status in the region so that they will be able to exercise self governance or
3. Alternatively, they be repatriated to the regions or places where they can have their rights respected and be able to preserve and develop their culture and language;²³⁴

²³² This decision is premised on the argument that according to proclamation no 111/1995 Article 38(1) (b) one of the criteria for candidature is being versed with the vernacular of the region of intended candidature.

²³³ Getachew Assefa, *Federalism and Legal Pluralism in Ethiopia*, 12-14

²³⁴ Ibid

But the house only chose to consider the language requirement for constitutional interpretation and blatantly stated that “the house focuses on issues of electing and being elected as other demands are responded by the regional and other executive bodies.”²³⁵

In tackling the main issue, the house after collecting advisory opinion from the Council of constitutional Inquiry and professional recommendations formulated two issues for decision.²³⁶

1. Does proclamation 111/95 Article 38(1) (b) by taking language as a requirement for an individual to appear as a candidate contradict with Article 38(1)(a) of the federal Constitution or not?
2. Is the decision given by the electoral board constitutional or not?

The decision of the house was one which was differently formulated from the advisory opinion supplied to it by the Council of Constitutional Inquiry, which claimed that the proclamation’s Article 38(1)(b) was unconstitutional by a majority of 6 out of the 8 members. Disregarding this opinion, the house opined on the first issue that knowing the local (official) language with which the state council performs its duties is appropriate to use as an evaluation for election and declared Article 38(1) (b) of the proclamation as constitutional. However, on the second issue, that is, the decision of the electoral board’s interpretation of the proclamation to mean a candidate should be versed in one of the indigenous languages, particularly, the Berta language (one of the five indigenous languages spoken in the region) even though it is not the official language of the regional state, the HoF declared it to be unconstitutional and null and void.²³⁷

²³⁵ Decision of the House of Federation on ‘Constitutional Dispute Concerning the Right to Elect and being Elected in Benishangul Gumuz Regional state, 13 March 2003, Available www.hofethiopia.org/HOF/HOF-constitutional-interpetation.htm

²³⁶ Ibid

²³⁷ Ibid

4.3.2 Language as a Legitimate Requirement or a Barrier

After the decision given by the HoF, the electoral law of the country went under substantial amendments, the major one being proclamation 532/2007, which under its Article 45(1) (b) came out with a stipulation similar to the decision rendered by the house.²³⁸ The proclamation pursued on the idea that language should be used as a legitimate requirement after the blessing it received from the decision of the house. The formulation under this proclamation was to take the working language of the region or the local vernacular as an alternative requirement.²³⁹ The decision of the House of the Federation on the one hand and the electoral law on the other were understood in two differing ways.

4.3.2.1 For the Language Requirement

The argument in favor of the electoral law applauds the decision rendered by the house, as a decision which attempted to strike a balance between the concerns of the different ethnic groups.²⁴⁰ Assefa vehemently argues that saying simply that the language requirement is discriminatory and unconstitutional will be missing the fundamental virtue of not only the Ethiopian Constitution, which is apparently based on the free will of nationalities, but also the values of federalism, unity in diversity.²⁴¹

The other point worth considering here will be, simple desertion of the language requirement for candidature will inevitably impair the rights of indigenous groups whose access to political power, the use of their language and associated cultural rights had been curtailed for long. The very purpose in which the states of Harari, Gambella and Benishangul Gumuz have been created is for the purpose of ensuring the political

²³⁸ See, Proclamation 532/2007, Article 45(1)(b)

²³⁹ Ibid, Article 45(1)(b)

²⁴⁰ Assefa Fishea, *Constitutional Adjudication*, 28

²⁴¹ Id, 25

dominance of the indigenous groups.²⁴² This is clear from the intention of the constitutional drafters in which they recognized only nine states despite the existence of more than eighty ethnic groups. If legitimate mechanisms of empowering these groups are not realized then they will end up becoming subordinates and the whole purpose of national self-determination will not be served.

4.3.2.2 Against the Language Requirement

Those who strongly oppose the decision argue that it is a reversal of past injustice which meets fire with fire as it tries to correct past discrimination with present discrimination rather than up root discrimination in all of its forms.²⁴³ It is a move from one extreme to the other.²⁴⁴

Under the new electoral law, being versed with the working language of the region or the language of the place of intended candidature is put as an alternative requirement implying that a candidate for instance, in Benishangul Gumuz who is well versed with the Berta language only, can run for political office without knowing the working language of the region which is Amharic.²⁴⁵ This will then be missing the whole purpose of the proclamation. Because the very reason behind the decision of the HoF was, if a member within a state council is not able to communicate fluently with the other members then it will be very difficult for the council to conduct its normal transactions.²⁴⁶ But according to the proclamation, since, working language and local vernacular are put as an alternative, a candidate in Benishangul who is well versed in the

²⁴² Speech made by Dr. Gebreab , former Ministry of State at the Ministry of Federal Affairs at the 1st National Conference on Federalism, Conflict and Peace Building , Addis Ababa, May 5-7,2003 quoted in Assefa, *Constitutional Adjudication*, op.cit, 26

²⁴³ Takele Seboka, The Interplay of Equality Clause and Affirmative Action Measures under the Ethiopian Constitution: The Benishangul Gumuz Case and Beyond, in Girmachew Alemu and Sisay Alemahu(eds.) *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects*, Ethiopian Human Rights Law Series, Vol.2 (Dec.2008), 94

²⁴⁴ Ibid

²⁴⁵ It is interesting to notice here that if a person is to join the regional council without knowing its working language then what is the need for knowing the language of the region? Since acquaintance with the working language was one of the grounds in which the House of Federation considered in validating the language requirement of the proclamation and declaring unconstitutional the decision of the NEBE.

²⁴⁶ Decision of the HoF, op.cit

local vernacular only can enter into the state council without knowing the working language of the region which is Amharic.

The issue of regional minorities is another point at stake. Given the fact that none of the nine regional states are ethnically homogenous and minorities are already underprivileged in these regions, the addition of the language barrier will eventually lead to under representation or no representation at all of non-indigenous minorities in particular in their respective state councils.

The other strong argument against the language requirement is that it is one which opens a door for subjective discrimination.²⁴⁷ Since, the question of fluency in any language and the ability to use that language for different purposes requires factual determination in each case: who is to make that determination and on what basis of criterion? Are all candidates running for an elective office in an electoral district to be subjected to a similar test? And if so, who will be mandated to carry out the task of evaluating a candidate's proficiency? Is such a determination to be conducted by the ethnic identification of the would be candidate or is there any other objective standard of ascertaining any allegations that may arise against a would be candidate? In addition, does being versed, with the working language or the local vernacular includes one's ability to write only or to speak the language also? What about cases of mutually intelligible languages where people are able to communicate with each other, without one not being well versed with the language of the other?²⁴⁸

Looking specifically at the case of Benishangul, let us now critically analyze the implications of the decision and the electoral law on the non-indigenous minorities of the region. As mentioned earlier the working language of the region (the language in which the activities of the regional state council are to be conducted) is Amharic. As per proclamation 532/2007 Article 45(1) (b), a person will be eligible for candidature where

²⁴⁷ *Cf.* Advisory opinion given by Ato Kifle Wodajo to the House of Federation on the constitutionality of Article 38 (1) (b) of Proclamation 111/1995

²⁴⁸ *Ibid*

he is versed either in the working language of the regional state or alternatively the language of his/her area of intended candidature.

In the case of the first requirement, since the working language of the regional state is Amharic anyone who is versed with the Amharic language can run for political office. The alternative condition put secondly seems to have been ill framed and the wordings are basically flawed. What does the area of intended candidature mean? Is it to imply that if one is for example to run for political office in Oromia regional state, then the language of the area of the intended candidature is to be discerned from the language of the region or does it mean the language of the specific electoral district in which one is running for political office? If we are to take the first modality as a way in which the wording “area of intended candidature” is to be interpreted then the non-indigenous groups will not be the beneficiaries of the outcome. This is because; regional minorities in most scenarios have a language different from the working language of the region (except in regional states which have adopted Amharic as their working languages). At this point if one takes the Oromo nationality present in Benishangul, a candidate has to either speak Amharic or that is the end of it.

If we are to take the second modality as the mechanism of interpretation then one has to know for sure what the language of the specific electoral district is. This may be constructed from the fact that if there is the applicability of the “administration of nationalities” then the “area of intended candidature” could be the language adopted by the specific area of administration. But in the case of Benishangul Gumuz, administration of nationalities has not yet been implemented. Even if implemented, as demonstrated in the previous sections, it is very unlikely that it will extend to the non-indigenous groups. In this sense, non-indigenous minorities will not benefit from the outcome of the two interpretations.

Generally speaking, one can infer from the preceding arguments that the non-indigenous regional minorities (except the Amhara) which are not capable of speaking the Amharic language will not be eligible for electoral candidature. Submitting the issue again for

constitutional interpretation will be a futile undertaking because, a decision given by the house has the effect of being binding and serving as a precedent for similar cases.²⁴⁹ Hence, at this point the problem of these non-indigenous minorities quest for share of political power and adequate representation is something that will continue unless other mechanisms of political inclusion are not put into practice.

