PROTECTION OF INTERNAL MINORITIES IN ETHIOPIA:
Assessing the Potential of Non-Territorial Autonomy Arrangements

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A THESIS

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Declaration: *I, Tefera Diriba, declare that the thesis* ***'Protection of Internal Minorities in Ethiopia: Assessing the Potential of Non-Territorial Autonomy Arrangements'*** *is my original work and has not been presented for a degree in any other university, and that all sources of materials used for this thesis have been duly acknowledged.*

Declared by Tefera Diriba

Signature_______________________

Date_____________________________

Declaration of this thesis has been confirmed by the approval of the advisor:

Dr. Christophe Van der Beken (Associate prof.)

Signature________________________

Date_______________________

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APPROVED BY EXAMINERS: **SIGNATURE/DATE**

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Acronyms

ACH	American Convention on Human Rights
ACNM	Advisory Committee on National Minorities
BCR	Brussels Capital Region
ADRDM	American Declaration on the Rights and Duties of Man
CERD	Convention on Elimination of Racial Discrimination
CoE	Council of Europe
CoN	Council of Nationalities
CSCE	Conference on Security and Co-operation in Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPRDF	Ethiopian People's Revolutionary Democratic Front
ESM	Ethiopian Student Movement
FDRE	Federal Democratic Republic of Ethiopia
HCNM	High Commissioner on National Minorities
HoF	House of Federation
HoPR	House of People's Representative
HRC	Human Rights Committee
NTA	Non-Territorial Autonomy
OLF	Oromo Liberation Front
OSCE	Organization for Security and Co-operation in Europe
RFOM	Representative on Freedom of the Media
SNNP	Southern Nations, Nationalities and Peoples Region
TA	Territorial Autonomy
TGE	Transitional Government of Ethiopia
TPLF	Tigray People Liberation Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nation Education, Science &Cultural Organization

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Dedication

The thesis is dedicated to the memory of my mother **Gudetu Fita** whose support and love was incessant with me throughout my careers but who suddenly died of stroke without sharing my pleasure on this very special occasion.

List of table and figure

1. Table shows ethnic composition of the regions and their number of representatives in the HoF
2. Figure shows how NTA operates in Belgian Federalism

Table of Contents

Acronyms ..... **iv**

Acknowledgements ..... **v**

List of table and figure ..... **vi**

Table of Contents ..... **vii**

Abstract ..... **ix**

CHAPTER ONE 1

Introduction 1

1.1Background andStatement Problem 1

1.2Objective of the study 3

1.3Research Questions 4

1.5 Significance of the Study 4

1.6 Methodology 4

1.7 Limitation of the Study 5

1.8 Organization of the Thesis 5

CHAPTER TWO 6

Evolution and Conceptual Developments of Minority Protection under International Law 6

Introduction 6

2.1.1 The Peace of Westphalia 6

2.1.2 The Congress of Vienna of 1815 7

2.1.3 The Congress of Berlin of 1878 7

2.1.4 The League of Nations 8

2.1.5. The United Nations 8

2.2. The conceptual development of minority protection 10

2.2.1 Defining minority 10

2.2.2 Basic Principles of Minority Protection and the debate over it 11

2.2.3 The Identification of Minorities 12

2.2.4 Specific Concerns of Minorities: The Right to Internal Self-determination 12

2.2.5 Typology of Minorities 14

CHAPTER THREE 15

Minority Protection under Regional and Foreign Legal Frameworks: Special focus on Europe 15

Introduction **15**

3.1 Minority protection in Africa 15

3.2 Minority protection under Inter-American Legal System 16

3.3 Protection of Minorities under European Regional law 17
Introduction 17
3.3.1 Institutional Frameworks 18
3.3.2 Legal Frameworks 19
3.4 Practices of Non-Territorial Autonomy (NTA) 22
3.4.1 NTA in Belgium 22
3.4.2 NTA in Hungary 28
3.4.3 NTA in Estonia 29
CHAPTER FOUR 32
Protection of internal Minorities in Ethiopia: Assessing the Potential of Non-Territorial Autonomy Arrangements 32
Introduction 32
4.1 The Pre 1991 Minority protection 33
4. 2.1The Transitional Period Charter 34
4.2.2 The 1995 FDRE Constitution 35
4.3 Protection of minorities under Regional Constitutions: Overview of Opportunities 41
4.4 The Failure of the Existing Mechanism 45
4.5 The potential of Non-Territorial Autonomy in Ethiopia 48
CHAPTER FIVE 51
Conclusion and Recommendations 51
5.1 Conclusion 51
5.2 Recommendations 52
Bibliography i

Abstract

The international practice has revealed that individuals belonging to different minorities are often not able to enjoy their human rights because of the discrimination they face. The same holds true in Ethiopia since the long centralist history triggered ethnic inequalities. Fortunately, following the system change, the FDRE Constitution was adopted and declared ethnic federalism, inter alia, to guarantee the rights of ethnic minorities. The thesis, however, argues that the existing ethnic-based territorial autonomy has again failed to accommodate internal minorities. Therefore, it first scrutinizes the inadequacy of protection given to these groups of people under the existing legal and institutional frameworks. Then, it recommends two constitutional solutions. First, the existing ethnic-based territorial autonomy federal system has to be kept intact with giving sufficient protection for the indigenous minorities. Second, non-territorial autonomy as a complementary constitutional arrangement has to be adopted to protect non-indigenous minorities.

Keywords: Minority, territorial autonomy, non-territorial autonomy, indigenous minorities, non-indigenous minorities, FDRE Constitution, Regional constitution

CHAPTER ONE

Introduction

1.1 Background and Statement Problem

'Ethiopia is a land of diverse people with divergent interests'.[1]It shares this diversity with most African countries except that Ethiopia's diversity is not part of the repercussions of the colonial administration.[2] It rather traces back to the historical expansion of the Abyssinian rulers from the northern part of the country to the rest with the aim of building a homogenized and united country through assimilation policy.[3]Neither the forceful subjugation nor cultural assimilation that had been in place during the reign of Emperors nor the bare nation-building policy of the Derg regime accommodated the divergent interests of the people of Ethiopia.[4] This is because particularly, by the second half of the twentieth-century, Ethiopia established a tremendously centralized government system that left no room for the accommodation of diversity.[5]

This, on the other hand, aggravated the situation of public upheavals in the country and caused the birth of several National Liberation Movements which finally allied to violently put an end to the last centralized government, the tyrant Derg regime, in 1991 under the name of Ethiopian Peoples' Revolutionary Democratic Front (EPRDF).[6] Though Ethiopia is known for its ancient state formation, unfortunately, the issue of accommodating diversity through multinational federalism

[1]Tsegaye Regassa, 'Learning To Live With Conflicts: Federalism As a Tool of Conflict Management In Ethiopia - An Overview' (2010) 4(1) Mizan Law Review 53

[2] Christophe Van der Beken, 'Ethiopia: Constitutional protection of Ethnic Minorities at Regional level'(2007) 20(1-2) African Focus 105

[3]Christophe Van der Beken, Federalism, 'Local Government and Minority Protection in Ethiopia: Opportunities and Challenges'(2014) Journal of African Law< https://doi.org/10.1017/S0021855314000205>accessed 3 November 2019

[4]Siraw Migbaru Temesgen 'Weaknesses of Ethnic Federalism in Ethiopia' (2015) 4(11) International Journal of Humanities and Social Science Invention 49

[5]Zemelak Ayitenaw Ayele , 'Local Government In Ethiopia: Still An Apparatus of Control' (2017) 15 African Journal Online <http://dx.doi.org/10.4314/ldd.v15i1.7>accessed 3 November 2019

[6]Siraw(n 4) 50

was not known before the coming to power of the EPRDF.[7]Diversity in Ethiopia has many dimensions: among other things; linguistic, culture, religion, ethnicity, but since late 1991 attention was seriously given to the latter aiming at rectifying the imbalanced relation that had been lasting among different ethnic groups for a century.[8] It was following this that the 1995 FDRE Constitution declares equal protection for the nations, nationalities, and people of Ethiopia[9] through the introduction of territorial ethnic-based federalism, as the latter, being the most applicable system of government for cosmopolitan society is believed to be the system within which diversity is better accommodated and minority groups are also well protected.[10]

Ironically, it is argued that although the territorial self-rule administration has brought some measurable signs of progress for minority groups in Ethiopia, particularly in areas of keeping their linguistic and cultural rights, there are still precarious imitations in terms of comprehensively addressing issues of self-determination and of protecting individual rights of people belonging to minority communities on an equal footing with those of people belonging to majority groups.[11]This is because, the right to self-determination, which could even be exercised up to secession, is mainly limited to territorial autonomy and doesn't have a suitable room to appropriately recognize the self-rule and full representation of those dispersed minorities who live throughout the country.[12] Following the austere application and establishment of territorial autonomy that is currently been practiced in Ethiopia, two classes of ethnic groups were created, one referred to as 'endogenous' and the other as 'exogenous.'[13]

[7]Dereje T.Birru, 'Ethnic Federalism Implementation in Ethiopia: The Paradox' (2018) 6(4) Journal of Political Sciences & Public Affairs 1

[8]Yonatan Tesfaye Fessaha and Christophe Van der Beken, 'Ethnic Federalism and Internal Minorities: The Legal Protection of Internal Minorities In Ethiopia' (2013)21(1) African Journal of International and Comparative Law 32

[9]Preamble of the Constitution of the Federal Democratic Republic of Ethiopia, Proc No.1/1995 NegaritGazete1st year No.1,21 August 1995

[10]Van der beken(n 2) 1

[11]Semahagn Gashu Abebe, 'The Dilemma of Adopting Ethnic Federal System in Africa In Light of the Perspectives from Ethiopian Experience' (2012) 4(7) J. Afr. Stud. Dev.168

[12]FDRE Constitution, Art.39

[13]Van der Beken(n 2)130

The regional sovereignty of people has been largely given to endogenous ethnic groups and exogenous groups have no tangible political rights within the regional states where they permanently reside.[14] They are often considered as settlers or newcomers to that region and nowhere could they enjoy the right to self-determination as it has been enshrined in the FDRE constitution.[15] It follows that, so long as the protection of these groups would not be realized in Ethiopia, the tension between the two will continue and result in the devastation of common understanding and living together with harmony and the tolerance which may have potentially adverse ramifications on the country's sovereignty.

1.2 Objective of the study

Many LL.M Theses have been done on the minority issue in Ethiopia. For instance, some of these theses done at Addis Ababa University include: 'The Legal and Practical Protection of the Rights of Minorities in Self Administering Nations of Ethiopia: The Case of Oromia' (Tokuma Daba 2010), 'Minority Rights Protection in Amhara National Regional State: The case of the Kiment people in North Gonder' (Belay Shibeshi 2010), 'Minority Rights Protection in Oromia National Regional State: A Case Study of the Zay People (Guta Balcha 2016), and many others. Yet, none of these works have researched an all-inclusive legal and institutional framework for the nationwide problems of minority protection in Ethiopia. They rather focused on the specific minority problems of each sub-national group.

Therefore; the objective of this thesis is to research on how to solve problems of minorities in Ethiopia by and large through the introduction of new legal and institutional frameworks. To this effect, the research generally aims at exploring potential constitutional rearrangements of minority issues to fully guarantee the right to self-determination of internal minorities in Ethiopia. In particular, it explores the potential of applying Non-Territorial Autonomy arrangements together with the existing territorial autonomy administrations to remedy the dearth caused by the exclusive application of the latter.

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[14] ibid

[15]FDRE Constitution, Art.39(1)

1.3 Research Questions

Based on the above problems, the research questions are:

- What are the weaknesses of the existing constitutional arrangements in terms of offering comprehensive minority protection in Ethiopia?
- What are the opportunities and limitations of territorial autonomy in protecting the rights of minorities in Ethiopia?
- Could non-territorial autonomy be a complementary arrangement to territorial autonomy in order to comprehensively accommodate internal minorities in Ethiopia?

1.4 Scope of the study

The study applies to all national or ethnic minorities living in Ethiopia. It in particular, examines the protection accorded to minorities under the Ethiopian legal and institutional frameworks and assesses the potential of non-territorial autonomy to accommodate non indigenous minorities.

1.5 Significance of the Study

The outcome of this study may be used for potential constitutional amendment or drafting, policy making and further research works.

1.6 Methodology

The researcher is not at full liberty to decide arbitrarily over the method he is going to employ to conduct given research.[16]It is the nature and type of the research question which shall determine the method that must be applied.[17] To this end, since a number of empirical researches have been done as far as minority protection in Ethiopia is concerned, the researcher believes that employing the same method would add no value to the potential research's finding. For this reason, he rather prefers to apply the doctrinal way of researching methods using the existing empirical researches as key inputs to undertake the research at hand. As the research studies the adequacy and gap of

[16]Yitayew Alemayehu and Wondemagegn Tadesse, *Human Rights Research: a practical guideline Book on methodology and methods* (Center For Human Rights, Addis Ababa University 2013)

[17] Nicholas William, *Research Methods, The Basic*(Routledge 2011)

the existing law particularly, both FDRE Constitution and regional constitutions as the protection of internal minority is concerned, it is qualitative in nature. Accordingly, both primary and secondary sources are used. Relevant national and international legislations are used as primary sources and books, journal articles, reports, different papers, and online sources are among secondary sources used in this research.

1.7 Limitation of the Study

Financial and time constraints may reduce the quality of this thesis.