4.4 The Electoral System and the Protection of Regional Minorities

The protection of minority rights is best achieved and articulated through a combination of majority sensitivity and minority inclusion.²⁵⁰ The inclusion of minorities in representative bodies is a necessary, if not sufficient, condition of conflict prevention and longer-term conflict management. There is not a single case of peaceful and democratic conflict avoidance in which the minority community is excluded from legislative representation.²⁵¹

Election, which is by far the best (probably the only) way in which one assumes political office, if not managed appropriately taking into consideration the specific needs of the electorate, will lead to uneven distribution of powers and most importantly to the marginalization and relegation of minority groups. Ultimately, electoral systems are merely tools developed for organizing representative democracies. They are the mechanism used to select decision makers when societies have become too large for every citizen to be involved in each decision that affects the community.²⁵²

While there are some basic elements of participatory democracy present in all methods of electing leaders around the world, the details of electoral systems vary widely.²⁵³ The issue of adopting an electoral system largely depends upon the nature and character of the

²⁴⁹ See, proclamation No 251/2001, Federal Negarit Gazeta, 7th year, No 41, Addis Ababa 6th July 2001, Article 11

²⁵⁰ Andrew Reynolds, *Electoral Systems and the Protection and Participation of Minorities*, Minority Rights Group International (2006), 3

²⁵¹ Ibid

²⁵² Id,8

²⁵³ Ibid

specific society. What works well in a homogenous society may bring about a disastrous end in multiethnic societies.

With regard to the protection of minorities, the electoral system may be used with two aims. One is to insure the adequate parliamentary representation of a minority and the second is to increase the electoral influence of minority group independently from representation.²⁵⁴

Two main families of electoral systems generally dominate the world. These are plurality-majority systems and the proportional representation type system. While the first one is characterized by the winner takes all in which a relative majority is sufficient to be declared the winner, the second one gives primacy to a close relationship between the votes cast and seats won proportionally.²⁵⁵ Systems are generally defined and categorized with reference to representatives elected from each constituency district (district magnitude), the formula adopted (either plurality or proportionality of vote) and threshold of representation for parties or candidates (which can be determined by the law or by the number of seats).²⁵⁶

Election, which is by far the only democratic way of assuming power, if not properly versed with appropriate electoral system might lead to inequitable share of political power among the people. Taking the case of our country, Ethiopia has adopted the “First-past-the-post” electoral system which simply states that one who receives the majority of votes within the electoral district is the winner.²⁵⁷ In practice this means the one seat in each electoral district is won by the candidate who gets the majority of votes in the district. In a country where the states are organized on an ethnic basis; where none of these states are ethnically homogenous, the use of such an electoral system runs the risk that the one seat in each electoral district will be won by the candidate who represents the

²⁵⁴ J.A.Laponce, *The Protection of Minorities by the Electoral System*, The Western Political Quarterly, Vol.10, No. 2(June 1957),321

²⁵⁵ Andrew Reynolds, *Electoral Systems*,8

²⁵⁶ Ibid

²⁵⁷ Proclamation No 532/2007, Article 25

interest of the largest ethnic group in the district. This is particularly problematic for minorities that are to be found dispersed, which will eventually make them a minority in every electoral district.

Taking this as a simple background between the need for minority protection and choosing an appropriate electoral system to be adopted, in the following section I will discuss about the electoral system of Ethiopia and its implications for the protection of regional minorities in Benishangul.

4.5 Its implications for Benishangul

As has been described in the previous chapter, the four ethnic groups of Ethiopia (Amhara, Oromo, Tigrie and Somali) together form an overwhelming majority. In addition to the existence of these four populous ethnic groups, the country is also inhabited by numerous and diverse ethnic groups. Hence, adopting an electoral system which best suits this multiethnic character of the nation is mandatory. Since 1991; elections in Ethiopia have been based on a plurality system of votes, with single-seat constituencies each of them drawn on the basis of woreda administrative units.²⁵⁸

The Constitution has also adopted the same modality with respect to the House of Peoples representatives. The house is composed of representatives of the country. Accordingly, elections to the house are conducted by means of general and direct elections under the first past the post electoral system.²⁵⁹ In effect, this at the federal level implies that an ethnic group which constitutes a majority in a region will be entitled to send its representatives only, despite the presence of numerous minorities. For example, in the Amhara regional state the only representation will come from the Amhara ethnic group despite the existence of numerous regional minorities within it, because, the Amhara is the numerical majority within the region, unless otherwise, consideration is made in setting up electoral constituencies.

²⁵⁸ Tafesse and Aklilu, *post 1991 Elections*, 99

²⁵⁹ Article 54(2) of the FDRE Constitution

This will also be the case in the multiethnic region of Benishangul, in which the non-indigenous groups are relatively a bit smaller in number than that of the indigenous ones. Hence, under the plurality (first past the post) system where absolute majority is not necessary, single vote supremacy may even lead one to be declared the winner. Hence, a minority group will not have its own representation in the House of Peoples Representatives from its own place of residence. Luckily, if that minority ethnic group has a state outside its place of residence then it might get a representation via this line; otherwise ethnic groups which do not have a mother state and that can not constitute a majority in an electoral district will be outside the ambit of representation in the house.²⁶⁰

But, not only the problem arises out of the modality of the electoral system adopted, it is also due to the small bargaining power of the states in the formulation of the electoral laws of the country. The power to enact necessary laws concerning political parties and elections so as to give practical effect to the political rights provided in the Constitution is the duty of the federal government.²⁶¹ This will be effective through the legislative powers of the House of Peoples Representatives. This means, states are not entitled to formulate their own electoral system taking into consideration their population size, ethnic diversity and the long established communal relationship of their inhabitants. They are only expected to function within the emblem of an electoral law which is promulgated through the federal government. Since some of the regional states have a more diversified population than that of the others, adopting a country wide electoral system to function without inserting any mechanism by which these states are to deal with their diversified population is something which seriously affects the non-indigenous regional minorities of Benishangul Gumuz regional state. Let us now see the implications of the electoral law in a diversified population.

²⁶⁰ Though, they might secure a seat in the House of Peoples Representatives through minority nationality representation.

²⁶¹ Article 51(15) of the FDRE Constitution

Proclamation 532/2007 unequivocally states the electoral system in the following manner:

*A candidate who received more votes than other candidates within a constituency shall be declared the winner.*²⁶²

The plurality (first past the post) system in which the country has been implementing since the advent of the EPRDF in its various elections, as most commentators agree is contrary to the principles of pluralist multi party democracy.²⁶³

The winner takes all principle presents a significant problem in pluralistic societies, particularly where ethnic and cultural divisions have led to the formation of ethnic political parties and the division of the population along simple ethnic lines.²⁶⁴ In a multiethnic society, opting for plurality system favors the majority by way of determining election results on the basis of a relative majority and reduces the chance of smaller and minority groups to be elected. The system exaggerates the representation of the winning party but fails to reflect the various opinions of the voters in the elected assemblies. In other words, election results are decided on the bases of very few votes compared to the total votes cast.²⁶⁵ This is particularly problematic for minority groups, which can not constitute a majority in each and every electoral district.

In the first past the post electoral system, even a minimal majority is enough to gain a contested seat. The effect is that, proportional representation where smaller parties can get a voice without necessarily getting the highest number of votes in any of the electoral constituencies is avoided in fact.²⁶⁶ In this respect, most commentators pervasively argue that the first past the post electoral system is not the ideal type for Ethiopia where national consensus is lacking among the competing parties and ethno nationalist elites of the country.²⁶⁷ This also extends to elections conducted to the regional state councils,

²⁶² Proclamation No 532/2007, Article 25

²⁶³ Tafesse and Aklilu, *post 1991 Elections*, 100

²⁶⁴ *Id.*, 101

²⁶⁵ *Ibid*

²⁶⁶ Merera Gudina, *Competing Ethnic Nationalisms*, 133

²⁶⁷ *Ibid*

especially in regions like Benishangul where the region is composed of multiple ethnic groups.

Benishangul Gumuz is the best manifestation of the problem in this regard. First of all, the region is of a multiethnic character and there exists no ethnic group as a numerical majority. But speaking of numerical foundations, the indigenous groups and the non-indigenous groups taken together, the former constitute 57.46% of the region while the later constitute 42.54%. But, this high numerical presence of the non-indigenous groups has not been matched by appropriate representation in the regional state's council. This is partly attributable to the electoral system, where in most of the electoral constituencies the non-indigenous population constitutes a minority.²⁶⁸ Furthermore, Benishangul is administratively divided by three zones and one special Woredas but in most of the zones and the two special Woredas the indigenous nationalities taken together constitute a slight numerical superiority relegating the non-indigenous to constitute a minority status.²⁶⁹

But the real problem, especially, with respect to representation at the regional council is the way electoral constituencies are set up for representation at the council. There are 99 seats in the regional council and representation to these seats is based on the number of woredas in the region not on the population size. This means a woreda is taken as an electoral constituency and the regions ruling party simply decides the number of representatives from each woreda. There is no law which sets a criterion as to how the number of representatives is to be decided from each woreda but the political practice only.²⁷⁰ Formerly, what has been done was the quota system; this only takes into account the needs of the indigenous nationalities, where the number of representatives from each woreda is simply decided to cater their proportionate representation in the region's council.²⁷¹ What is being done for the minimal representation of the non-indigenous communities is that, the ruling party of the region Benishangul Gumuz Peoples

²⁶⁸ Interview with Ato Daniel Seifu, Elections expert GIS unit at the National Electoral Board of Ethiopia, Addis Ababa, December 23, 2009

²⁶⁹ Ibid

²⁷⁰ Interview with Ato Birhanu Ayehu, Legal advisor to the speaker of the House of Benishangul Gumuz, Assosa, December 28, 2009

²⁷¹ Interview with Ato Seifedin Harun Sosa, Speaker of the House of the Benishangul Gumuz regional state, Assosa, December 28, 2009

Democratic Party (BGPDP) simply grants them 1 seat in areas where they are found very much territorially concentrated.²⁷² When elections are conducted, for example, if it is in a woreda where Oromos are found territorially concentrated the regions ruling party simply gives the name of an Oromo representative along with its party members in the name of the BGPDP to the NEBE, so that he/she can be eligible for candidature.²⁷³

The number of representatives from each woreda is therefore decided without any pre-established criterion but rather by the simple political interest of the indigenous nationalities. This shows as that, the way non-indigenous minorities are entitled to compete in the election is not basically as a right by itself but by the political will of the ruling party of the region.

In addition, since the non-indigenous groups are minorities in most of the electoral constituencies, they cannot acquire a majority vote so that they can win a contested seat. Besides, the non-indigenous minorities have not yet secured a political party which truly addresses their problems both from the government wing and the opposition as well. Especially, from the government's point of view, political organizations like the OPDO, ANDM, TPLF and SPDM are not politically active in the region as they are in their respective regions. This is mainly attributable to the political context that the EPRDF has with its affiliate BGPDP. During my interview with the different EPRDF representatives within the region, they all responded that, the respective parties do not have the right to demand political power and to compete in elections with the regions ruling party, rather they are mandated only to work mainly on recruiting members so that their members will give their support to the ruling party of the region.²⁷⁴

²⁷² Ibid

²⁷³ Interview with Ato Asfaw Mamo, Assosa Zone and Mao Como special woreda election coordinator, Assosa, December 28, 2009

²⁷⁴ Interview with Ato Amare Mekuria, ANDM's coordinator and office head in the Benishangul region, Assosa, December 28, 2009, Interview with Ato Shimeles Tefera, OPDO's Party Branch head in the Benishangul region, Assosa, December 28, 2009, Interview with Ato Woldegerima Gebresellassie, TPLF's coordinator and office head in the Benishangul region, Assosa, December 28, 2009, Interview with Ato Zewdu Zembalo, SPDM's coordinator and office head in the Benishangul region and representative of the president office, Assosa, December 28, 2009

What is more, the requirement of language proficiency by the electoral law seriously hampers the non-indigenous minorities to compete for political office. If one sees the issue of the non-indigenous groups (except for the Amhara) they are required, to either know Amharic (which is the working language of the region) or the language of indigenous nationalities (which is the language of the place of intended candidature).

Therefore, the non-indigenous groups are faced with a series of problems both from the Constitution of the regional state and the political context of the region. Both ways have not been favorable to the exercise of the political rights of the non-indigenous minorities, especially, to their quest of adequate and equitable share of political power within the region.

CHAPTER 5

5. Schemes appropriate for the protection of the non-indigenous regional minorities in Benishangul: The way out

As has been discussed in the previous chapters, the minority status of the non-indigenous groups in Benishangul emanates from two fundamental elements. These are: first the non-indigenous groups are politically disempowered and secondly, they are numerically inferior in their population size in contrast to the indigenous nationalities of the region.

The plight of these non-indigenous minorities mainly revolves around the lack of adequate political representation in the regional state's council, as there are no adequate representatives of the concerned groups representing the interests of the same. Hence, if one is to ensure a long lasting peace in the regional state, balancing the political rights of the non-indigenous communities with that of the indigenous one's is a must.

In this regard, this chapter addresses the specific issues and problems articulated in the previous chapters by formulating solutions to the problems. In doing so, it analyzes the Constitution of the FDRE and as well looks into international Human Right Standards, for a better protection of the rights of these non-indigenous regional minorities.

5.1 Constitutional Protection of Ethnic Diversity of Regional States under the FDRE Constitution

In articulating the problems of the non-indigenous minorities at a constitutional level, the first one to be addressed is the inadequacy of the Benishangul regional state's Constitution in accommodating its diversified population.²⁷⁵ In this respect, it has been discussed in the previous chapter that given the multiethnic character of the region, the various self-determination rights under Article 39 of the regional state's Constitution have been made to extend only to the indigenous nationalities of the region. This may

²⁷⁵ See, supra text chapter 4 section 4.1 and 4.2

have its own justifications, especially, with respect to protecting the rights of the long forgotten and historically discriminated indigenous peoples. But, with regard to the rights of the non-indigenous groups, it is one which severely curtails the exercise of their political rights.

In discussing constitutional mechanisms employed by the FDRE Constitution in protecting the rights of minorities at the regional level, two mechanisms are worth mentioning. The first mechanism emanates from Article 39 of the FDRE Constitution. In this regard, sub article 3 of the same provision provides protection for ethnic groups (nations, Nationalities and peoples) irrespective of a pre-requisite of territory. Article 39 (3) states that:

*Every nation, nationality and people in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.*²⁷⁶

This provision is particularly useful to ethnic group/s found in regional states other than their own mother state or ethnic group/s which do not even have a mother state. By the wordings of the same provision they have the right to a full measure of self government in the territory they inhabit outside the frame work of their own regions. They also have the constitutional right to adequate and equitable representation in the state government in which they are currently residing. This is clearly and explicitly stated in the language of Article 39(3) of the FDRE Constitution, which does not require ethnic groups to be present in their own regional states only, for the exercise of this right. It also extends to ethnic groups which do not have a state of their own but where they are found inhabiting a given territory. This constitutional right may be implemented and exercised by the different regional minorities within a given state, either by giving them special zonal or woreda administrations or by the establishment of nationality administrations.

²⁷⁶ Article 39(3) of the FDRE Constitution

Therefore, it follows that the different non-indigenous minorities in Beinshangul have a constitutional right for a full measure of self government and as well have a constitutional right for an adequate and equitable representation which is relevant to their population size in the regional state's council.

At this juncture, one is faced with the dilemma that; what is then the status of Article 39 of the Benishangul Constitution which curtails the rights of the non-indigenous minorities to self government otherwise provided in Article 39 of the FDRE Constitution?

Even though, states are granted the power to enact their Constitutions, they should enact the same in a manner consistent with the purpose and spirit of the FDRE Constitution. In doing so, they should take the FDRE Constitution as a minimum threshold for providing a better protection to their citizens.²⁷⁷ But if they are going to fall below this minimum standard, then, by virtue of Article 9(1) of the FDRE Constitution, since they are contradicting it, their stipulations will yield no effect.

Therefore, Article 39 of the Benishangul Constitution which limits the rights of the non-indigenous minorities to internal self-determination is inconsistent with the federal Constitution's Article 39. And, since, it is inconsistent it will be of no effect with respect to the rights of the non-indigenous minorities.

The second mechanism originates from Article 47 sub articles 2 and 3 of the FDRE Constitution. This article grants all nations, nationalities and peoples that do not have their own regions yet, the right to establish the same. Hence, an ethnic group (which may be a minority within the region or not) that is aggrieved by the situations of the regional state has the right at any time to establish its own state. But, this provision will not be as such helpful in the Benishangul scenario, because, the relatively populous Amhara, Oromo and Tigrie ethnic groups already have their own regional states, while the other

²⁷⁷ See, Article 52 (2) (b) of the FDRE Constitution See also, Getachew Assefa, *Protection of Fundamental Rights and Freedoms in the Ethiopian Federalism*, paper presented at the 1st national conference on federalism, conflict and peace building, may 5-7, 2003, 14

non-indigenous minorities in the region are too small numerically to demand the right of statehood.

An additional mechanism by which an ethnic group may ascertain its rights in cases of infringement of its political rights provided under the FDRE Constitution is seeking a remedy through the HoF. Even though, the demand of the non-indigenous communities, that they be regarded as distinct ethno national identities of the Benishangul Gumuz regional state, has been rejected by the HoF, the non-indigenous communities as outlined in the previous chapter have not yet acquired a remedy from the regional state. Therefore, since, the HoF has a constitutional mandate to decide on issues relating to the rights of nations, nationalities and peoples to self-determination and finding amicable solutions to disputes that may arise between the different ethnic groups, I would like to stress here that the house should be able to address the demands of the non-indigenous communities rather than escaping the issue by saying that it is something to be addressed by the regional state.