1.8 Organization of the Thesis

The thesis is composed of five chapters of which the first chapter includes introductory points whereas chapter two provides for the historical and conceptual development of minority protection under International law. In Chapter three, minority protection under the regional and foreign legal frameworks along with the best practices of non-territorial autonomy arrangement is discussed. Chapter four is where the main issue of the thesis, the protection of internal minorities in Ethiopia through non-territorial autonomy, is broadly dealt with. In chapter five, conclusions and recommendations are made.

CHAPTER TWO

Evolution and Conceptual Developments of Minority Protection under International Law

Introduction

The modern system of nation-states that started in the middle of the 17th century in Western Europe marked the evolution of the issue of minority protection.[18]The time was highly influenced by the ideology of creating homogeneity among the peoples of one nation through assimilating policies to build the so-called system of 'one state, one nation, and one language'.[19]Hence, the later emerged idea that propagates for the accommodation of diversity has therefore intended to remedy the discrimination that had been in place for centuries.

2.1 Development of minority protection

2.1.1 The Peace of Westphalia

The Westphalia treaty marked the first congress held in the modern era to end the draconian Christian war between Catholics and Protestants.[20] The Treaty discussions were opened in 1644 with 135 delegates that included theologians, philosophers, and diplomats and signed in 1648 between the Holy Roman Empire and France.[21] Following the peace agreement, two typical events occurred: The new political order of sovereign states and the liberty to exercise one's religion.[22] While the former brought to an end the international authority of the Papacy & the temporal territories of emperors as well as removed the existed societal classes,[23] the latter ensured the

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[18]Durk Gorter and Jasone Cenoz, 'Legal Rights of Linguistic Minorities in the European Union'in P.Tiersma & L. Solan (Eds), *Oxford Handbook on Language and Law* (Oxford University Press 2012)

[19] Ibid

[20]Gordon A. Christenson, 'Liberty of the Exercise of Religion in the Peace of Westphalia'(2012) 21 Transnational Law & Contemporary Problems 722,737

[21]ibid

[22]ibid

[23]Leo Gross, 'The Peace of Westphalia, 1648-1948' (1948) 42 (1) American Journal of International Law 20

principle of toleration and tried to establish equality between Catholic and Protestant States and thus provided for the religious minorities with some sort of safeguarding mechanisms.[24]

2.1.2 The Congress of Vienna of 1815

The Beginning of the19th century was characterized by the time when the influence of religion became less and the question of language and ethnicity, on the other hand, continued to be critical because of the emergence of many new sovereign states through conquering and secessions.[25]This period also marked a significant point in the evolution of minority rights' protection due to the fact that it was during the congress of Vienna in 1815 that the key change in minority protection started to distinguish between religious and national minorities.[26]The Polish agreement which was signed on the congress of Vienna remains one of such indicators of ethnic-based protection because it recognized the rights of Poles people to preserve their own cultural and institutional rights.[27]

2.1.3 The Congress of Berlin of 1878

The congress of Berlin is regarded as the major revolution made towards the development of minority protection in European history.[28]The treaty contained numerous provisions that guarantee the minority rights particularly in the freedom of religion, the right to non-discrimination and the right to hold public office and these are significant developments compared with its predecessors. For instance, Article 4 of the treaty provides for the protection of national minorities such as Turkish, Romanian, and Greek minorities living in Bulgaria and Article 43 is more vital since it declares the recognition of newly emerged states as a result of minority protection.[29]

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[24]Muhammet Said Nuhoğlu '1648 The Treaty of Westphalia' <http://www.academia.edu >1648 The Treaty of Westphalia accessed 26 January 2020. See also Turan Kayauglu,'Westphalian Eurocentrism in International Relations Theory' (2010) 12 International Studies Review 193

[25]Antonija Petričušić, 'The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations'(2005) XI (38/39)Croatian International RelationsReview1

[26]ibid

[27]Kheink or Lamarr, 'Jurisprudence of Minority Rights: The Changing Contours of Minority Rights' (Proceedings of the RAIS Conference Jawaharlal Nehru University, March 2018)

[28]ibid

[29]Krasner D.Stephen and Daniel T. Froats' TheWestphalian Model and Minority-Rights Guarantees in Europe' (1996)<http://edoc.vifapol.de/opus/volltexte/2008/476/> accessed 27 January 2020

2.1.4 The League of Nations

The idea that the state should be composed of one nation is as old as humankind and began to be clearly challenged during the League of Nations.[30]This is because as the aftermath of World War I, the demand for having one's own national sovereignty irrespective of the group's large or small territory became the issue of international agenda.[31]During this period at least two incredible measures were taken: population exchange mechanism and the minority treaties.[32]The former implies a mechanism by which certain minority groups are consensually transferred to the country where they live in the majority. This experiment was first undertaken under the guise of the League of Nations among the Greek, Bulgarian and Turkish populations.[33] The latter represents a couple of treaties signed between 1919 & 1920 and of these, the Paris peace conference was decisive once since it refuted the applicability of Versailles 'one nation one state' principle predominantly in the Eastern and Central European countries.[34]

2.1.5. The United Nations

The charter of the United Nations [35]doesn't explicitly put provisions that proclaim the protection of persons belonging to different minorities rather it embraces provisions that provide for the prohibition of discrimination on the ground of race, religion, ethnicity, sex.[36]Likewise, the 1948 Universal Declaration of Human Rights[37] that set the international human rights standard has also

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[30]David Wippman, 'The Evolution and Implementation of Minority Rights' (1997) 66 (2) Fordham Law Review 597

[31]Carol Weisbrod, 'Minorities and Diversities: The Remarkable Experiment of the League of Nations (1993) 8 Connecticut Journal of Int'l Law 35

[32]ibid

[33]ibid

[34]Riga. L & Kennedy.J, 'Tolerant Majorities, Loyal Minorities and 'Ethnic Reversals': Constructing Minority Rights at Versailles 1919 (2009)15 (3) Nations and Nationalism 461. See also Asbjorn Eide, 'Minority Situations: In Search of Peaceful and Constructive Solutions' (2014) 66(5) Notre Dame Law Review1311

[35]Charter of the United Nations, entered into force, 24 October 1945, 1UNTS XVI <https://www.refworld.org/docid/3ae6b3930.html> accessed at 27 January 2020

[36] UN Charter, Article 1

[37]Universal Declaration of Human Right, General Assembly ResolutionNo.217 A (111), 10 December 1948. Despite its non- binding nature UDHR is referred as a mother document for all the human rights instruments adopted following it.

failed to clearly incorporate group rights because the UN General Assembly was unable to come to the same consensus as to the universality of minority rights than trying to answer the country-specific issue of minorities.[38]

The specific protection of minority rights in both aforesaid international human rights instruments seems to have intentionally been renounced because the time was ranging when most states were threatened by state fragmentation that had been anticipated by liberation movements and many States were too busy to work for national unity through integration policies.[39]Indisputably, lists of fundamental rules of the equal enjoyment of rights and non-discrimination incorporated in several UN documents among which, article 27of the ICCPR takes the lead and the separate recognition given to minorities under the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (hereafter referred as ‘ UN Minority Declaration’) could not be undermined and have overriding significance for the modern evolution of minority protection.[40]For instance, the UN Minority Declaration, despite its non-binding nature, which implies that it puts no specific obligation on states, it, however, bears substantial moral authority as protection of minority rights is concerned once it was unanimously adopted by the resolution of UN General Assembly.[41]

See for instance, Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House 2002) 221

[38]United Nations High Commissioner for Human Rights, *Promoting and Protecting Minority Rights: A Guide for Minority Rights Advocates*(Geneva and New York 2012)

[39]Ana F.Vrdoljak, ‘Minorities, Cultural Rights and the Protection of Intangible Cultural Heritage’ (2005)<https://www.researchgate.net/publication/266405740> accessed 29 January 2020

[40] See for example, Article 27 of the ICCPR, Article 13 of the ICESCR, Article 5 of the UNESCO Declaration on Race and Racial Prejudice, Article 5 of the UNESCO Convention against Discrimination in Education, Article 11 of the Convention on the Prevention and Punishment of the Crime of Genocide, Articles 2 and 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 30 of the Convention on the Rights of the Child, the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

[41]Petričušić (n 25)11

2.2. The conceptual development of minority protection

2.2.1 Defining minority

Over the last few decades, minority protection has been one of the most pressing issues on both national and international agendas.[42]However, except the dictionary meaning[43] which does not have much relevance in practice, the term 'minority' is not yet defined with its legal meaning and this has obscured the nature of the rights holder and its scope of application.[44]Moreover, since the UN minority declaration doesn't provide for any clear definition, the only standard definition we can refer to is the subsequent attempt made to define minority by the then Special Rapporteur of UN on minority issues, Francesco Capotorti. He defines minorities as follows:

> A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members being nationals of the state- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.[45]

Similarly, without adding any new element to the definition of Capotorti, the Canadian Judge Jules Deschênes also attempted to define minority in 1985 as follows:

> [a] group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the

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[42]Jennifer J.Preece, 'Beyond the (Non) Definition of Minority' (2014) ECMI Brief, no.30<http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_1st_SR_Croatia_en.pdf>accessed 27 January 2020

[43]For instance, The Oxford Advanced Learners' Dictionary defines the word minority as a 'smaller part of a group.' See Hornby et al, *Oxford Advanced Learners Dictionary* (8thedn, Oxford University Press 2010). Likewise, the Black's Law Dictionary is more usual since it delimits minority as 'A group that is different in some respect (such as race or religious belief) from the majority and that is sometimes treated differently as a result; a member of such a group.' See Brayan A. Garner (ed), *Black's Law Dictionary* (8th ed. 2004), See also J. A Laponce, *The Protection of Minorities (*University of California 1960) which defines minority as 'a group of persons having a different race, language, or religion from that of a majority of inhabitants'.

[44]Athanasia S.Akermark, 'Justifications of Minority protection in International Law'(1996)50International Studies In Human Rights 86

[45]Francisco Capotorti, Study on Persons Belonging to Ethnic, Religious and Linguistic Minorities, UNDoc. E/CN.4/Sub.2/384/Rev.1, (1979). The definition of Capotorti was based on the case law of the Permanent Court of International Justice (PCIJ), proposals forwarded by governments, and discussions held within both the Sub-Commission and the Commission on Human Rights. JelenaPejic, 'Minority Rights in International Law' (1997) 19 Human Rights Quarterly 670

majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.[46]

In both endeavors made to define minority, the tendency to use less numerical aspects as a key criterion to distinguish from the dominant group is repeatedly demonstrated. However, this further carries another question as to whether it is possible to fix a specific number of people on which one should rely to consider a certain group as a minority.[47]The other question that could possibly follow the numerical factor is whether the numerical comparison is employed in line with the total majority population of such country or should be applied in comparison with the sub-state in which the said minority groups live.[48]This might be employed case by case because it depends on whether the sub government is mandated to grant such rights.[49]In other words, it is a matter left to countries domestic law and if the law of a particular country allows in such a manner that sub government could decide on the issue of minorities, a comparison in such a case is only limited to sub-regional population.[50]

2.2.2 Basic Principles of Minority Protection and the debate over it

Though the most common protection accorded to a minority is the effective means of integration to the rest of the population with the right to reserve their distinctive characteristics, there is however, no consensus reached as to whether integration or accommodation is a better device to fully realize the protection of minority rights.[51] For instance, officials of intergovernmental organizations such as the United Nations, Breton Woods's institutions, most Western states, and scholars such as Mc Garry and O'Leary argue that 'integration is the dominant strategy for regulating diversity'.[52]This

[46]Jules Deschênes, CC FRSC (June 7, 1923 – May 10, 2000) was a Canadian Quebec Superior Court Judge <www.icty.org/en/press/judge-jules-deschênes>accessed 19 May 2019

[47]Prosper N. Musafiri, 'Right to Self-Determination in International Law: Towards Theorisation of the Concept of Indigenous Peoples National Minority? ' (2012) 12International Journal on Minority and Group Rights481

[48]Philip V. Ramaga, 'Relativity of the Minority Concept'(1992) 14(1) Human Rights Quarterly104

[49]Musafiri (n 47) 493

[50] ibid

[51]Kristin Henrard, 'The interrelationship between individual human rights, minority rights and the right to self-determination and its importance for the adequate protection of linguistic minorities' (2001)1(1) The Global Review of Ethno politics 41

[52] Will Kymlicka, 'The Internationalization of Minority Rights' (2008)6 ICON 1

idea in fact encountered generalization since some scholars and other international organizations have not fully supported such mechanism of minority protection.[53]The debate still continues since the status of article 27 of the ICCPR remains controversial though there have been attempts to clarify these divergent ideas by the Human Rights Committee ('HRC').[54]

2.2.3 The Identification of Minorities

The objective and subjective criteria are often referred to the two typical mechanisms of identifying minorities. Having unique features that separate them from the dominant groups as incorporated in article 27 of the ICCPR such as ethnic, religious, or linguistic differences is considered to be an objective criterion to identify minorities.[55]The second objective criterion that has been commonly used to distinguish minorities from the dominant group is using their numerical inferiority as has been mentioned in the definitions of Capotorti and Deschenes.[56]

The Subjective criterion vocalizes that the group referred to as a minority must have a common sense of identity and a willingness that enable them to benefit from the rights provided for under Art.27 of ICCPR.[57]However, whether the will to preserve these distinctive characteristics should be known to everybody is doubtful but according to Capotorti, 'the will of the group emerges from the fact that a given group has kept its distinctive characteristics over a period of time.'[58]