Therefore, irrespective of the fact that the response is in favor of the non-indigenous minorities or not, unless the house explicitly deals with the problem, it is my firm conviction that the issue could again be submitted for its consideration.

Generally speaking, the FDRE Constitution has the above stated mechanisms in addressing the rights of the different regional minorities within a given regional state. But, strictly speaking the Constitution does not in any way try to explicitly address the issue of regional minorities from the problems that may arise as a result of majority-minority tensions within the newly formed nine regional states.

Putting the above arguments in mind, as argued by many commentators, problems under the Ethiopian context should not only be seen at a constitutional level only but remedies should be sought at a broad political and policy level also.²⁷⁸ Because, the formation of the nine regional states under the FDRE Constitution does not in any way signify that the

²⁷⁸ See generally, Assefa Fisseha, *Theory Versus Practice*

regions are the sole property of the dominant ethnic group/s and that the dominant ethnic group/s, in whatsoever manner, can exercise their rights without due recognition of their ethnic minorities. But, the problem here is that, the political practice is so different from the constitutional stipulations.²⁷⁹

Especially, the politically empowered ethnic group/s within a given regional state, duly exclude regional minorities within their emblem, depriving them of their adequate right to be represented in the state's regional council. This also extends to denying them of their right of establishing institutions by which they can exercise self rule. Therefore, remedies taking into consideration the political context of a given regional state are mandatory, by which solutions should be sought at a broad political and policy levels.

5.2 A Human Rights Approach to the Problem

The FDRE Constitution provides for a list of Human Right protection schemes, in which group specific, as well as individual concerns could be addressed. The fundamental rights and freedoms enshrined in the Constitution are applicable to all Ethiopians irrespective of the territory they occupy and the particular ethnic group they belong to.

Hence, the non-indigenous regional minorities of the Benishangul region can resort to the universally protected Human Rights under the federal Constitution, in times, where they are discriminated and relegated by the regionally empowered dominant group. This also extends to the regional state's Constitution, which provides for a list of Human Rights protection schemes which have been framed under the auspices of the Federal Constitution.

This approach can basically be realized by employing two mechanisms. The first one is by invoking the list of fundamental Human Rights under the FDRE Constitution by the members of the specific minority groups (individual rights) in question. While, the

²⁷⁹ See, supra text chapter 4 section 4.4.1

second one is, by resorting to the ethnic groups rights (group specific rights) stipulated under the same Constitution.

In the first case, if an individual who is a member of the non-indigenous minorities, finds himself/herself being discriminated by the regionally empowered dominant group, he/she can resort to Article 25 of the FDRE Constitution, where it is provided that, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”²⁸⁰ The protection in the same manner also extends to other specific individual Human Right concerns of the members of non-indigenous minorities.

In the second case, where group specific rights are concerned, the FDRE Constitution has set a standard in which such rights are given constitutional protection. For instance, Article 39(2) of the FDRE Constitution states:

*Every nation, nationality and people in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.*²⁸¹

One can see here that, for the exercise of the right to cultural self-determination stipulated in the above provision, ethnic groups need not be present in a specific regional state (their own regions only). This is basically because, as it can clearly be discerned from the provision, territorial presence is not at all necessary for the exercise of such a right. The same holds true for sub article 3 of the same provision, which provides for the political rights of nations, nationalities and peoples (ethnic groups) without any territorial prerequisite.

Therefore, irrespective of the place of residence, ethnic groups have the constitutional right to exercise their cultural, linguistic and political rights. I therefore argue here that,

²⁸⁰ Article 25 of the FDRE Constitution

²⁸¹ Article 39(2) of the FDRE Constitution

the Benishangul regional Constitution which curtails the political, linguistic and cultural rights under its Article 39 is not compatible with the federal Constitution. As argued earlier in this research, this provision of the Benishangul Constitution is not reconcilable with its federal counterpart. Hence, it is as well with no effect regarding the rights of the non-indigenous minorities of the region.

Having said this much about the constitutional protection of individual as well as group specific rights, the questions that may subsequently arise are, what are the modality of their enforcement? How can a member of a minority group or an ethnic group/s as a whole claim that their rights be respected in cases of infringement?

The first mechanism will be to seek judicial remedy to the problem. Since, courts are constitutionally mandated with the responsibility and duty to respect and enforce fundamental rights and freedoms of the Constitution²⁸² and since everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by a court of law or any other competent body with judicial power,²⁸³ an individual aggrieved by the respective regional authorities violation of his/her Human Rights may sue and seek redress in a court of law.

But, in cases where the issue involves the demand of an ethnic group's to self-determination or a question for adequate and equitable representation are the concerns, as these may need constitutional interpretation and since courts do not have the power to assess the constitutionality of acts by different government bodies and are not as well mandated to interpret the Constitution, they may not be the appropriate places to seek redress.

Therefore, in cases where there exists an infringement to the group specific rights like; linguistic, cultural and political rights of the non-indigenous minorities, the aggrieved party can directly submit its claims to the HoF, because there is no protection of such

²⁸² Article 13(1) of the FDRE Constitution; See also Article 14(1) of the Benishangul Gumuz Constitution

²⁸³ Article 37(1) of the FDRE Constitution

rights provided under the regional state's Constitution. But, in cases where there exists constitutional protection, which is given to the non-indigenous minorities under the region's Constitution, they can also submit their cases for the region's Constitutional Interpretation Commission. However, as there are no representatives of the non-indigenous groups in the commission, the outcome for a positive response under the current political practice may become a remote reality.²⁸⁴

In this regard, international instruments as well provide for mechanisms in protecting minorities. Understood in light of the problems outlined, the ICCPR Article 27 has some solutions to the problem. This is basically because; the provision in the covenant is the first internationally accepted and binding rule for the protection of minorities. It provides that; in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.²⁸⁵ Therefore, since Ethiopia has signed and ratified the ICCPR, by virtue of Article 9(4) of the FDRE Constitution it is an integral part of the law of the land. Hence, minorities in Ethiopia are also beneficiaries to the protection offered by Article 27 of the ICCPR.

At this juncture, a question may arise as to whether the minority protection offered by Article 27 of the ICCPR is to extend to minorities articulated in light of the whole population of the country or to minorities that exist at the regional level also?²⁸⁶ Even though, there is no clear and binding answer to the question, at least in the international level, the step taken at the European level is best suited to the situation of regional minorities in Ethiopia. At the European level, the parliamentary assembly of the council of Europe has proposed a definition in recommendation 1201.²⁸⁷ According to the

²⁸⁴ See supra text chapter 4 section 4.1 for a discussion on the Constitutional Interpretation Commission of Benishangul Gumuz region.

²⁸⁵ Article 27 of the ICCPR

²⁸⁶ For more on the discussion of determination of minority status, See, Aberra Dagafa, *National minorities*, 22-31

²⁸⁷ Id, Citing, Parliamentary Assembly, Council of Europe, Recommendation 1201(1993), on an additional Protocol on the Rights of National Minorities to the European Convention on Human Rights, 1993

recommendations definition of minority, the concept of minority has also been understood to include minorities at the regional level within a given country.²⁸⁸

Hence, regional minorities found in most of the regional states of Ethiopia should be made beneficiaries by the protection of minorities provided in Article 27 of the ICCPR by understanding the term minorities within the covenant's provision to extend to minorities at the regional level also. This should be implemented, by taking the parliamentary assembly of the council of Europe as a standard analytical framework.

5.3 Protection by an Appropriate Electoral System

The electoral system of Ethiopia, as has been shown in the discussion under chapter four, has presented minorities with a lot of problems, especially in light of their ambition to an equitable and adequate share of political power in the respective federal and state councils.

The winner takes all (first past the post) system has been a problematic approach for minorities who cannot get the majority of votes in an electoral constituency. This is basically because; a contested seat will simply be won by a candidate having a simple majority of vote. This in effect means, despite the number of votes cast, the candidate who will be named the winner might not be the one who represents the interest of the majority of the given population. For a simple demonstration of this fact, let us take A, B, C and D as candidates contesting for an electoral seat, if A secures 20%, B 30%, C 15% and D 35% of the votes within the given constituency, D is the one to be declared the winner under the simple majority system, even though the combined votes of A, B and C which is 65% by far exceeds the number of votes secured by D.

Generally speaking, the British style first past the post electoral system is not the best approach to address the political rights of the different ethnic groups in multiethnic

²⁸⁸ Aberra Dagafa, *National minorities*, 22-31

societies like Ethiopia.²⁸⁹ This will also apply to the multiethnic regional states within the federation. Even though, none of the Ethiopian federated states can be described as homogenous ones; some of them are more diverse in their ethnic compositions than the others. Especially, the Benishangul Gumuz regional state is one that can be described as a multiethnic region within a multiethnic country.