2.2.4 Specific Concerns of Minorities: The Right to Internal Self-determination

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[53] ibid

[54]For detail of the debates see Athanasios Yupsanis, 'Article 27 of the ICCPR Revisited - The Right to Culture as a Normative Source for Minority / Indigenous Participatory Claims in the Case Law of the Human Rights Committee', Nikos Lavranos, Ruth Kok, et al. (eds.), *Hague Yearbook of International Law*(BRILL NIJHOFF2013)26. See also General Comment No. 23: The rights of minorities (Art. 27) : . 08/04/94. CCPR/C/21/Rev.1/Add.5, General Comment No. 23. (General Comments), Patrick Macklem, 'Minority rights in international law'(2008) 6(3&4) ICON 531 and Dieter Kuglemann, 'the protection of minorities and indigenous peoples respecting cultural diversity' (2007) 11Max Planck UNYB 233

[55]Capotorti (n 45)

[56]ibid

[57]ibid

[58]ibid

The Right to Internal Self-determination is a very important right for minority protection because it enables to accommodate their distinct features without forceful assimilation being employed against them.[59] These rights include; language, cultural, religious, self-administration, etc. For instance, article 27 of ICCPR reads as '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 use their own language. [60]However, the detail of using one's own language in courts, education, communication with public authorities, and other uses of language is neither plainly addressed in the covenant [61] nor in the UN Declaration on minority rights.[62]

The protection of cultural rights is very important to preserve the distinct identity of minorities.[63] Culture remains a decisive tool to separate one group from the other because it comprises generic lifestyles of a certain ethnic group that no longer known to the other group. HRC states 'culture' as something that could be manifested in numerous forms whereas the explanation given by the CERD committee is broader to include 'distinct culture, history, language and way of life as an enrichment of the State's cultural identity.'[64]However, culture in this regard should narrowly be understood in such a manner that it gives rise to a unique identity to distinguish minorities from majorities.[65]

Local self-government could be exercised either through Territorial Autonomy (TA) or Non-Territorial Autonomy (NTA) or via the combination thereof. Territorial autonomy refers to the situation where a certain group of people establishes its own local executive institutions and elected representatives upon the will of its inhabitants so that they run political activities within that local administration as well as connecting the inhabitants with the upper level of the government.[66] On the other hand, non-territorial autonomy implies a mechanism by which certain dispersed minority groups have been granted the right to decision making power on matters particularly related to their

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[59]Henrard (n51) 57

[60]ICCPR, Art. 27

[61]Musafiri (n 47)495

[62] See The UN Minority Declaration, art.4, para. 3

[63]Kuglemann (n 54) 260

[64]ibid

[65]Eduardo J. Ruiz Vieytez, 'Cultural Traits As Defining Elements of Minority Groups' (2016)7 The Age of Human Rights Journal 6

[66]Ibid 523

identities such as language, culture, religion, and the likes, without being bound by the rule of territorial integration.[67]

2.2.5 Typology of Minorities

Minorities could be classified as ethnic, national, religious, or linguistic depending on the base they rely on to be distinguished as a peculiar group from the mass population of one country. In fact, there is not as such a clear yardstick criterion by which one minority group is distinguished from the other particularly with regard to ethnic and national minorities but it is equally problematic to take the assumption that these groups are spotlessly one and the same.

As ethnic minority is concerned, countries have used various criteria to define and classify ethnic minorities and often some refer to their historical background.[68]On the other hand, the delineation line between ethnicity and race is still contentious though ethnicity is often criticized for its linkage with race and some argue that they both differ in such a manner that the former mainly focuses on the identity to be discerned as a distinct group, as has been understood both under article 27 of the ICCPR and the UN minority declaration whereas the latter is a socially constructed concept that has been scientifically tied to the Biological aspects of human characteristics.[69] Similarly, protecting linguistic and religious minorities separately have fabulous importance on the way to achieve the general objective of protecting minorities under international law.[70]

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[67]John Coakley, 'Introduction: dispersed minorities and non-territorial autonomy' (2016])15(1) The Global Review Ethnopolitics 1.See also Alexander Osipov, 'Can 'Non-Territorial Autonomy' serve as a category of analysis? Between 'thick' and 'thin' approaches'(Workshop No.21, Johannes Gutenberg University, March 2013), Tove H. Malloy and Francesco Palermo (eds), 'Minorities and the Limits of Liberal Democracy: Democracy and Non Territorial Autonomy' (ECPR General Conference, Université de Montréal, August 2015) and Tove H. Malloy, 'The Lund Recommendation and Non- Territorial Arrangement Progressive De-terrorization of Minority Politics'(2009)16International Journal on Minority and group Rights 665,679

[68]Kevin Myers, 'Immigrants and ethnic minorities in the history of education' (2009) 45(6) Paedagogica Historica801.See also Mathias Bos, 'Ethnicity and Ethnic Groups: Historical Aspects', International Encyclopedia of the Social & Behavioral Sciences (2nded, Leibniz University of Hannover 2015)

[69]Lilla Farkas, *The meaning of racial or ethnic origin in EU law: Between stereotypes and identities* (Publications Office of the European Union 2017). See also Paul O'Connor, 'Ethnic Minorities and Ethnicity in Hong Kong' (2018) <https://www.researchgate.net/publication/326753759> accessed 29 January 2020

[70]Kristin Henrard, 'Minority specific rights: a protection of religious minorities going beyond the freedom of religion?'<https://www.researchgate.net/publication/228184688> accessed 29 January 2020. See also Case of the

CHAPTER THREE

Minority Protection under Regional and Foreign Legal Frameworks: Special focus on Europe

Introduction

The chapter examines the protection of minorities under regional and foreign legal and institutional frameworks. It first highlights the essence of minority protection under African and Inter American legal frameworks and then proceeds to assess the comprehensive system of minority protection under the European legal and institutional systems. In this regard, the author will discuss the significance of specific laws that govern issues of minorities at the European level and the experiences that some Western and East& Central European Countries (ECEC) have developed on minority protection, particularly with regard to the adoption of Non-Territorial Autonomy.

3.1 Minority protection in Africa

'Minority rights are often perceived as a Western concept'.[71] Such a stand could even be taken from the fact that the concept of 'national minority' is more plausible to be dealt with in Europe and Canada than in Africa.[72] Hence, many African states are very much reluctant to properly regulate the issues of minorities under their domestic law because they have usually outsourced the creation of the same as a problem that happened to the continent through the 'divide and rule' policy of their former colonizers.[73] For instance, Atua, without denying the existence of some small groups in the pre-

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Minority Schools in Albania *(Greece vs. Albania),*Orders and Advisory Opinion, [(1935),]P.C.I.J., Series A/B, Judgments No. 64, Para 4.17 and CCPR/C/21/Rev.1/Add.4,General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) adopted 30/07/93. Para. 9 p.3

[71]Jeremie Gilbert, 'Constitutionalism, Ethnicity and Minority Rights in Africa: A legal appraisal from the Great Lakes region' (2013) 11(2) I•CON 414,431. See also H. Kwasi Prempeh, 'Constitutionalism, ethnicity and minority rights in Africa: A reply to Jeremie Gilbert (2013) 11 (2) I•CON 438

[72] ibid

[73]Samia Slimane, 'Recognizing Minorities in Africa' MRG Briefings<http://www.minorityrights.org.> accessed 14 March 2020

colonial era, highly attached the concept of minority in Africa to the period of colonialism.[74] According to him, among the various methods that the former colonialist had used to rule Africans separately for a long period of time is through the creation of minority groups and by empowering them over majorities.[75]Though Africa doesn't have any specific regional minority law, the African Charter on Human and Peoples' Rights however, contains some provisions that govern issues of minorities under the regional legal framework.[76]

3.2 Minority protection under the Inter-American Legal System

When the Inter-American Human Rights is at issue the contribution of OSA (Organization of American States) founded in 1948 with headquarter in Washington DC, remains very much substantial.[77] Members are bound by both the OAS Charter and the 1948 American Declaration on the Rights and Duties of Man. Though the latter is without legal force, it is politically influential on each member state.[78] There are also other specific human rights treaties among other things, the American Convention on Human Rights[79] along with its two protocols[80] could be named first.

Despite the absence of regional minority legislation, the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man (ADRDM) are the most important

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[74]Kwadwo A.Atua, 'Minority rights, democracy and development: The African experience' (2012) 12 African Human Rights Law Journal 69,73

[75] ibid

[76]For more detail see the African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter), articles 2, 3, 17, 19, 20, 22, 28 and 29. See also Pamphlet No. 6 of the UN Guide, 'Minority Rights under the African Charter on Human and Peoples' Rights' <http://www.ohcr.org.guid...pdf>accessed 14March 2020

[77]See Pamphlet No. 5 of the UN Guide, 'Protection of Minority Rights In The Inter-American Human Rights System'<http://www.ohcr.org.guid...pdf>accessed 14March 2020

[78] ibid

[79]The Inter-American Convention on Human Rights also known as Pact of San Jose(Costa Rica), signed on 22 November 1969 and entered into force on 18 July 1978

[80]There are two protocols adopted under the Inter-American Convention on Human Rights. The First is the protocol on the Abolition of Death Penalty which adopted at Asuncion, Paraguay on June 8, 1990 at the twentieth regular session of the General Assembly and the Additional Protocols on Economic, Social and Cultural Rights (adopted in 1988, and known as the Protocol of San Salvador)

instruments of OSA that deal with the issues of minorities.[81] To this end, both provisions of the Declaration and the Convention such as article 2 of the declaration and article 1 of the convention has a direct concern with the issues of minorities though in fact, these articles apply to individual person's rights as well.[82] As the monitoring bodies are concerned, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the two OAS bodies most directly concerned with human rights protection in the region.[83]

3.3 Protection of Minorities under European Regional law

Introduction

The project of nation-state system that had been in place for many years in Europe and that was instigated by the ambition to have national and linguistic unification still remains untouched though contracted, as many states maintained a unitary system of government.[84] The issue of protecting minorities has got substantial attention when it was explicitly set as a precondition to accede to the EU in 1993.[85] This was decided at the Copenhagen conference where the EU members agreed that the potential member states should comply with the 'stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities'.[86]

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[81] See Pamphlet No. 5 (n 77)

[82] See Art.2 of DRDM & Art. 1 of ACHR

[83] See Pamphlet No. 5 (n 77)

[84] G. Gilbert, 'The Legal Protection Accorded To Minority Groups in Europe' (1991) XXIII Netherlands Yearbook of International Law 67,68. See also Balázs Vizi, 'Protection without definition – notes on the concept of "minority rights" in Europe' (2013)<https://www.researchgate.net/publication/278676388>accessed 14 March 2020.

[85] Carter Johnson, 'The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies towards Accession Countries of Central, Eastern and South-Eastern Europe' (2006)13(1)International Journal on Minority and Group Rights 27

[86] ibid

3.3.1 Institutional Frameworks

a) The OSCE and its High Commissioner on National Minorities

Formed, as a result of the West-East conflict during the so-called cold war, the Conference on Security and Co-operation in Europe (CSCE) was terminated by the 1975 Helsinki Final Act and altered from a permanent conference to an institutionally established international organization namely the Organization for Security and Co-operation in Europe (OSCE).[87]The OSCE, having maintained its traditional focus on Euro- Atlantic security matters now has been puffed-up in scope to include the human dimension of security, such as promoting democracy and minority rights.[88]

The High Commissioner on National Minorities (HCNM), one among the specialized bodies of OSCE, is now entrusted with the mandate to work on the prevention of conflicts that might arise among different ethnic groups. But, when it was first established at the Helsinki Summit in1992 as an independent institution, it was initiated to formally resolve the usual conflict that happens between the majorities and minorities of South-Eastern Europe, Central Asia and the Caucasus in the early 1990s.[89]Currently, the HCNM mainly focuses on those minority disputes that retain the international character and on those the occurrence of which may entail inter-state tensions or international armed conflicts.[90] It gives early warnings whenever disputes will have the tendency to cause imminent danger to peace and security of countries and also participates in the activities that should be taken place to lessen the ensued tensions.[91]

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[87]Julinda Beqiraj 'Organization for Security and Co-operation in Europe: First International Democracy Report' (IDW 2011)

[88] Ibid

[89] ibid

[90]See Pamphlet No. 9 of the UN Guide for Minorities, High Commissioner on National Minorities of The Organization For Security and Cooperation in Europe <http://www.ohcr.org.guid...pdf> accessed 14 March 2020

[91] Ibid

b) The European Court of Human Rights

Different Human Rights case laws have been developed through the jurisdiction of European Court of Human Rights *inter alia* the issue of minorities has shown significant development.[92] Though the court doesn't have special jurisdiction that empowers it to entertain the issue of minority separately, it, however, applies article 14 of the convention as the provision designed to protect and promote the rights of minorities.[93]However, since article 14 applies to a violation of rights guaranteed under ECHR through the discriminatory acts listed therein, the petitioner has to first substantiate that the violated right is the one already recognized under the convention.[94]

On the other hand, there are decisions that the court has given on minority issues and thus could be considered as value-adding to the regime of minority protection. Some of such decisions are: *Horváth and Kiss v Hungary*, *Nachova and Others v. Bulgaria* and *D.H. and Others v. the Czech Republic* are some model cases appealed before the ECtHR by Roma ethnic of different nationals and these are believed to have a greater contribution for the global development of minority discourses.[95]