Considering the specific case of Benishangul, the region has 7 regular and 2 special constituencies (Metekel, Kemashi, Sherkole, Daleti, Bambasi, Assosa megele, Assosa Hoha and Hobesha, Shinasha special and Mao Como special) for representation in the HPR. But in none of the nine electoral constituencies the non-indigenous communities constitute a numerical majority in contrast to the combined presence of the indigenous nationalities.²⁹⁰ Within an electoral constituency, either an indigenous nationality constitutes a numerical majority or a combined presence of two indigenous nationalities constitutes a numerical majority. This can also be deduced from the fact that, for example in Assosa zone the Berta constitutes a majority, in the Kamashi zone the Gumuz constitute the numerical majority and in the Metekel zone the combined number of the Gumuz and the Shinasha constitute the numerical majority.²⁹¹

The three zones of the region (Assosa, Metekel and Kamashi) are the ones divided into 7 regular and 2 special constituencies for representation to the house of people's representative. The way these electoral constituencies have been set up did not affect the indigenous people's numerical majority found at the zonal level. This makes the indigenous nationalities to continue being the numerically dominant groups within most of the electoral constituencies.²⁹² Since, members to the HPR are elected in accordance with the plurality of the votes cast in each electoral district; the non-indigenous groups

²⁸⁹ See supra text chapter 4 section 4.4

²⁹⁰ Interview with Ato Daniel Seifu, Elections expert GIS unit at the National Electoral Board of Ethiopia, Addis Ababa, December 23, 2009

²⁹¹ The 1994 Population and Housing Census of Ethiopia: Results for Benishangul Gumuz region, Central Statistical Authority (1996). However, the recently declared statistical report does not contain numerical values of ethnic groups at the zonal and woreda levels.

²⁹² Interview with Ato Daniel Seifu, Elections expert GIS unit at the National Electoral Board of Ethiopia, Addis Ababa, December 23, 2009

will not have a representative in the house from their place of residence. They will only be entitled to a representation from their mother states if they have one.

What is more, is the fact that, the electoral constituencies have not been subject to change as per the new electoral law of the country; the functioning constituencies are the one's already set up taking into consideration the 100,000 population.²⁹³ The new electoral law, which stipulates that electoral constituencies shall be established taking into consideration population size of the country has not been pragmatic yet. Therefore, no matter the variation that occurred within the formerly setup electoral constituencies, this has simply been neglected.

Hence, the new electoral constituencies should be established based on the new electoral law of the country, and when they are done so, it should take into consideration the high numerical presence of the non-indigenous communities (i.e. they should be not always be made minorities in each and every electoral district) which in effect means redrawing the map of the electoral districts to serve the purpose of the non-indigenous communities as well. This means when electoral districts are drawn up, especially in areas where the non-indigenous communities are found territorially concentrated, constituencies should be formulated in a manner that they will constitute numerical majority. This will particularly address the needs the non-indigenous communities in the first past the post electoral system since they will be made to constitute a numerical majority.

Furthermore, the problem with setting up electoral districts shows its implications when one sees the representation of the non-indigenous communities at the regional council. Even though it is stipulated in the Benishangul Constitution, that the number of members of the regional state council shall be on the basis of the size of the population, this has not been the fact in setting up electoral constituencies for representation at the regional level.²⁹⁴ Because, they are not set up by taking the population size of a given population,

²⁹³ Interview with Ato Daniel Seifu, Elections expert GIS unit at the National Electoral Board of Ethiopia, Addis Ababa, December 23, 2009

²⁹⁴ Interview with Ato Seifedin Harun Sosa, Speaker of the House of the Benishangul Gumuz regional state, Assosa, December 28, 2009

rather they are established by taking the woreda as an electoral constituency and deciding the number of representatives from such a constituency.²⁹⁵

This means, electoral constituencies are set up taking into consideration the number of woredas in the region and deciding the number of representatives from each woreda. This approach does not take the population size of the region as a basis, which will in effect be particularly disadvantageous for the non-indigenous communities, because woredas are established taking into consideration the rights of the indigenous nationalities only, which again makes the non-indigenous groups numerical minorities in most of the electoral districts established for the purpose of representation at the regional council level. Since at the regional level also winning a contested seat is only through attaining a simple majority of votes,²⁹⁶ the non-indigenous minorities will not be able to secure a seat proportional to their numerical presence within the region.

Having said this much about the inadequacy and inappropriateness of the electoral system for the non-indigenous communities, let us now look into alternative options in which such inadequacy could be counterbalanced. Taking into consideration the country's long history of competing ethnic nationalisms and lack of consensus, the best option is to adopt the proportional representation system at the federal as well as at regional level of government structure. This is because, in the proportional system of representation, a contested seat will not simply be won by a simple majority vote, but rather, it will be distributed among candidates, proportionately; in accordance with the percentage of votes they have secured.

This can be achieved by one of the following two mechanisms. The first one is by replacement of the FDRE Constitution's stipulation of first past the post electoral system by the proportional representation system. But this may be a very remote ambition, because, since the adoption of the FDRE Constitution, not a single provision has been amended or struck out. The other option is amendment to the electoral law of the country,

²⁹⁵ Ibid

²⁹⁶ Article 48 (2) of the Benishangul Gumuz Constitution

especially, on the part where the electoral system is stipulated. This could even be done without the whole rejection of the plurality system. The former system can be used to elections conducted at the federal level i.e. to the HPR while in the case of the later; states will be allowed to devise their own electoral systems in accordance with their own specific needs. Particularly, in regional states where there exists a huge amount of ethnic diversity, it could be stipulated that for the purpose of conducting elections to the regional state council, the proportional representation mechanism could be used. This will enable the non-indigenous minorities to secure a seat in the regional state's council proportionate to their population size without necessitating them to constitute a numerical majority in each and every electoral constituency.

Therefore, the plurality system in general should be replaced by the proportionality system. But in cases where it is not possible to realize such an undertaking, both could be made to work complementarily. This can basically be achieved by granting states to devise their own electoral systems as per their own needs.

Apart from the above mechanism, an alternative for equitable and adequate political representation for the non-indigenous minorities is that stipulated under Article 45(3) of the Benishangul Constitution, which states:

*Representation of other peoples of the region
shall be given special consideration; particulars
shall be determined by law.*²⁹⁷

This is an important clause for the protection of the political rights of the non-indigenous communities. But the problem is, particulars of the provision of the Constitution have not yet been determined by law. This may be attributable to many factors, but, even if they do come out, since they are to be promulgated by the regional state's council and the fact that there are no adequate numbers of non-indigenous representatives to make a serious bargain concerning their rights; the law to be promulgated may not as such be an

²⁹⁷ Article 45 (3) of the Benishangul Gumuz Constitution

impressive one. But, in one way or another, determining the particulars of the provision of the state's Constitution is something that should be realized as soon as possible.

5.4 The Applicability of Non-territorial Autonomy

The Ethiopian federal system of accommodating its ethnic diversity has mainly focused on the granting of territorial administration by which ethnic group/s exercise autonomous or semi autonomous existence.²⁹⁸ Basically, this has been put into action by the creation of the nine regional states. Although, this territorial approach of addressing the desires of the different ethnic groups, effectively managed the quest of the same, in cases where there exists an overlap between ethnic groups and territorial entity, it cannot overall be said that it has dealt with all the problems.²⁹⁹ This is mainly due to the fact that, especially at the regional level, regional minorities are found scattered outside their own mother states. This has made the regional states to be ethnically so diverse, that an overlap between ethnic identity and territorial presence has been difficult to achieve. In addition, since the purpose of forming the regional states under the Ethiopian federation is to empower ethnic group/s within the territory of the states so that they can exercise some degree of autonomy, the presence of regional minorities in most of the regional states has made it difficult to reconcile the rights of these groups. Mainly, this has been attributable to the political practice, rather than being of a constitutional stipulation only, because, in states where regional minorities are present (in which some might have their own mother states and in which some might not) the regionally empowered and dominant ethnic group, which at the same time is the regions ruling party, has not given due attention to them not only as a matter of constitutional guarantee but also as a matter of political practice. This is mainly due to the exclusionary politics that a regionally empowered ethnic group shows towards its regional minorities.

²⁹⁸ Christophe Vander Beken, *Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the territorial approach* in Tsegaye Regassa (ed.) *Issues of Federalism in Ethiopia: Towards an Inventory*, Ethiopian constitutional law Series, Vol.2 (May, 2009), 226

²⁹⁹ See generally, *Ibid*

Therefore, problems of political practice as well as the inability of the territorial approach to address the specific concerns of regional minorities warrant other mechanisms to be devised, so that, the specific problems of these minorities could be considered. Hence, as some scholars argue, the territorial approach has not offered an all round comprehensive solution to minority issues in Ethiopia and argue that it be supplemented by the non-territorial approach.³⁰⁰

The proposal of non-territorial autonomy implies, all nations' nationalities and peoples of Ethiopia have the right to establish legislative and executive councils that are not linked to a particular territory,³⁰¹ which means autonomy is not granted to a specific territorial administration but to the ethnic groups as such.³⁰² The authority of institutions to be established by the non-territorial approach will be limited to the members of the concerned ethnic groups, but will extend to all members of the group, regardless of where they live on Ethiopian territory.³⁰³

The non-territorial institution that is to be established will be mandated with issues of ethnic identity protection of the concerned ethnic groups, which do not necessarily require territorial entities because of their very nature. So, this institution without affecting the territorial rights of an ethnic group (the indigenous nationalities in case of Benishangul) will be responsible to problems that may arise to ethnic groups who are minorities (the non-indigenous communities) who are outside of their own mother states and to those which do not even have mother states.