3.3.2 Legal Frameworks

a) The European Convention on Human Rights

The European Convention for Protection of Human Rights and Fundamental Freedoms[96] (ECHR) does not explicitly provide for the protection of minority rights. The general protection that has been accorded to minority groups is stated under Article 14 of the convention and reads as 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any

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[92]Jukka Viljanen, 'The Role of the European Court of Human Rights as a Developer of the General Doctrine of International Human Rights Law' (2005)16 EJIL 787

[93] ibid

[94]Gabriel Toggenburg, 'European Union Agency for Fundamental Rights and Council of Europe' (2018)<https://DIO:10.1007/978-981-10-5206-4_23>accessed 14 March 2020

[95] ibid

[96]European Convention for Protection of Human Rights and Fundamental Freedoms (consolidated ... five Protocols) - Rome, 4.XI.1950 - Text completed by Protocol No. 2 (ETS No. 44) of 6 May 1963 and amended by Protocol No. 3 (ETS No. 45) of 6 May 1963, Protocol No. 5 (ETS No. 55) of 20 January 1966 and Protocol No. 8 (ETS No. 118) of 19 March 1985

ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'[97] On the other hand, the convention provides for *locus standi* before the Commission on matters representing the communal interest of a certain group of individuals in which the interests of minority groups could be manifested.[98]Article 25of the convention reads as:

> The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.[99]

From the above expression, one can find that there must be two conditions met so that the issue of a group of individuals to be heard before the Commission: the petitioner(s) should be the one explicitly mentioned under this provision and also, be able to claim against the breach of any provision of the convention.[100] As nowhere in the convention that the group rights have been separately recognized, minority groups have no direct say before the commission and thus group petitioners have only entitled protection to the extent that their claims resemble those lists of rights protected under the convention.

b) The European Charter on Regional or Minority languages

The charter includes a wide range of minority rights that particularly deal with language rights.[101] It was designed to expand the use of minority languages ranging from private use through public up to 'transnational exchanges'.[102] However, the document is full of vague provisions and it is difficult to put these rights on the ground.[103] Similarly, there exists another difficulty as the charter does protect

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[97]ECHR, Art. 14

[98]G. Gilbert (n 84)80

[99] ECHR, Art. 25

[100]G. Gilbert (n 84)80

[101] Johnson(n 85)29

[102] ibid

[103] ibid

language not the users thereof.[104] Individuals are not explicitly entitled under the charter to make use of any minority language and this in turn hinders developments that have been expected in this regard.[105]

c) The Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities[106]was drafted and agreed by the council of Europe committee of ministers Deputies in 1994.[107] The convention has come up with different mechanisms of protecting minority rights than the previous endeavors made to this end.[108]The fact that it still remains the only binding legal instrument that governs the issue of minorities separately and comprehensively gives a principal status as opposed to its predecessors.[109] Since it is fundamental in nature, it constitutes an integral part of international human rights law.[110]Also, through the notion of participatory mechanism it first recognized the political rights of minorities.[111] Moreover, the preamble of the convention offers non CoE member states to be eligible for a state party to the convention upon the fulfillment of the criteria set forth in this regard.[112]Likewise, the distinctiveness of the convention has been more brightened since the convention leaves room for the state parties to take the necessary measures towards the

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[104] ibid

[105]ibid

[106]The Framework Convention for the Protection of National Minorities, drawn up within the Council ofEurope by Ad Hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1February 1995 and entered into force on 1 February 1998.

[107]A.Phillips ,'Contribution of the Council of Europe Framework Convention for the protection of National Minorities and its Advisory Committee to the effective participation Rights of National Minorities' (2009)16 International Journal on Minority And Group Rights 527

[108] Geoff Gilbert, 'The council of Europe and minority Rights' Human Rights Quarterly 18(1996)160

[109]See Pamphlet No. 8 of the UN Guide for Minorities<http://www.ohcr.org.guid...pdf>accessed 14 March 2020

[110]Lidija R. Basta Fleiner, 'Participation rights under the framework convention for the protection of national minorities (FCNM): Towards a legal framework against social and economic discrimination' (2013) 36(65) Ornikradova National Law School in Nishu

[111] ibid

[112]See The Framework Convention of National Minorities and explanatory Report (The Council of Europe, Strasbourg 1995) 13

implementation of provisions contained in the convention as per the reality existing in their particular countries.[113] Yet, this unique feature has faced many criticisms from different angles. Of these shortcomings, failure to define what 'minority in general and 'national minority' in particular is a major problem. This, as some argue, escalates the degree of the vagueness of the convention because the latter gives a wide range of discretions for the state parties to individually implement their obligation at domestic level which might create a very contrasting condition as state parties' domestic performance usually differ.[114]

The monitoring procedures are as follows: First, state parties are expected to submit their report and then, the Advisory Committee will give its opinion thereon and direct the issue to the Committee of Ministers.[115] Lastly, the Committee of Ministers adopts final recommendation(s) on the domestic efficiency of each reporting state party to the convention.[116]

3.4 Practices of Non-Territorial Autonomy (NTA)

3.4.1 NTA in Belgium

In 1830, when Belgium seceded from the Netherlands, the country was delineated as French-speaking state as a result of the pressure exerted from Francophone elites.[117] Except for some limited linguistic freedoms that the constitution itself guaranteed to non-French speaking groups, the French language was proclaimed as the official language of the country and a unitary form of government was established.[118] To this end, France by itself used to assist its own affiliated ethnic group, the Francophone, to the effect that they would be able to control the overall political, economic and social affairs of the country at the expense of the Flemish (the largest Dutch-speaking ethnic group) which,

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[113] ibid

[114]Johnson(n 85)32

[115]Emmanuel D. Mulle, Belgium and the Brussels Question: The Role of Non-Territorial Autonomy (2016) 15(1) Ethnopolitics105. See also, Catherine Barnes and Manon Olsthoorn, *The Framework Convention For The Protection of National Minorities: A Guide For Non-Governmental Organizations* (MGI, London 1999)

[116]ibid

[117] ibid

[118] See Aleander Murphy, 'Linguistic regionalism and the social construction of space in Belgium the international' (1993) 104 Journal of the Sociology of Language 49

in due course, created the unjust relationship between the two.[119]The main economic and political interests of the country were dominated by Francophones and this started to cause public grievances particularly from the side of the Flemish. Moreover, between 1873 and 1898 the linguistic freedom contained in the constitution paved the way for the Flemish to claim that their language should be used in courts, schools, and other public administrations, which they succeeded in so doing.[120] This escalated the demand for autonomy on the Flemish side though the Francophone themselves were in need of regional autonomy, particularly with the aim of regenerating the weakened economy of their region due to the outdating of local industries since the 1960s.[121]

On the other hand, the fact that Belgium was already a divided country under the unitary government through consociational democracy eased the path to ethnolinguistic federalism.[122] It follows that the country had developed a noticeable power sharing experience since consociational democracy has two major tenets namely, executive power sharing and group autonomy, as the former implies the inclusive means of decision-making process while the latter regulates some personal related affairs such as language, education, and cultural matters.[123]

Finally, the long grievances developed from the side of Flemish following the absence of equal political participation, language use particularly, in the field of education, military services, governmental offices and the systematic denial of developing its cultural heritages as properly as that of the Francophone along with the ambition to exploit more economic sources of the country by the latter led Belgium to restructure the existing unitary consociational government to the ethno-linguistic based federalism which started from 1970 though it was officially proclaimed in 1993.[124] In due course, the law to this effect was enacted and the country was changed from a '*de facto*

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[119] ibid

[120]Lieven De Winter and Pierre Baudewyns, 'Belgium: Towards the Breakdown of a Nation-State in the Heart of Europe?'(2009) 15 Nationalism and Ethnic Politics 280

[121]ibid

[122]Mulle (n115)117

[123] ibid

[124]Dirk Jacobs and Marc Swyngedouw 'Territorial and Non-territorial Federalism in Belgium: Reform of the Brussels Capital Region, 2001', (2003) 13(2) Regional and Federal Studies 127

monolingual francophone regime to a system based monolingual in both Wallonia and Flanders and bilingualism in Brussels.'[125]

The Belgian Constitution (as revised) clearly provides for the dual arrangement of federal administration namely the Regions and the Communities.[126] The former has the power to run matters related to territorial administrations and are often referred as 'space-bounded' matters such as regional economy, agriculture, environment, infrastructure and traffic whereas the latter mainly focuses on 'personal related' matters such as education, culture, language, and health and also seeks international cooperation to enhance their better achievement.[127] The constitution establishes three regions namely the Flanders region (Dutch-speaking), the Walloon region (French-speaking) and the Brussels Capital region (bilingual).[128] They each establish regional parliaments and governments and are also directly elected by people.[129] And also three linguistic communities: the Flemish community, the French community (francophones), and the German-speaking minority community. As their jurisdiction is concerned, the French Community only exercises its power over the Walloon region whereas the regional territory of the Flanders is exclusively given to the authority of the Flemish Community.[130] This implies that the French community does not have any say over francophones living in Flanders' region and vice versa. Similarly, the German-speaking minority groups are autonomous over the nine territories of the Walloon municipalities that comprise of German monolinguals.[131] Hence, though in principle, the power of communities on personal related matters

[125] ibid, see also J.Treffers-Daller, 'Language Use and Language Contact in Brussels'(2002)23(1&)Journal of multilingual and multicultural Development and Bruno De Wever 'The Flemish Movement and Flemish Nationalism Instruments Historiography and Debates'(2013)1 Studies on National Movements50

[126]The Belgian Constitution as updated following the constitutional revision of 24 October 2017 (Belgian Official Gazette of 29 November 2017), Article 1.See also Patricia Popelier 'The need for sub-national constitutions in federal theory and practice: The Belgian case'(2012) 4(2) Perspectives on Federalism and Sherrill Stroschein, 'What Belgium Can Teach Bosnia: The Uses of Autonomy in 'Divided House' States'(2003)2 JEMIE

[127]Read the Belgian Constitution, Arts. 38 &39 cum 127 &134

[128]See Jurgen Goossens and Pieter Cannoo 'Belgian Federalism after the Sixth State Reform' (2015) -7(2) Perspectives on Federalism 29, 46

[129]Mulle (n 115) 116

[130] ibid

[131]ibid

seems non-territorial in approach, practically, it, however, retains territorial dimension, and thus the non-territorial autonomy in Belgian federalism is limited to the Brussels Capital Region (BCR).[132]

Looking into how non-territorial autonomy is applicable in Brussels, the BCR parliament is composed of 89 elected members, 72 from Francophone and 17 from Flemish.[133] As the regional and community institutions are overlapping in the case of Flemish, there is only single Flemish parliament in BCR and of the 17 elected members of the BCR Parliament 6 are delegated to pass legislation related to Flemish community affairs.[134] Contrary to this, the French community has separate parliament and government in which the Walloon parliament is composed of 75 elected members and the French community Parliament composed of 94 elected members which, 75 of them are from the Walloon Parliament and 19 from the BCR parliament. Of the 72 elected members of the BCR parliament, 19 Francophone members are delegated to pass legislation related to the French community affairs.[135] The German Community is empowered to establish small parliament whose members are 25 in number, to establish their own local government in the Wallonian region.[136] Moreover, there is a Commission established for community matters from both the Flemish and French communities as aforesaid. Each Commission is composed of members elected to BCR parliament on the basis of their respective languages and has the duty to interpret general decisions of their respective communities into operational policies. In case institutions or policies regarding person-related matters cannot be the exclusive concern of one of the two linguistic they would resolve through the so-called United Assembly of the Joint Commission for Community matters.[137]

As working language is concerned, despite the fact that Flemish constitutes a minority in the Brussels Capital Region, the Dutch language is, however, equally recognized as official as the French one. Unlike the civil servant who is expected to be fluent in one of these languages, since this works on the 70-30(French –Dutch) quota basis, all administrators working on the permanent contract in one of

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[132] ibid

[133]Kris Deschouwer, *The Politics of Belgium* (2nd ed, Palgrave Macmillan 2012). See also Céline Romainville, 'Dynamics of Belgian Plurinational Federalism: A Small State Under Pressure' (2015) 38(2) B.C. Int'l & Comp. L. Rev. 225

[134]ibid

[135]See also Kris Deschouver, The Rise and Fall the Begian Regionalist (2009)19(4) Party Regional Federal Studies

[136]Mulle (n115)116

[137]Dirk Jacobs & Marc Swyngedouw,'Territorial and Non-territorial Federalism in Belgium: Reform of the Brussels Capital Region 2001' (2003) 13(2)Regional & Federal Studies 127

the 19 municipalities of the region need to be bilingual.[138] However, civil servants working in municipal institutions that had been in place before the federal arrangement was made are expected to be bilingual in principle, though this is often not practically applicable and in some cases violate the rights of Flemish as commented by the Council of Europe.[139] In Brussels, the language of instruction at the community schools strictly follows the rule of monolingual though undeniably one school gives the other's language as a separate subject.[140]

On the other hand, the government of the BCR has one prime minister, four ministers, and three secretaries of the state. [141]They are elected by majority both in the parliament and in every language of the groups. If this could not be obtained in any case, the prime minister is elected by the entire parliament, while every language group appoints their own two ministers.[142]The Parliament of the BCR can issue compulsory laws at regional levels but identity matters such as culture and language are not the business of the BCR Parliament and they are instead governed by the commissions established for community matters.[143]Another important point is that communities in BCR are not directly dealing with individuals rather Institutions.[144]They regulate and support institutions so as the latter would be able to provide quality services for its customers.[145] For instance, Francophones could send their children to Dutch speaking schools at the primary level and meanwhile, if they need to change their mind they could bring back to their own on the secondary levels and the same is true for the Flemish.[146]

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[138]ibid

[139]ibid

[140]ibid

[141] ibid 131

[142] ibid

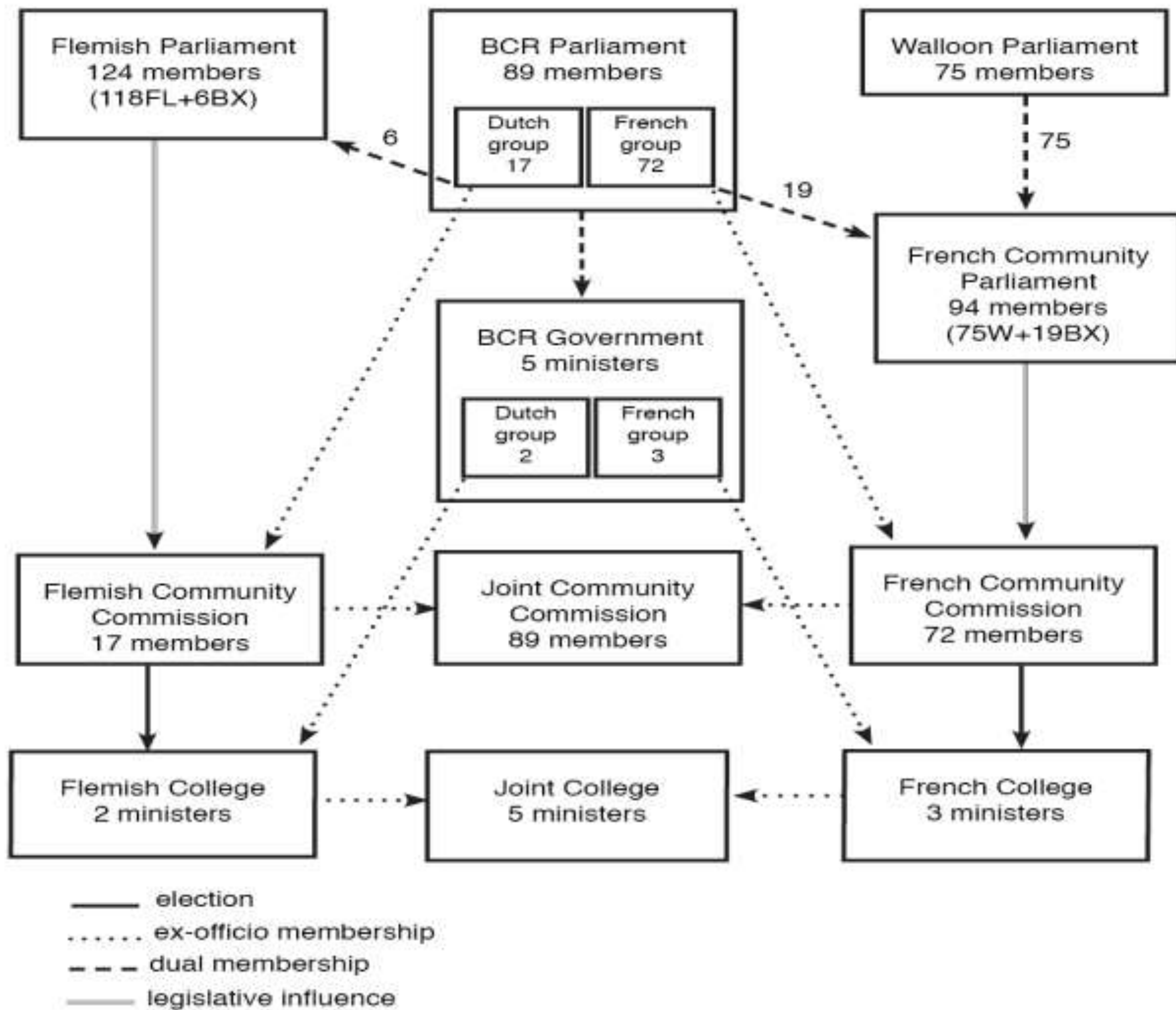
[143]ibid

[144]Mulle (n 115) 117

[145] ibid

[146] ibid

The following Figure describes how NTA operates in Belgian Federalism.[147]



[147]ibid 132

3.4.2 NTA in Hungary

After the downfall of communism in Central and Eastern Europe, Hungary was the first state that adopted the application of NTA in 1993 through its comprehensive act LXXVII on National and Ethnic Minorities,[148]the law that guarantees Cultural autonomy for thirteen 'indigenous' national minorities '(Bulgarians, Greeks, Croatians, Poles, Germans, Armenians, Roma, Romanians, Carpatho-Rusyns, Serbs, Slovaks, Slovenes, and Ukrainians)' who at least lived in the country for a century.[149]Being found as the most impressive act both by the Advisory Committee on National Minorities (ACNM) and other international community's it remained the most robust law that empowers national minorities to participate in the decision making process as redrafted in 2005 and till it was totally replaced by act CLXXIX in 2011.[150]

As this law provides, the minority self-governing system was designed as the bottom-up structure in such a manner that locally elected minority representatives will come together to appoint their national level representatives though the structure was later complemented by intermediate regional level representatives in 2007.[151] For instance, representatives of minority groups played a leading role in the deliberation that was taking place while the minority act was circulated for public opinion in which they manifested their idea as opposed to the assimilationist ideology of communist Hungary.[152]To this end, Hungarian political scientist Pap believes that many ethnic Hungarian lawmakers were satisfied with the way by which the law was drafted taking it as 'a sincere desire to compensate for the pain and suffering that the 'traditional' ethnonational communities of the region had had to endure over preceding decades'.[153]

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[148]Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, Adopted in July 1993, Hungary, Budapest <http://www.regione.taa.it › biblioteca › minoranze › ungheria2 >accessed 8 May 2020

[149] David J. Smith, 'Non-Territorial Autonomy and Political Community in Contemporary Central and Eastern Europe' (2013) 12 (1) JAMIE 27,32. See also Vizi, B, 'Hungary: A Model with Lasting Problems in B. Rechel (ed), *Rights in Central and Eastern Europe*(London and New York, Routledge 2009) 119

[150]Act CLXXIX of 2011 on the Rights of National and Ethnic Minorities, adopted on 19 December 2011, Hungary, Budapest <http://www.legislationline.org › documents hungary leg >accessed8 May 2020

[151] ibid

[152]Dobos, B. 'The Development and Functioning of Cultural Autonomy in Hungary'6 (2007) 6(3) Ethnopolitics451

[153] Smith(n 149)35

Another important and latest law that was enacted on the minority issue is the Act CLXXIX and among other things, the law remedies the prohibition imposed by electoral law on self-governing minorities not to conduct election starting from 2014 because their number of inhabitants was assumed to be under the required threshold for election as per the 2011 census data.[154]Besides, the Council of Europe recommended as a comprehensive law that contains regulations governing issues of minorities such as their legal status and competency, right of advocacy, and the right to be represented in national parliament. To date, the Hungarian electoral system provides for a separate mechanism of the voting process in parliamentary elections for the 13 above recognized minorities to ensure their political participation by which they vote on the minority candidate list instead of the party list.[155]

However, NTA in Hungary is criticized for lack of clear resource allocation guidelines between minorities and majorities and for its failure to properly accommodate Roma, the most discriminated group in Europe.[156]As a response, Hungary established, 'Equal Treatment Authority in 2005 and adopted a strategic action plan to implement a Decade of Roma Integration programme for 2007-2015' to improve Roma's protection from simple representation to full integration though this in fact needs a detailed empirical research to certify to what extent it will curb the ongoing Roman discrimination.[157]

3.4.3 NTA in Estonia

Estonia could be mentioned as the first country that recognized minority protection after the WWI.[158] Russians, Germans, Jews, and Swedish were the first minority groups that qualified for the protection followed by the Ingrian Finish and Swedish communities.[159] It established cultural autonomy (NTA) to protect the rights of dispersed minorities of which the first phase lasted from

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[154] ibid

[155]See Country Reports on Human Rights Practices, Hungary 2018 Human Rights Report<http://www.state.gov/wp-content/uploads/2019/03/HUNGARY-2018-HUMAN-RIGHTS-REPORT.Pdf> accessed 11 May 2020

[156] ibid

[157] ibid

[158]Bertus de Villiers, 'Protecting Minorities on a Non-Territorial Basis—Recent International Developments' (2012) 3 *Beijing Law Review* 170

[159]Ibid 176

1920 to 1939 and a second phase started after the fall of the Berlin Wall and continues to date.[160] The Act on Cultural Autonomy for Ethnic Minorities and the Estonian Language Act 1995 is listed among legislations that have been enacted to ensure the protection, promotion, and preservation of minorities' identity, language, and culture in Estonia.[161] Membership to the cultural autonomy is voluntary and a group applies for the autonomy should comprise at least 3000 members.[162]

Cultural Council was established and its jurisdiction is exercisable extraterritorially on personal basis and decisions are applicable to all of its members regardless of where they reside in Estonia.[163] The institutions and structures needed for these purposes are established after the group gets recognition and representatives are elected in conformity with the democratic process of the country. The members of cultural autonomy elect their representative according to the electoral law of the country and the vote needs to be approved by the national government to ensure its adherence to the country's electoral regulations.[164] The cultural autonomy may have regional and local offices to be accessible more to its members and one central office at the federal level.[165]

On the other hand, the relation between the national authorities and the cultural council is legally limited and the former do not interfere with the affairs of the latter arbitrarily, instead, they are obliged to provide a legal guarantee to this end.[166] Institutions established for the purpose of cultural autonomy are not merely private organizations or NGO's rather they have a public nature by which they are freely working on the promotion and protection of minorities' culture & traditions, language, and education in their mother-tongue. [167] The cultural council obtains its budget sources from government grants, taxes, or membership fees.[168]

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[160]K. Alenius, 'The birth of cultural autonomy in Estonia: How, Why, and for whom?' (2007) 38(4) Journal of Baltic Studies 445

[161]Estonia: Law of 1993 on Cultural Autonomy for National Minorities, 28 November 1993 <https://www.refworld.org/docid/3ae6b51810.html > accessed 8 May 2020

[162]Act on Cultural Minorities, Art. a2(2)

[163]Act on Cultural Minorities, Art. a1

[164]Act on Cultural Minorities, Art. a13(1)

[165]Act on Cultural Minorities, Art.a11(2)

[166]Villiers(n 156) 176

[167] ibid

[168] Act on Cultural Minorities, Art. A27

Finally, a cultural council may be dissolved by the national government upon the initiation of the council itself or if the number of members of the community is found below the minimum threshold or if the council fails to comply with statutory requirements for two consecutive elections or if less than half the number of persons on the electoral list vote in two consecutive elections.[169]

[169]Villiers(n 156) 176

CHAPTER FOUR

Protection of internal Minorities in Ethiopia: Assessing the Potential of Non-Territorial Autonomy Arrangements

Introduction

Ethiopia, as home to more than 80 nations, nationalities, and peoples and none of its ethnic group comprises half of the total population,[170]has failed to properly respond to the long-lasting question of ethnic equalities.[171]This is because, the defining feature of the country, diversity, had been ill-treated by its centralist system of governments which lasted till1991under the shadow of national unity.[172]Unfortunately, the long-envisioned territorial ethnic-based federal arrangement particularly

[170]See Summary and Statistical Report of the 2007 Population and Housing Census Results Compiled by the Federal Democratic Republic Ethiopia Census Commission in December 2008, Addis Ababa. See also Haileyesus Taye Chekole, 'Issues of Minority Rights in the Ethiopian Federation' (2012) ECMI Working Paper #59 <http://www.files.ethz.ch>isn> Working_paper_59_Final> accessed 5 November 2019. He referred Ethiopia as country of minorities since there is no ethnic group which comprises 50+1 of the total population, since Oromo, the largest ethnic group in the country even comprises only 36.7% as per the 2007 Census report.

[171]Asessfa Feseha,'Intra-Unit Minorities in the Context of Ethno-National Federation in Ethiopia' (2017)13(1) Utrecht Law Review 171. He quoted Ethiopia as 'Un museo di popoli' as devised by Conti Rossini, meaning that 'the museum of peoples'. In the same vein, Ethiopia is also expressed as country composed of at least 80 ethnic groups which all experienced different degree of national and political integration and have different national feelings as some fought for their identities and regional autonomy. See also, Von Alexander Meckelburg, 'From "Subject to Citizen"? History, Identity and Minority Citizenship: The Case of the Mao and Komo of Western Ethiopia' (Dr. Phil, University of Hamburg 2016) and Alefe Alene Belay 'How State Structures Reflects Diversities: Ethiopia and Switzerland Compared'(2014)1(1) ELP 22,24

[172] See Semahagn(n11)169. He noted that despite the conspicuous diversities particularly Ethiopia has been experiencing, the nation building policy had instinctively been led by centralized strategies executed by force. He added that 'the long reign of Haile Selassie I (1930 to 1974) more aggravated the process of making nation-state through centralized way of administration that was incepted earlier by Menilik II in the late19th century towards the acute realization of the so called 'one country, one language and one flag'. See also Temesgen Thomas Halabo, 'Ethnic Federal System in Ethiopia: Origin, Ideology and Paradoxes' (2016)4(1) International Journal of political Science and Development1. He mentioned that since the successive feudal governments had highly relied on hegemonic project of state building, the question of equality and one's identity were totally ignored from governments' agenda which finally caused the irresistible Ethiopian

came into practice after the adoption of the1995 FDRE Constitution faces many challenges and suffers from several constitutional loop-holes, among which, it has failed to appropriately accommodate the rights of internal minorities within the existing territorial autonomy contexts.[173]

This chapter embodies the central theme of the thesis. The author first highlights some historical antecedents of minority protection before1991 and continues to examine how internal minorities are accommodated under the existing federal arrangements. In doing so, he goes on to assess the available legal and institutional frameworks that could guarantee minority protection both at the federal and regional levels of governments. Thereafter, he will identify problems the system has faced in practice with regard to minority protection. To this end, he does not need to collect empirical data since this has already been done by other authors such as Van der Beken and rather, he will make use of the existing primary and secondary data sources.