There may be two mechanisms, in which, under the Ethiopian frame-work the non-territorial approach could be made of use, along with the territorial approach. One modality is that it could be realized by providing for a constitutional stipulation of a non-territorial approach within the FDRE Constitution, thereby making the territorial and the non-territorial approach to work side by side complementarily.

³⁰⁰ Christophe Vander Beken, *Federalism at the regional level*, 17

³⁰¹ *Id.*, 18

³⁰² *Ibid*

³⁰³ *Ibid*

The other mechanism is making the non-territorial approach to be stipulated by the Benishangul state Constitution, taking into consideration its ethno-linguistic diversity. This institution may even be stipulated in the regional state's Constitution, in instances where, such institution has not been given recognition in the FDRE Constitution. This is because; the federal Constitution is to work only as a minimum standard by which the regional states are to give protection in the administration of their citizens. If states stipulate within their respective Constitutions for a better protection for their citizens, then there is always a room for a better protection.

Therefore, either the federal Constitution or the respective state Constitution could grant a right to non-territorial autonomy, to all ethnic groups of Ethiopia in the case of the former and to its constituent ethnic groups only in the case of the later. This in the Benishangul state of affairs would mean that the non-indigenous groups will receive protection from the non-territorial institutions to be established concerning identity related issues irrespective of territory.

To this end, the Belgian experience provides for an appropriate mechanism to implement taking into consideration the needs of a given regional state. In the Belgian Constitution, it is stated that 'Belgium is a Federal State made up of communities and regions'.³⁰⁴ There are three communities: The French Community, the Flemish Community and the German Community.³⁰⁵ And also the three regions: The Walloon region, the Flemish region and the Brussels region.³⁰⁶ While the regions are setup based on territory the communities have their base irrespective of territory. The three communities are, especially, vested with extensive powers from establishing a parliament to the concerned community to the point of exercising various linguistic, cultural and political rights.³⁰⁷

Therefore, taking into consideration the fact that many ethnic groups live outside of their

³⁰⁴ Article 1 of the English version of the Belgian Constitution, available at, www.servat.unibe.ch/icl/law as accessed on December 23, 2009

³⁰⁵ Id, Article 2

³⁰⁶ Id, Article 3

³⁰⁷ Id, Articles 121-133

mother states, territorially scattered in some places and concentrated in other scenarios, and some even might not have a state of their own states, supplementing the territorial with the non-territorial approach is indispensable.

In the Benishangul scenario, the non-indigenous communities are found territorially scattered and as well concentrated in some instances. Therefore in cases where they are found territorially scattered (the Amharas and the Oromos are a case in point here) their rights could best be realized by supplementing the already existing system with the non-territorial approach as outlined above.

5.5 Political Party Mobilization within the Region

One of the problems for the non-indigenous minorities in Benishangul, as has been discussed is the lack of a political party specifically addressing their quest for proportional political representation.³⁰⁸ Even though, four of EPRDF's member parties: the Amhara National Democratic Movement (ANDM), Oromo People Democratic Organization (OPDO), the Tigray Peoples Liberation Front (TPLF), and the Southern Peoples Democratic Movement (SPDM) have their respective branch offices in the region, they have not still addressed the problems of the non-indigenous communities in light of their quest of adequate and equitable share of political power.

Representatives of the respective ethnic parties informed me that, even though they are aware of the fact that the non-indigenous community is severely curtailed in the exercise of its political rights, their very purpose within the regional state is not to address this problem and bargain for political power.³⁰⁹ Rather, their presence mainly focuses on

³⁰⁸ See supra text chapter 4 section 4.4.1

³⁰⁹ Interview with Ato Amare Mekuria, ANDM's coordinator and office head in the Benishangul region, Assosa, December 28, 2009, Interview with Ato Shimeles Tefera, OPDO's Party Branch head in the Benishangul region, Assosa, December 28, 2009, Interview with Ato Woldegerima Gebresellassie, TPLF's coordinator and office head in the Benishangul region, Assosa, December 28, 2009, Interview with Ato Zewdu Zembalo, SPDM's coordinator and office head in the Benishangul region and representative of the president office, Assosa, December 28, 2009

recruiting members for their respective parties, finding amicable solutions by which ethnic conflicts are to be resolved and awareness creating programs only.³¹⁰

This is mainly attributable to the fact that the region's ruling party is Benishagnul Gumuz people's Democratic Party (BGPDP)³¹¹ is the one entitled to rule the region, because it is the party representing the owners (indigenous nationalities) of the regional state. And, since, BGPDP is an affiliate of the EPRDF; it will be against party politics for the other EPRDF members of OPDO, ANDM, TPLF and SPDM to battle for political power within the region.³¹² At this point, one may wonder how has then the Amhara able to secure 4 seats, the Oromo 2 seats, the Agew and Kembata 1 seat respectively. This is basically accomplished by the fact that, in areas where the non indigenous communities are found in huge numbers, the BGPDP simply grants them one seat and will eventually send the name of that 1 member to the NEBE as its own candidate to compete within that specific woreda.³¹³ This cannot basically be seen as the non-indigenous communities exercising their political rights as a right by itself, but rather, as something being granted to them by the goodwill of the ruling party within the region.

This mainly shows us that the EPRDF has not and is not going to address the political quest of the non-indigenous communities as a matter of political practice. When we see the issue in light of other political organizations operating in the region for this purpose, I have learned during my interview with Ato Asfaw that, the Coalition for Unity and Democracy (CUD) was very active during the 2005 elections. It even managed to win a seat in the HPR from the Bambasi electoral district and also won some 10 seats within the regional state council, though later on they did not assume their seats.³¹⁴ But in the upcoming election, to be conducted in 2010, only the All Ethiopian Unity Party (AEUP)

³¹⁰ Ibid

³¹¹ The BGPDP is recently established as an amalgam of four different parties of the region. It was formerly operating as Benishangul Gumuz people's Democratic Unity Front (BGPDUF), which was a coalition of the four different indigenous nationality fronts.

³¹² Interview with the representatives of ANDM, TPLF, OPDO and SPDM, op. cit

³¹³ Interview with Ato Seifedin Harun Sosa, Speaker of the House of the Benishangul Gumuz regional state, Assosa, December 28, 2009

³¹⁴ Interview with Ato Asfaw Mamo, Assosa Zone and Mao Como special woreda Election Coordinator, Assosa, December 28, 2009

and one indigenous party (operating in the Mao and Como Locality) have registered to run for political office. However, the former has not even opened its office within the region.

Therefore, one can generally conclude that, the government is not adequately giving protection to the non-indigenous communities in light of their ambition of adequate and equitable representation. This basically has to do with the internal political program of the EPRDF, but obviously, it is relegating the non-indigenous population to an inferior status than what they already are into. The protection offered by political organizations other than the EPRDF at the same cannot be said to be a satisfactory one.

Hence, if the problems of the non-indigenous populations are to be addressed, first of all the role of the member parties of EPRDF should be elevated to bargaining political representation in the region as well, rather than simply being a resident within the region as a second class party operating under the hegemony of the BGPDP. They should also be able to make their voices heard in the regional state council, so that, the non-indigenous population will have a real negotiating power within the region.

Concerning other political parties, this gap created by the EPRDF and its affiliate BGPDP could under normal circumstances be considered to have created an opportunity for opposition parties to exploit, but surprisingly, their presence is not as such felt within the region. Therefore, at this point the presence strong political parties other than the EPRDF, specifically organized to address the problems of the non-indigenous population, would help in counter balancing the political dominance exercised by the indigenous nationalities and as well make the EPRDF to reconsider its political program in the region. But, this basically should be understood as reducing the political dominance of the indigenous nationalities proportionately to their numerical presence and elevating the political representation of the non-indigenous population in the same manner and not as something that will rip off the indigenous nationalities from exercising political control within their own region.

6. Conclusion and Recommendations

The whole endeavor in writing this thesis is to assess the political rights of the non-indigenous regional minorities of Benishangul Gumuz, under the context of the current ethnic federal structure of the country. In so doing, it has made particular revisitation on the notions of federalism; ethnicity and self-determination in order to assess their implications on the political rights of the non-indigenous minorities of Benishangul.

After a long period of protracted war and an attempt by generations of rulers to centralize state power, the country went on a different path in the conduct of its affairs with its citizens after 1991. This was basically realized by a marriage of federalism and ethnicity. This was further institutionalized by the promulgation of the new Constitution, which established nine regional states mainly carved on an ethno-linguistic basis. The formation of the regional states mainly focused in addressing the long-standing demands of the different ethnic groups to self-determination. The ethnic federalism experiment, which the country has been employing for almost two decades now, has on the one hand been severely criticized as the ethnicization of not only politics but also the conduct of citizens in their public life along simple ethnic lines. While some on the other spectrum argue that, the ethnic federal structure was able to contain one of the worst civil wars and ensured the survival of the country from the threat of fragmentation, though with its own limitations.

However, this research tackled the question of the viability of the ethnic federal structure, from the point of view of federalism or accommodation of ethnic diversity at the regional level. This issue has been evaluated taking the premise that, only nine regional states have so far been formed, despite the existence of more than eighty ethnic groups. In addition, none of the regional states are ethnically homogenous. Some of the regional states, let alone being ethnically homogenous, they are so diverse in their ethnic compositions, that they can be considered as multiethnic states within a multiethnic country.

The presence of different ethnic groups within a given regional state gives rise to the formation of ethnic regional minorities. This is basically due to the fact that, a given regional state has a politically dominant and/or numerical majority ethnic group/s on the one hand and those relegated and/or numerically inferior ethnic regional minorities on the other. The formation of the regional states under the FDRE Constitution coupled with the presence of no mechanism of addressing issues that may arise out of majority-minority tensions, made the framework of Benishangul Gumuz's Constitution to go to the extent that markedly differentiates between indigenous and non-indigenous peoples, which gave rise to the dominant indigenous nationalities of the region and the relegated non-indigenous minorities.

Even though there is not as such a defining element for the term non-indigenous, it has been described by way of defining it through exclusion. This means, they are the one's which fall outside the definition of the indigenous peoples. In the Benishangul scenario, identifying the non-indigenous peoples has even been made easier, because the region's Constitution identifies five nationalities as indigenous to the region. Therefore, other inhabitants of the region, other than the so identified nationalities, are the non-indigenous ones.

Since, the regional state is composed of the indigenous and the non-indigenous communities, the two especially after the restructuring of the country along ethnic cleavages, have entered into serious disagreements ranging from political representation, resource competition, and civil service administration. These being problems at a glance, making the matter even harder, the regional state's constitutional as well as political accommodation of its non-indigenous minorities has not been a remarkable one.

If one sees the constitutional design of Benishangul, in light of accommodating its non-indigenous communities, it is something which adds fuel to the fire. It blatantly vests an ownership right of the region upon the indigenous nationalities, it devolves the various self-determination rights of Article 39 of the region's Constitution to the indigenous nationalities alone, mandates the indigenous nationalities only in the interpretation of the

Constitution and as well entrusts the privilege of establishing 'Nationality Administrations' to the indigenous nationalities alone.

Furthermore, the political practice of the region has not been an impressive one in the context of the non-indigenous minorities. Despite the big numerical presence of non-indigenous communities, (especially the Amhara, Oromo, Agew, Tigre and Kembata) their right of political participation within the region has been an appalling one. This has basically centered around two main issues; the first one is the hegemonic rule exercised by the party ruling the region (BGPDP). Political parties, other than the region's ruling political party, i.e. member parties of the EPRDF have fallen short in addressing the political rights of the non-indigenous communities. This has been mainly due to the political contract between EPRDF and its affiliate BGPDP that one will not compete with the other for political office. While the second situation is, there are no adequate political parties other than the EPRDF representing the interest of the non-indigenous communities within the region. Hence, the non-indigenous minorities are simply made second class citizens, by which their quest for adequate and equitable share of political power has fallen on deaf ears.

The Electoral Law and the setting up of electoral constituencies (especially for the purpose of representation at the regional council level) have also played a significant role in hindering the non-indigenous communities from securing adequate representation proportional to their numerical presence. This is mainly due to the fact that, the first past the post electoral system, which declares the winner by a simple majority of votes, has reduced the rights of the non-indigenous minorities. This is because, in the first place, in most of the electoral constituencies, the non-indigenous communities constitute a numerical minority. Secondly, the way the electoral constituencies are drawn up, particularly disadvantages the non-indigenous population. Especially, for representation at regional council level, electoral constituencies are set up by taking the woreda as a basis rather than taking the population size as a standard. In so doing, the number of representatives from each woreda is decided by the region's ruling party rather than by the region's council. This has been particularly inconvenient for the non-indigenous

communities, because, for one thing woredas of the region are established taking into consideration the rights of the indigenous nationalities, and the other is, even in cases where the non-indigenous communities have high numerical presence, though in few woredas, the number of representatives to be elected from such woreda will not exceed from one representative. This is because, the regions ruling party is the one which decides the number of seats for each woreda without any pre-established criteria.

The Electoral Law's stipulation of language as a legitimate criterion for political candidature has also presented the non-indigenous communities with a huge barrier to compete for political representation. For a political candidate to run for political office, he/she either has to know the working language or the local vernacular (the indigenous language) of the region. This will, in effect mean, Oromos, Tigryans, Agews and other non-indigenous nationalities, who know neither Amharic nor the local vernacular of the region cannot run for political candidature.

In effect, this means, the constitutionally guaranteed political, linguistic and cultural rights are simply eroded by the stipulation of the electoral law. In addition, the law simply provides for a double standard. While the indigenous nationalities are allowed to compete for political office without knowing the working language of the region, non-indigenous nationalities who do not speak Amharic are not allowed to compete for political office, because they do not know the working language of the region. In effect, non-indigenous nationalities who do not speak Amharic are not allowed to compete for political office. Making the matter even worse, the HoF, in its decision concerning the political rights of the non-indigenous communities of Benishangul stated that, it is constitutional to use the working language of a regional state along with the local vernacular for political candidature. This, in fact, closed the door for most of the non-indigenous communities within the region in light of their ambition of adequate political representation.

From the problems so far outlined, improving the political representation of the non-indigenous communities, to the extent necessary in accordance with their numerical

presence, is a must that has to be realized as soon as possible. In addressing the political representation of the non-indigenous minorities and in entrenching adequate schemes of their political rights protection, it will be duly appropriate that the subsequent modalities are followed and implemented within the regional state.

The FDRE Constitution, which is the supreme law of the land, has provided for a wide range of rights by which regional minorities are also made beneficiaries of. Seen in this light, they can avail themselves from the individual as well as group specific rights of the Constitution. Additionally, the Benishangul Constitution should also function in accordance with the FDRE Constitution. But in cases as outlined in this research, where it provides for a lesser protection to the rights of the non-indigenous regional minorities, it should be made to be null and void as it contravenes the supreme law of the land.

Particularly, the Benishangul Gumuz Constitution's Article 39, which limits the various self-determination rights to the indigenous nationalities only, to the minimum, needs constitutional interpretation to ascertain the modalities of its implementation in relation to the rights of the non-indigenous population. In addition, the region's Constitution should be revisited by the regional council. Especially, in areas which concern the setting up of the Constitutional Interpretation Commission and Administration of Nationalities. And when they are revisited, it should be done so in a manner inclusive of the rights of the non-indigenous communities as well.

Basically, the Benishangul Gumuz's Constitution stipulations which severely restrain the rights of the non-indigenous minorities should be moderated by one of the following mechanisms. The first one is, by the application of the FDRE Constitution's Article 39 (3). This can principally be realized by the granting of special woreda or zone status to the non-indigenous communities. This will ease the tension with respect to political power ambition, as a special zone /woreda entertain considerable degree of autonomy. In addition, the high numerical presence of, in particular, Amhara, Oromo, Agew and Tigray nationalities will somehow find an outlet in light of exercising their political right of self rule. Secondly, in cases where it is difficult to give autonomy by taking into

consideration their territorial presence, it will be best if the non-territorial approach could be made to work complementarily along with the territorial approach of granting autonomy. Thirdly, constitutional guarantees stipulated in the Benishangul Gumuz (especially those in which their particulars have not yet been determined) Constitution for the non-indigenous communities should as early as possible have their details determined and be promulgated by the region's proclamation. In this regard, the regional state council should exercise its utmost effort to promulgate the laws in conformity with Article 39 of the FDRE Constitution and the political rights of the non-indigenous minorities.

The Benishagul Gumuz region, which has been described as a multiethnic entity, still functions with a unicameral legislature. But, taking into consideration the diversity of its constituents and the ambition of each and every ethnic group within the region to have a say on the conduct of public affairs, it will be very reasonable for the region to set up a bicameral legislature, wherein, in the second house (upper house), each and every ethnic group within the region will have at least a seat. An additional membership will depend on the population of the ethnic group. This house should also be mandated in deciding on matters of constitutional interpretation and as well should be entrusted with the task of ascertaining the various demands of its resident ethnic groups. This will very much help in counter balancing the political dominance of the indigenous nationalities and protecting the interests of its minority groups.