Finally, the author discusses the potential of NTA constitutional mechanism as a complementary arrangement to fill the gap created by the exclusive application of TA, particularly as protection of non-indigenous minorities is concerned.

4.1 The Pre 1991 Minority protection

In the history of the country, though the 1931 Imperial Constitution marked the first written constitution, it, however, declared that the state does not owe any duty to the subjects and all rights and privileges resided in the hands of the Emperor.[174] And so does the 1955 revised constitution with the exception that, unlike the former, it contains some human rights that were curtailed by claw back clauses.[175] The 1987 *Derg* Constitution, though brought some significant changes such as *'land to tiller'* proclamation and secularization principle, it however, extremely focused on socio-economic

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Student Movement (ESM) with a new philosophy of Marxism- Leninism and thus, demanded for the equality of nationalities' self-determination. He added, it was from the ideology emerged by ESM that the TPLF and its symbolic allies assumed state power with the name of EPRDF, having abolished the Derg regime in 1991.

[173] ibid

[174]Tsegaye Regassa, 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia' (2009)3(2) Mizan Law Review289, 297-99. See also Meressa Tsehaye, 'Minority empowerment, Self-determination rights and Sub national constitutionalism in Tigray National Regional State: An analysis of the 'Kunama community' case' (2014)31 Journal of Law, Policy and Globalization 1

[175]ibid

rights having influenced by its political ideology of Marxism- Leninism and overlooked civil and political rights as well as group rights such as minority protection.[176]

4.2 The Post 1991 Minority protection

4. 2.1The Transitional Period Charter

Ethiopia's coincidental adoption of ethnofederalism in the 1990s was a paradigm shift and an incredible political achievement because *inter alia*, it recognized diversity as distinctive features of the country.[177] Immediately after the demise of Derg in 1991, the EPRDF and other mainly ethnic-based organizations such as OLF held a conference and adopted the Transitional Charter based on which the Transitional Government of Ethiopia (TGE) was established.[178] The TGE publicly pledged to bring about three basic reforms: the decentralization of the state, the democratization of politics, and the liberalization of the economy.[179] There was a high concern to fulfill the aspirations of the many diverse groups in Ethiopia after the change. To this end, Article 2 of the Transitional Charter states, 'the right of nation, nationalities and peoples of self-determination is affirmed'.[180] It further provides that each nation and nationality is entitled to preserve its identity and promote its culture, administer its own affairs, and claims its independence whenever the above listed are internally denied.[181] Proclamation No.7/1992 is believed to be the enabling act of the charter as it contains the particulars to legally establish regional self-ruling governments.[182]

The Constitutional Commission was established to prepare the draft constitution and having completed its task, finally submitted the draft to the elected special body called constitutional

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[176] ibid

[177]Seyuom Mesfin, 'Ethiopian Ethnic Federalism: Without a Space for 'Indigenous Peoples'?'(2017)16 (3) Ethnopolitics246

[178]Sarah Vaughan and Kjetil Tronvoll, 'The Culture of Power In Ethiopian Contemporary Political Life' (2002) Sida Studies Research Paper No.10 <https://cardeth.org.2014/5.Vau>accessed 27 March 2020

[179] ibid

[180]Peaceful and Democratic Transitional Conference of Ethiopia, The Transitional period Charter, Federal Negarit Gazetta, 22 July 1991, Article 2

[181]Read article 2 of the Transition Charter along with its three sub articles.

[182]The Transitional Government of Ethiopia, A Proclamation to provide for the establishment of National/Regional self-government Proclamation No.7/1992, Negarit Gazetta year 51, No,2, 14th January, 1992, Addis Ababa

Assembly, the body whose mandate was preparing the constitution for deliberation and final ratification.[183]Gloomily, the Constitution- making process was highly dominated by those people who had paid astonishing loyalty to the TPLF driven EPRDF and thus failed to have got public confidence.[184]Nonetheless, the constitution was ratified in1995and it declared the establishment of the Federal Democratic Republic of Ethiopia (FDRE) and formed ethnic-based federalism in the country.

4.2.2 The 1995 FDRE Constitution: Opportunities

The nations, nationalities, and peoples of Ethiopia, on the 8th day of December 1994, ratified the FDRE Constitution through their delegated representatives, and later on, it was promulgated by Proclamation No 1/1995.[185]Among other things, it was believed to bring about 'the full respect of individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any ethnic, religious or cultural discrimination.'[186] To this end, ethnicity was considered as a center to the political rationale that brought about the adoption of the constitution.[187] This, among other things, explains why some authors considered the FDRE Constitution as the most advanced one particularly paying regard to the inclusion of both individual and group human rights provisions.[188]

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[183]ibid

[184]Paul stated that 'There was little meaningful public participatory debate, especially debate focused on devolution versus ethnic federalism, let alone sovereignty or self-determination …Just as the EPRDF controlled the Constitutional Commission's work, so it controlled the election, and then the deliberations, of the Constitutional Assembly' See, Paul CN, 'Ethnicity and the New Constitutional Orders of Ethiopia and Eritrea' in Yash (ed), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic Societies* (Cambridge University press 2000)

[185] See the preamble of the FDRE Constitution for the public pledge the 'Nations, Nationalities or Peoples made since they adopted the former and article 39(5) for the constitutional definition of what is meant by the latter.

[186] See the preamble of the FDRE Constitution, para. 2

[187]Zemelak Ayitenaw Ayele '[The] politics of sub-national Constitution and local governments in Ethiopia' (2014) 6(2) Perspectives on Federalism 9,101. See also Tsegaye Regassa,'Sub-National Constitutions In Ethiopia: Towards Entrenching Constitutionalism at State Level' (2009) 3(1) Mizan Law Review

[188] Marco Bassi, Federalism and Ethnic Minorities in Ethiopia: Ideology, Territoriality, Human Rights, Policy(2014)1DADARivista di Antropologia postoglobale 45<https://www.dadarivista.com/Singoli-articoli/2014-Giugno/02.pdf> accessed 27March 2020

Following the promulgation of the constitution two levels of governments— Federal and Regional were created and started to operate.[189]As Van der Beken notes, '[since] the constitutional drafter tried to create an overlap between regional and ethnic boundaries, the Ethiopian federal structure can be called an ethnic federation.'[190]Also, among the nine territorially integrated ethnic based regional states, only five of them namely; Oromo, Amhara, Tigre, Somali, and Afar ethnic groups constitute the majority within their respective regional states.[191] This indicates that as far as the regional classification mainly follows ethnic and linguistic identities along with territorial integrity there exist however, those ethnic groups that were given regional autonomy irrespective of their smaller population number.[192] In such a manner, two types of minorities were created in Ethiopia: those indigenous to some particular region (endogenous) and the others (exogenous).[193] It might also be possible to classify indigenous internal minorities into two: those group of minorities that constitute less numerical size in the region but considered as a majority for political purposes such as Berta, Gumuz, Shinasha, Mao and Komo in Benshangul Gumuz and those historically indigenous to the region but constitute less numerical size against the dominant ethnic group such as Oromo and Agaw in Amhara and Kunama, and Irob in Tigray. Practically, since the former exercises every constitutional right which has been exercised by the dominant groups within their respective regions there is no problem with it as far as minority protection is concerned. The latter also enjoy some moderate degree of constitutional protection by being considered as one among 'nation, nationalities, or people of Ethiopia. The problem remains with how to protect the non- indigenous internal minorities. This refers to all ethnic groups who are scattered throughout the country without being given the right to self-administrations.[194] The FDRE constitution does guarantee protection to this group nowhere in its content.

With respect to the protection of indigenous internal minorities under FDRE Constitution they are granted both individual and group rights. Article 25 which has been coined in line with international law on minority rights in protecting against discrimination on grounds of ethnicity, gender, opinion,

[189]See FDRE Constitution, Art.47

[190]Vander Beken (n2)114

[191]Yonatan and Van der Beken (n 8)35

[192] ibid

[193] ibid

[194]ibid

religion, and the like could be mentioned first.[195]Rights included under articles 32 and 38 are also applicable to them.[196]In the same vein, Articles 40(4) and (5) seemed to have been included to protect the right of peasants and pastoralists in such a manner that they shall not be arbitrarily displaced from their land possessions.[197]

As to group rights, Article 39 is a core principle since it provides for the protection of the right to self-determination of nation, nationalities and peoples of Ethiopia up to secession.[198] Self-determination could either be internal or external.[199]Under this article, an ethnic group that could be considered as one of the 'nation nationality and peoples' could enjoy at least four constituent elements of self-determination: the right to promote and protect its distinct language, culture and identity, the right to self-administration[200], the right to be represented in the regional and federal

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[195]FDRE Constitution, Art.25

[196] See FDRE Constitution, Art.25 and 38. It could be argued that though these articles apply to any one, similarly, they have potential to protect the rights of those persons belong to ethnic, linguistic, religious and other minorities. For instance, article 38 reads as 'Every Ethiopian national, without any discrimination[emphasis] based on color, race, nation, nationality, sex, language, religion, political or other opinion or other status has right to… vote and to be elected'

[197] FDRE Constitution, Art.40

[198]FDRE Constitution Art.39(1-3)

[199]Though the FDRE constitution doesn't define what is meant by internal and external self-determination, CERD however, defines internal self-determination as 'the rights of all peoples to pursue freely their economic, social and cultural development without outside interference; linked with the right of every citizen to take part in the conduct of public affairs at any level'. In the same fashion, CERD also defines external self-determination as the rights 'of all peoples to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation' As the latter is not concerned here, article 39 is understood with the former's meaning and it applies to territorially integrated indigenous internal minorities in same manner it shall apply to ethnic majorities.

[200] In addition, having listed the nine regional states recognized under the constitution, article 47(2) states as the 'Nations, Nationalities and Peoples within the States enumerated in sub-Article 1 of this article have the right to establish, at any time, their own States.'

governments and finally, if the three listed first are impossible, the right to form independent state through secession.[201]

Let's take representation sole as a point of consideration here. The FDRE Constitution established two federal Houses :the House of People's Representatives (HoPR) also referred to as the 'Lower House', a law making body, and the House of Federation (HoF)also referred to as the 'Upper House', a non-law making body composed of the representatives of each nation, nationality, and people. [202]To begin with the first House, article 54(3) states that 'Members of the House, on the basis of population and special representation of "Minority Nationalities" and Peoples shall not exceed 550; of these, Minority Nationalities and Peoples shall have at least 20 seats and particulars shall be determined by law.'[203] The inclusion of this provision has indicated that the Constitution unmistakably recognizes minority representation. To this end, though the constitution doesn't clearly distinguish who 'minority nationalities' are, it however, seems to ensure the equitable representation of minorities in the HoPR.[204] On the other hand, the constitution fails to provide for equitable

[201] See for instance, Tsegaye Birhanu, 'The Impact of the Inclusion of Secession Clause in the Federal Democratic Republic of Ethiopian Constitution on the Prospect of Ethiopian Federation' (2017) 7(10) International Journal of Scientific and Research Publications 1

[202] FDRE Constitution, Art.53

[203] FDRE Constitution, Art. 54(3)

[204]Article 54(3) of the FDRE Constitution provides 20 reserved seats for 'minority nationalities' or people's representation. The problem here lies as the constitution nowhere defined who they are. So do other subsidiary laws. In this regard, there have been different views taking into consideration the practical operation of the House. On the one hand, the impartiality of the house is largely contested. This is unusual to expect that the House which practically reluctant to give recognition to several ethnic minorities in the normal course of things would now give special weight for this issue and act accordingly. On the other hand, there is still disagreement among the scholars whether these groups of peoples could be categorized under those people the constitution calls 'Nation, Nationalities and peoples.' For instance, Fasil agues as they are found among those groups of peoples the constitution call as 'Nations, Nationalities and Peoples of Ethiopia'. See, Fasil Nahum, *Constitution For Nation of Nations: The Ethiopian Prospect* (Lawrenceville, NJ, Red Sea Publishers, 1997)160. Contrary, Beza classifies them under those groups of people who are unable to establish their own electoral constituencies because of their smaller in number. See, Beza Dessalegn, 'The Right of Minorities to Political Participation under the Ethiopian Electoral System'(2013)7(1) Mizan Law Review 67, 84-5

representation of ethnic minorities in the Executive, Judiciary and Civil Service.[205] In the same vein, regional governments are duty bound to accommodate the existing diversities that designate what their society really looks on the ground.[206] This is because central to the objective of representation is to accommodate intra-regional minorities in such a way that they would perceive the region they live in equally as belonging to them.[207]

The second representation refers to representation in the HoF. As said before, taking the position that indigenous internal minorities are one among those group of peoples who the constitution calls 'nation, nationalities and peoples'(for instance, as Fasil argues), the insertion of article 61(1) in the provision of the constitution will have substantial importance towards the realization of minority protection through their elected representatives.[208] This is because one of the federal mechanisms by which minority groups could defend their basic interests against the discriminatory administration of majorities is by having their own agency in the nationality decision making body of the federal government, such as, in this case, the HoF. In this House, ethnic representatives are believed to defend the interest of the people whom they represent whenever a decision is made against their group. Unfortunately, the representation that has been employed by HoF in the Ethiopian context is largely contingent on the population and the identity of a given group so that the larger the population size of an ethnic group, the larger number of seats it should have in the House. All members of ethnic groups are to be represented with one member and the bigger ethnic groups are entitled to one additional member for each 1 million of its population as per Article 61(2) of the Constitution. [209] For instance, regions comprising a large number of majority ethnic groups such as Oromia and Amhara and those that have numerous diversified ethnic groups such as SNNP would get an advantage in the decision making process and there might be circumstances in which the

[205]Provisions of the FDRE constitution that govern for instance, the Judiciary organ of the government under article 79ff does not provide for such protective schemes and so does the section of the constitution that deals with executive organ under article 72 and ff.