Though the HoF addressed the burning issue of the time, on the matter of the right to elect and be elected by formulating the working language as a mechanism of reconciling the demands of the different ethnic groups within Benishangul, this decision which was later incorporated by the electoral law of the country has not fully addressed the demands of the non-indigenous minorities which do not speak the Amharic language. Therefore, since, elections on a country level are to be conducted, controversies may arise as to who is fit and who is not for political candidature, and when they arise, the least the House can do, I suppose is consider the practical reality. This has to be not only in the Benishagnul state of affairs but rather in the whole of the nine regional states, in light of the resident

regional minorities in accordance with their constitutionally guaranteed right of Article 39(3) of the FDRE Constitution.

Another thorny issue for the right of the non-indigenous regional minorities in Benishangul is the electoral system and the setting up of electoral constituencies. The first past the post system, as outlined in the thesis duly excludes minorities from political representation and as well may at times bring the downgrading of combined majority votes. Therefore, the proportional representation system should be adopted either replacing the already existing system or in combination with it. In doing so, states should also be allowed to devise and adopt the appropriate electoral system suitable to them taking into consideration the diversity and need of their population.

With respect to electoral constituencies, they should strictly be demarcated by taking the population size as stipulated in the electoral law of the country. And when they are done so, especially in the Benishangul region, due consideration should be made to the non-indigenous communities, that the electoral constituencies are not always drawn against the interests of the non-indigenous communities. This means, taking into consideration the numerical presence of minorities in the region, constituencies should be drawn, so that they will have a majority vote within some constituencies.

The final point worth commenting will be the political context of the regional state. As outlined previously, the BGPDP is the one exercising political rule over the region. To this end, the EPRDF has not formulated any kind of framework by which its member parties could legitimately compete for a share of political power. However, it would be advantageous if the region's ruling party, the EPRDF and as well opposition parties could work on a peaceful way by which they can legitimately compete for political office and represent the non-indigenous community. And specifically, it would be appreciable if the EPRDF and the BGPDP could work on devising some sort of consociational power sharing arrangement by which proportionate share of indigenous and non-indigenous community's representation with regard to political power could legitimately be effected.

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- The 1994 Population and Housing Census of Ethiopia: Results for Benishangul Gumuz region, Central Statistical Authority 1996).

Interviews

- Interview with Ato Amare Mekuria, ANDM's coordinator and office head in the Benishangul region, Assosa, December 28, 2009
- Interview with Ato Asfaw Mamo, Assosa Zone and Mao Como special woreda election coordinator, Assosa, December 28, 2009
- Interview with Ato Birhanu Ayehu, Legal advisor to the speaker of the House of Benishangul Gumuz, Assosa, December 28, 2009
- Interview with Ato Daniel Seifu, Elections expert GIS unit at the National Electoral Board of Ethiopia, Addis Ababa, December 23, 2009
- Interview with Ato Seifedin Harun Sosa, Speaker of the House of the Benishangul Gumuz regional state, Assosa, December 28, 2009

- Interview with Ato Shimeles Tefera, OPDO's Party Branch head in the Benishangul region, Assosa, December 28, 2009
- Interview with Ato Woldegerima Gebresellassie, TPLF's coordinator and office head in the Benishangul region, Assosa, December 28, 2009
- Interview with Ato Zewdu Zembalo, SPD's coordinator and office head in the Benishangul region and representative of the president office, Assosa, December 28, 2009

Annexes

Interview questions prepared for Ato Seifedin Harun Sosa, Speaker of the House of the Benishangul Gumuz regional state

Is there any special woreda established for the non-indigenous communities?

How are electoral constituencies established for the purpose of representation at the regional level?

On what basis of criterion does the regional state decide the number of representatives from each electoral constituency for the representation at the regional council?

Is there any constitutional or legal ground for the regional council to decide the number of representatives from each woreda?

Has the “Nationality Administration” framed in the regions constitution put into practice? If not what is the reason behind?

Is the applicability of the “Nationality Administration” to all ethnic groups of the region or to the indigenous nationalities of the regions? If not what do you think the reason is?

How are the non-indigenous communities (Amahra, Oromo, Agew and Tigre) able to secure a seat in the regional state’s council? Is it due to the good will of the BGPDP or is it by the mere fact of their numerical majority in an electoral district? Or due to their own ethnic political parties?

Are the represented non-indigenous communities of Amhara, Oromo, Agew and Tigrie Operating under BGPDP or through their respective ethnic parities of ANDM, OPDO, TPLF and SPDM?

If they are not operating under their respective group parties what do you think is the problem?

Are there any mechanisms employed by the regional state to accommodate the rights of the non-indigenous groups in light of adequate and equitable political participation in the regional state, at the council, zone and woreda levels?

Do you think Article 39 of the Benishangul Gumuz Constitution is inconsistent with Article 39 of the FDRE Constitution? Especially with the federal constitution which provides for equitable representation of ethnic groups in the regional as well as federal council irrespective of territorial foundations?

What do you think is the cause of the ethnic conflicts that have occurred in the region between the indigenous and the non-indigenous communities?

Has the regional state council thought of setting up special woreda /zone for the non-indigenous communities? If not what is the reason behind?

Are the non-indigenous communities found territorially scattered or concentrated within the region?

Interview questions prepared for Ato Asfaw Mamo, Assosa Zone and Mao Como special woreda Election Coordinator

- Has the new electoral law of the country which stipulates “the working language of the region” as a requirement for political candidature addressed the issue of the non-indigenous communities?
- To the contrast has the new electoral law impaired the rights of the non-indigenous nationalities of the region?
- What do you think is the reason behind the fact that the non-indigenous communities have not been able to secure proportional political representation in accordance with their numerical size?
- Are the non-indigenous communities found territorially scattered or concentrated within the region?
- How are electoral constituencies established for the purpose of representation at the regional level and federal level?
- On what basis of criterion does the regional state decide the number of representatives from each electoral constituency for the representation at the regional council?
- Is there any constitutional or legal ground for the regional council to decide the number of representatives from each woreda?
- What are the mechanisms employed in conducting elections at the regional level? What is the role of the NEBE in conducting elections at the regional level?

Interview questions prepared for Ato Birhanu Ayehu, Legal advisor to the speaker of the House of Benishangul Gumuz

- Since the region is home to different ethnic groups have you thought of setting up a bicameral legislature?
- How are language rights entertained in the region?
- How do you see the stipulation of the Benishangul Gumuz Constitution, Article 48(3) which states that the regional state council shall be the representative of the people of the regional state as a whole? Has this been practically implemented? What do you think is

the reason behind the under representation of the non-indigenous communities even though the constitution has granted them the right to be represented?

- Do you think Article 39 of the Benishangul Gumuz Constitution is inconsistent with Article 39 of the FDRE Constitution? Especially with the federal constitution which provides for equitable representation of ethnic groups in the regional as well as federal council irrespective of territorial foundations?
- What is the message of Article 45(3)? It says particulars shall be determined by law. Is there any law promulgated which specify the rights of the non-indigenous people?

Interview questions prepared for Ato Daniel Seifu, Elections expert GIS unit at the National Electoral Board of Ethiopia

- What does the ethnic composition of the three zones of the region look like in light of the comparison between the indigenous and the non-indigenous groups as a whole?
- Are the non-indigenous communities found territorially scattered or concentrated within the region?
- If found concentrated, what are the specific places in which they are situated?
- Is there any special woreda established for the non-indigenous communities?
- How are electoral constituencies established for the purpose of representation at the regional level?
- On what basis of criterion does the regional state decide the number of representatives from each electoral constituency for the representation at the regional council?
- Is there any constitutional or legal ground for the regional council to decide the number of representatives from each woreda?
- Has the new electoral law of the country which stipulates “the working language of the regions” as a requirement for political candidature addressed the issue of the non-indigenous communities?
- To the contrast has the new electoral law impaired the rights of the non-indigenous nationalities of the region?

- What is the numerical relationship between the indigenous and the non-indigenous communities within electoral constituencies established for the regional as well as for the federal level elections?

Interview questions prepared for the representatives of the ANDM, OPDO, TPLF and SPDM

- What is the role of the ANDM, OPDO, TPLF and SPDM offices in the region?
- Has the ANDM, OPDO, TPLF and SPDM ever brought a candidate to contest for a seat in the regional state council or house of peoples representatives? If not what is the reason behind?
- If the respective parties do not bring candidates to contest for an electoral seat, what other purpose do they play by opening their respective offices in the region?
- Are there any plans employed by the non-indigenous parties operating within the regions so that their political representation will be proportional to their numerical presence in the region?
- What improvements have you made in light of the interests of the non-indigenous communities after the representation of the same in the regional state council?
- Is the atmosphere of the regional council suitable to air the demands of the non-indigenous communities? Practically speaking are there improvements that can be cited in light of their political rights?
- What do you think is the reason behind the fact that the non-indigenous communities have not been able to secure proportional political representation in accordance with their numerical size?
- What do you think is the cause of the ethnic conflicts that have occurred in the region between the indigenous and the non-indigenous communities?
- Are the non-indigenous communities found territorially scattered or concentrated within the region?