[206]Meresse (n174)76

[207] ibid

[208] FDRE Constitution Art.61(1)

[209] FDRE Constitution Art.62(2)

interests of indigenous internal minorities would be at stake.[210] Moreover, since the House employs a simple majority vote electoral system, if consensus is not reached over a certain issue and then a vote is conducted, the vote of these minorities will automatically be overruled by the majority. Additionally, the competence and independence of the House has often been contested.[211]Their competence is under question paying regard to the precondition used for their nomination to the House. For instance, having a legal professional background is not mandatory in the house but they always pass issues that require adequate legal professional backgrounds such as constitution interpretation.[212] Likewise, their independence is importantly challenged because the House is an entirely political institution and the members thereof comprise those people who have shown a high degree of political loyalty to the ruling party.[213] In fact, the constitution provides for a professionally supportive body known as ' Council of Constitutional Inquiry(CCI)' to guide the House particularly on issues of constitutional interpretation but the role of the Council to play in the decision making process is limited to issuing advisory opinion and thus, could not challenge the decision of the House.[214] It follows that, it is up to the discretion of the House to follow the advisory opinions of CCI or to reject it at all.[215]

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[210] See Christophe Van der Beken, 'Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia' (ECAS, Leipzig, June 2009) <www.aegis-eu.org/old/archive/ecas2009panels_round_tables/31.htmaccessed 27 March 2020

[211]Agegnehu Alene and Dibu Worku 'Minority rights protection under the second house: The Ethiopian Federal Experience'(2017)11(6)African Journal of Political Science and International Relations 144, 147

[212] FDRE Constitution, Art.62(1)

[213]Agegnehu and Dibu (n211)147

[214] ibid

[215]FDRE Constitution, Art .82

The following table showsethnic composition of the regions and their number of representatives in the HoF.[216]

Member states	No. of ethnic groups	Seats in HoF
Tigray	**3**	**7**
Afar	1	2
Amhara	5	24
Oromia	1	26
Somali	1	5
BenshangulGumuz	5	5
SNNP	55	61
Gambella	4	4
Harari	1	1
Total	**76**	**135**

Source: House of Federation Official Website

From the above figure, it is easy to observe that the three states (the Southern state, Amhara and Oromia) together have 111 of the 135 representatives in the House of Federation. While the other six regional states: Harari, Gambella, Benshangul-Gumuz. Afar, Somali and Tigray altogether have only 24 representatives. This composition simply witnesses how easy it could be to reverse the interests of minorities.

4.3 Protection of minorities under Regional Constitutions: Overview of Opportunities

Introduction

Under the guise of the federal structure, regional states are constitutionally empowered to enact their respective Constitution and other laws in conformity with the FDRE Constitution.[217]To this end, the intention of the author under this subsection is not to discuss the detailed content of each regional state's Constitutional architecture. Because this has already been covered by different scholars, among others, Christophe Van der Beken takes a lead.[218] He rather goes on to shower the reader with

[216]Watch the official website of the House of Federation <http://www.hofethiopia.gov.et> accessed at 9 May 2020

[217] FDRE Constitution, Art.52(2)(b)

[218]Van der Beken (n 2)

the distinctive features of each regional state's Constitution in relation with the accommodation of internal minorities.

a) The Constitutions of Southern Nations, Nationalities and Peoples, Amhara, and Tigray Regional States

These three constitutions have shared similar characteristics as they all declared that their respective region belongs to all inhabitants live in it and protect the rights of territorially integrated indigenous minorities.[219]For instance, the Southern Nations, Nationalities, and Peoples Region ('the Southern Region') is home to at least 56 territorially integrated different ethnic groups though most of them are very small in number except some ethnic groups such as Sidama and Gurage.[220] Similarly, Oromo, Awi, and Himra are among those territorially integrated indigenous minorities that have been given the right to self-government underthe Amhara Regional Constitution.[221] Correspondingly, Irob and Kunama are recognized territorially integrated minorities under the Tigray Regional Constitution.[222]Unlike the Southern Constitution which provides for the establishment of four-tier internal administrative structures: the region, Zonal*/Special Wereda, Wereda, and Kebele* the rest two are limited to three tiers of administration structures: region, *Woreda*/Nationality administration *and Kebele*.[223]In the Southern Region, Zones and special *Woreda* have equal powers except the latter is smaller in population size and designed for the administration of territorially strongly concentrated groups.[224]

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[219]See The Revised 2001 Constitution of the Southern Nations, Nationalities and Peoples Regional State Proclamation No.35 2001 (Southern Constitution) Art. 8(1), the Revised Amhara National Regional Constitution Approval Proclamation No.59/2001preamble (Amhara Regional Constitution')Art.8 and the 2001 Revised Constitution of the Tigray Regional State, Proclamation No. 45/2001, 'Mekelle, Tigray Negarit Gazeta, 15th November (Tigray Regional Constitution') Art.8(1-2)

[220]Van der Beken (n2)132

[221]Amhara Regional Constitution, Art.45(2)

[222]Yohannes Mamo,'The protection of minority rights under regional constitutions in the Federal Democratic Republic of Ethiopia: The case of Tigray' (2015) 11(9) African Journal of Political Science and International Relations 249,253

[223]See Article 45(1) of the three Constitutions.

[224]Van der Beken (n2)132

The Southern and Amhara regional constitutions are similar in such a way that they both established Council of Nationalities (CoN), a body whose mandate is deciding over matters related to identities such as language, culture and particularly in the Southern Region, on the questions of being Zone, Special *Wereda or Wereda* administrations.[225] The difference is that CoN in Amhara region established under the administrative structure of the Nationality Administration[226] whereas, in the Southern Region, it is established as one among the chambers of the regional parliament.[227] Contrary, the Tigray regional constitution doesn't provide for such a special mechanism of minority protection though it guarantees the right to self-determination up to the secession of nations, nationalities, and peoples.[228]

As representation is concerned, the Southern Region Constitution empowers the nations, nationalities, and peoples of the region to be represented with at least one member each and one additional member per 1 million in the CoN.[229] Differently, the Amhara regional constitution recognizes minority representation in the regional lawmaking body– the State Council.[230]Besides, the Constitution creates a scheme for minority groups to be represented in the Constitutional Interpretation Commission.[231]In Tigray, though the constitution doesn't clearly provide for representation of minorities in either of the two houses, practically, 'out of 152 members of the Regional Council, Irob and Kunama each have four members like other *Weredas* in the region.'[232] Similarly, the constitution guarantees representation of minorities in the Constitution Interpretation Commission though they are usually outnumbered because of their less in number.[233]

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[225]Southern Constitution, Art. 50 (2)and Amhara Regional Constitution, Art.77

[226]Amhara Regional Constitution, Art.45(2)

[227]Southern Constitution, Art.50 (2)

[228]Tigray Regional Constitution, Article 39(1-5)

[229]Southern Constitution,Art. 58 (1)

[230]Amhara Regional Constitution 48(2)

[231]Amhara Regional Constitution 70(1)

[232]Yohannes (n 219) 253

[233]ibid

b) The Constitutions of Gambella and Benishangul Gumuz Regional States

The Gambella Constitution, practically, resembles the Benshanhul Gumuz Regional state's Constitution because it identifies five ethnic groups: Agnuak, Nuwer, Majang, Komo and Opa as the cofounders of the government of the regional state[234]alike the latter which recognizes five ethnic groups: Berta, Gumuz, Shinasha, Mao and Komo as indigenous and owner ethnic groups of the region.[235]The Benishangul Gumuz constitution has established TA and NTA dual mechanisms of administrations for indigenous ethnic groups.[236] The regional government comprises a four-tier administrative structure namely the region, Administration of Nationalities (AN), *Woreda,*and *Kebele* where except the AN which governs NTA of indigenous ethnic groups, the rests are however, mandated to operate administrative function common to every region in the federation.[237]Similarly, the Gambella regional constitution provides for the establishment offour-tier administrative structures: region, nationality zones, administrative *Weredas and Kebeles*.[238]

Under AN, there is the indigenous council that has been given the power to protect and promote the cultural, linguistic, and historical heritage of the indigenous communities.[239] Like the Benishangul Gumuz, the Gambella regional constitution provides for the establishment of nationality administration for the Agnuak, Nuwer, and Majang ethnic groups and it also establishes a council of nationalities which entrusted the power to promote their language, culture, decide over their working languages and others.[240]However, in both cases, some argue that AN in general and the indigenous council, in particular, have not been given sufficient power of legislation because the council is

[234]Gambella Regional Constitution, Art.46(1)

[235] The Revised 2002 Constitution of The Regional State of Benshangul Gumuz, Article 2

[236]Beza Dessalegn, 'Experimenting with Non-Territorial Autonomy: Indigenous Councils in Ethiopia' (2019) 18(2) JEMIE310,11

[237]Benshangul Gumuz, Constitution, Art.45(1)

[238]Gambella Constitution, Art.45(1)

[239] Proclamation provides for Nationality Administration of Benishangul Gumuz National Regional State , Article 3(4), see also Christophe Van der Beken, *Unity in Diversity-Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia*(Lit Verlag, 2012)

[240]Gambella Constitution, Arts. 75(1) and 76(3)

directly responsible to the regional parliament and the power to issue directives that constitutionally given to the council is not as much operational in practice.[241]

c) The Constitutions of Oromia, Somali, Afar, and Harari Regional States

These four Regional States' Constitutions have shared common features in such a manner that they all declared a sovereign power of the region should reside in the hands of their respective dominant ethnic groups. This is to mean, the Oromia region belongs to the Oromo people, the Somali region to the Somali people, the Afar region to the Afar people, and the Harari region to the Harari people. Thus, though it is not pragmatic in some cases, such as in Afar, (there is for instance, Argoba *Liyu Wereda*) but, literally speaking, there is no room to accommodate indigenous and non- indigenous internal minorities in each region.[242]

To conclude, all of these constitutions have failed to guarantee the equitable representation of indigenous minorities in the executive and judiciary branches of government at regional levels. Moreover, from the above insights, one can identify three main features of regional constitutions' diversity accommodation. First, the difference among regional states is the mechanism of minority accommodation and thus, not that of diversity itself. Second, though some regional constitutions explicitly recognize only indigenous minorities, most regional Constitutions do the same in realities. Third, in those regions where their constitutions exclusively give regional sovereignty to the dominant group of the region, other non-dominant groups are only left with the protection of individual international human rights.

4.4 The Failure of the Existing Mechanism

The constitutional assessment made above has shown us that there is a large legal gap and institutional frameworks to properly protect minorities in Ethiopia. Lack of protection becomes severe as the minorities are scattered throughout the federation. Some failures of the existing mechanism could be mentioned as follows:

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[241]Beza (n 236) 12, see also Benshangul Gumuz, Constitution, Art.75 (3) and Gambella Constitution, Art.76(3)

[242] See for instance, Art.8, art 9(1), Art.8 (1), and Art. 8 of the Revised Constitutions of each Regional State respectively as mentioned above

First, the prime failure of Ethiopia's ethnic-based TA stems from its very assumptions. This follows that when territorial ethnic-based federalism was initiated as an enabling political device to demarcate among boundaries of the regional states; it seems that the assumption was taken to the effect that boundaries are almost aligned with the inhabitance of ethnonational groups.[243] However, as for instance, Assefa Fiseha argues, 'this ignores the shared political history that resulted in heterogeneous territories, people of mixed ethnic background or those unsure of which ethnic group they belong to or wish to identify with.'[244]

Second, the exclusive application of ethnic-based territorial autonomy without being backed by other approaches is another core weakness of the system in place. This is problematic because since none of the nine Ethiopian regional states are ethnically homogenous, the rigid application of ethnic based TA would create a high degree of ethnic conflicts and majority-minority tensions. Assefa mentions this by saying that, among other things, Ethiopia's federal experiment has failed to strike a balance between the rights to self-rule of ethnonationalists on the one hand and the individual and group rights of minorities within each sub-national entity on the other hand.[245]He goes on to mention the fact that the existing federal experiment of Ethiopia favors the ethnonationalist groups when citizens in general and minorities, in particular, are often enslaved by the former's forces.[246] Van der Beken also notes that, taking into account the unique features of socio-economic and political background, though the fact that most regional states' constitutions reserve the right to TA for indigenous groups is logical, the total silence of the constitutions about the recognition of non-indigenous minorities, however, amounts to the violation of group rights because it clearly contradicts with article 39(3) of the FDRE Constitution. [247]

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[243]Zemelak Ayitenaw Ayele & de Visser, J, 'The (mis)management of ethno-linguistic diversity in Ethiopian cities' (2017) 16(3) Ethnopolitics 260

[244]Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*(Wolf Legal Publishers, 2006)

[245]Assefa Fiseha, 'Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet'(2014)22(4) Regional &Federal Studies 435, 454

[246] ibid

[247]See Christophe Van der Beken 'Minority Protection in Ethiopia : Unrevealing and improving Ethnic Federalism' (2010)30(30) Recht in Afrika

Third, the existing perception of the right to self-determination itself is problematic. Understanding of the right to self-determination at all administrative levels in Ethiopia has reached the conclusion that the interests and demands of each ethnic group are only best protected through the establishment of formal government structure.[248]

Fourth, failure to appropriately respond to the ongoing demands for self-rule. All most all the self-rule questions in Ethiopia, among other things, resemble the need for territorial administration and having these all bundle of ethnic groups, which is however, impossible in reality. For instance, in Southern Regional State there are about 56 recognized ethnic groups, but till now there are only seventeen Zones and six Special *Woredas*.[249] This reveals how much the difficulty is that to establish territorial self-administration for each and every ethnic group in Ethiopia since for this particular case itself majority ethnic groups share territorial administration with others.[250]

Fifth, it is apparent from Article 47(2) of the constitution that the scope of the right to self-administration goes beyond modest self-ruling questions at *Kebele* or *Wereda* level to the state formation (region) or (to become an independent nation), as for instance, the former has recently been requested by the Sidama people, who won the referendum but not yet established as independent state which in turn upsurges the number of federal constituents to ten. To this effect, the question of any Nation, Nationality, and People to form its own state shall be effected as per the same article sub 3 of the constitution.[251] This is to mean, among other things, the approval of a two-thirds majority vote of the members of the council of the concerned ethnic group must be obtained and the regional state council, in the same manner, is expected to transfer the power to the newly created state. As can clearly be understood from the procedure set forth under this sub-article the

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[248]Bassi, (n188) See also Beza Dessalegn , 'Comment On Ethnic Minority Rights Under The Ethiopian Federal Structure'(2012)6(2) Mizan Law Reviw 334. In this article he asserted that the territorial ethnic based federalism has created the domination of one ethnic group over the other and minority groups face difficulties in multiple ways and even in some cases their fundamental human rights are found to be under threat.

[249]Watch official website of South Nation Nationalities and Peoples Regional State <http://www.ethiopia.gov.et/snnp-regional-state> accessed 9 May 2020

[250]Belete Meheri, 'The Right To Self- Government and Representation Under Ethiopian Federation: An Assessment of The Practice And Challenges' (2018)8(6)RJSSM 88,90-92

[251] FDRE Constitution, Art.47(3)

particulars contained are cumulative and all happen concurrently. Hence, what if the regional council has deliberately failed to transfer the power? Is there any constitutional remedy to this effect?

Six; the pressing issue under this study is that, the present territorial administration of Ethiopia does not address the issues of exogenous ethnic minorities(non- indigenous internal minorities).As these groups are largely scattered throughout the country, a territorial self-rule system is not viable for their accommodation. This is a major headache and threat to the existing federalism because it has an inordinate potential to easily distort the existing peaceful co-existence among different ethnic groups. The situation in Benishangul-Gumuz regional state may witness this fact since ethnic conflicts habitually erupt between those called indigenous groups and the later immigrant groups like Oromo, Amhara, and other highlanders.

To conclude, as many agree, one cannot just think that Ethiopian federalism is as such defective until he knows problems seen in FDRE Constitution's architecture and its implementation thereof on the one hand and how the ruling party EPDRF (now dissolved except TPLF) used to dominate every aspect of the constitution in multifaceted direction since coming to power.[252]

4.5 The potential of Non-Territorial Autonomy in Ethiopia

Non-territorial autonomy, as discussed in the preceding chapters, also referred to as 'Cultural autonomy' is a mechanism by which decision making power is non-geographically decentralized to enable dispersed minorities to make decisions on matters particularly related to their identity such as language, culture, religious and aspects rights.[253] As Alexander Osipov also notes, NTA involves comprehensive mechanisms that should be backed by a wide range of institutional arrangements implementing the right to self-administration of ethnic groups in the manner other than territorial administration.[254]It should be noted that the mechanism of NTA is independent and the institutions

[252]See Merera Gudina, 'Ethnicity, Democratization and Decentralization in Ethiopia: The Case of Oromia' (2007)23(1) Eastern Africa Social Science Research Review 81

[253]Bertus de Villiers 'The Protection of Dispersed Minorities: Options for Aboriginal People in Australia' (2014) 74 ZaöRV 105, 111

[254]Alexander Osipov, 'Non-Territorial Autonomy during and after Communism: In the Wrong or Right Place?"(2013) 12(1) JEMIE

mandated to enforcing the system are not simply NGOs rather should be created statutorily and empowered to make a binding decision over their own affairs.[255]

Ethiopia, as a highly diversified country, is home to a large number of internal minorities. Internal minorities in this scenario include both indigenous and non-indigenous minorities. As aforementioned, though the protection of the former is relatively moderate in the region where they have been recognized as nationalities, the protection of the latter is found to be the worst one because it has not been recognized by the FDRE constitution and all regional constitutions as well as nowhere it statutorily recognized by lower legislation both at the federal and regional levels of governments. Yet, better accommodation of internal minorities has a greater role to play in having successful federalism, the system of government Ethiopia has been practicing, and because it would be unviable to create a region whose inhabitants exclusively comprise people with homogenous ethnic or linguistic backgrounds,[256] the need to search for additional federal arrangements in which the dominant ethnic group should not lose its territorial integrity, but at the same time the non-dominant ethnic group would get proper accommodation and legal protection. One such system is the adoption of Non-territorial autonomy (NTA).

The FDRE Constitution matches with Lijphart's constitutional guidelines particularly, on issues such as a parliamentary form of government, federalism, and power-sharing within or beyond the executive, at least to some extent.[257]NTA, also, as one of the constitutional guidelines designed by Lijphart, properly works for the accommodation of internal minorities in Ethiopia, particularly with respect to the protection of non-indigenous ethnic groups, in such a manner that it will have the potential to bring them together and at the same time, enable them to establish the de-territorially integrated administrations.[258] As Van der Beken suggests, it would be advisable to adopt the NTA arrangements in Ethiopia so that to promote and protect the rights of dispersed internal minorities, those groups of peoples who live throughout the country.[259] He however, stressed that the adoption and application thereof should wisely be done since the total replacement of the existing territorial

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[255] Villiers(n 253)111

[256]Yonatan and Van der Beken(n8) 33

[257]Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (2[nd]edn, Yale University Press 2012)191

[259]Van der Beken (n 239)26

autonomy by NTA would create another potential threat to the system in practice.[260]He goes on to mention that the NTA should be architected as a complementary device where still powers such as police, agriculture, land administration and others which naturally and primarily linked to territorial administrations must exclusively reside in the hands of regional governments(in the hands of indigenous ethnic groups) whereas those rights which are only intertwined with identity matters such language, culture, and education would be transferred to the non-territorial institutions in which an ethnic group is to be represented.[261] Van der Beken again elaborates that, giving due regard to the protection of non-indigenous groups mainly through the arrangement of NTA has win-win benefits in such a manner that it allows the autochthonous groups to maintain their territorial integrity together with the right to deciding over some sensitive issues such as land and at the same time would empower the non-autochthonous groups to participate in the government's decision making processes through representation.[262]

In Ethiopia, there are some practices that resemble NTA. For instance, members of the Harari National Assembly could be elected even when they live in the region other than the Hrari Regional National State.[263] The same trend works for indigenous minorities in Benishangul Gumuz regional state. The Amharic schools in Oromia and Somali regions may constitute one aspect of NTA.[264]Nevertheless, since there is no federal constitutional guarantee and the existing practices are also referring to the protection of indigenous minorities, the fate of non-indigenous internal minorities would be at peril.

[260]ibid

[261]ibid

[262]ibid 26

[263]See The Revised Harari National Regional State Constitution art.50(2)

[264] Beza (n 236) 11

CHAPTER FIVE

Conclusion and Recommendations

5.1 Conclusion

The attempt to protect minority groups goes many years back to the 17thcentury, particularly when the peace treaty of Westphalia was signed. It was then intended to reconcile the religious difference created between the Roman Catholic Church followers and the Protestants. It then started to grow and expand its scope of application to all aspects of minorities such as religion, ethnic, linguistic, culture, and the likes. The subsequent congresses of Vienna and Berlin also played a significant role particularly by introducing the need to separately treating minorities because of their distinct identities.

The recent development of minority protection started to emerge during the League of Nations as many important treaties such as the Paris Peace Conference that specifically concerned about minorities were entered among the then sovereign states. The protection has more enunciated under the auspice of the United Nations with the adoption of a Declaration on the Rights of Persons Belong National or Ethnic, Religious and Linguistic Minorities though it has remained without force. As regional protection is concerned, Europe has remarkable minority protection schemes in a wide range of instances. The council of Europe has adopted a binding Framework Convention for the National Minorities to protect their group-specific rights. Also, many countries in Europe have enacted specific minority protection laws.

In Ethiopia, neither the Imperial nor the Derg regimes had provided mechanisms for the protection of minorities. The idea to accommodate diversity emerged in Ethiopia with the coming to power of the EPRDF in 1991. The FDRE Constitution that was adopted in 1995 and that is currently in force doesn't provide comprehensive mechanisms of minority protection. It doesn't however, totally disregard the protection thereof either. It traces shallowly with the spirit of protecting group rights under the umbrella of the so-called 'nations, nationalities and peoples.'

As the regional states' constitutions are considered it is possible to simply put them in two categories: those that clearly declare that a particular ethnic group is the sovereign people of that

particular regional state and those that declare that the sovereign power belongs to the whole peoples of such a particular region. Unfortunately, none of them are preferred as better than the other. This is because, the thorough analysis and comparative study of all state constitutions have revealed that none of them have recognized the rights of non-indigenous internal minorities, the most at peril, beyond the constitutional rhetoric that the region belongs to the whole people of their respective regions.

In a nutshell, the three decades of Ethiopia's territorial autonomy experiment has not brought the result already sought in many instances. This problem at least stemmed from four sources: the very establishment of regional states, failure to appropriately and exhaustively utilize the existing territorial autonomy, lack of other gap-filling federal arrangements such as NTA, and the fact that politics used to ostensibly swallow the law. Recently, with the coming to power of the new Prime Minister, some legal and institutional reforms have been undertaken to improve the human rights situation in the country though this is still an uncompleted project.

5.2 Recommendations

A solitary ethnic-based territorial autonomy system of federalism in Ethiopia has lacked adequacy as could be witnessed from the three decades persistent experiment particularly in relation to its failure to accommodate internal minorities to the central polity so that they would enjoy the socio-economic and political rights on an equal footing or at least proportionally with the dominant ethnic groups throughout the country.

Therefore; another complementary arrangement must be in place to fill the existing gap. The application of Non-territorial autonomy is believed to be the gap-filling device in this regard particularly to accommodate diversity in general and the rights of non-indigenous minorities in particular. To this end, two important setups should be taken cumulatively in order to have any functioning federalism in Ethiopia.

1. The establishment of a fully-fledged NTA both at the federal and regional levels of governments to accommodate non-indigenous minorities. This would be realized at least if two things have simultaneously been done. First, the establishment of NTA must be legally backed by the

Constitution. To this effect, NTA has to be added to the existing TA, under Articles 47 and 39 of the FDRE Constitution through the constitutional amendment process to guarantee the right to self-determination of the non-indigenous minorities. Yet, this arrangement has to be done **cautiously** and the government's political commitment is very essential here. This is because the proposed NTA must not contravene the practice of the existing TA. Second, a detailed law which at least qualifies the building blocks[265]of NTA that was designed by Bertus de Villiers should apply to all regional states and has to be enacted by the federal parliament. Additionally, the country has to work closely with other countries that have developed the best experiences in this regard. Ethiopia should domesticate such experiences in such a manner that they would be functional, taking into account the distinctive features of the socio-economic and political context of the country.

2. Proper application of the existing territorial autonomy is equally important to ensure the protection of indigenous minorities. Because the rights to self-administration given to them at lower administrative units and the mere representation in the federal and regional parliaments alone do not suffice to exercise a real right to self-determination. They have to be equitably represented in the executive and judiciary branches of both levels of government. To this end:

   a. The term 'nationality minorities' mentioned under article 54(3) of FDRE Constitution has to be made clear by proclaimed law (again, the new electoral law failed to define it) to ensure representation of minorities in HoPR. Moreover, article 39 of the constitution has to be amended to the effect that it would give the more clear functional definition of the phrase 'nations, nationalities and peoples' as this has always been practically remaining ridiculous and adversely affect the protection of minority rights in Ethiopia.

   b. The One Million-One additional representative formula of the HoF has to be reassessed to narrow the large gap seen among ethnic representations in the House to the effect that it will enable minorities at least, to challenge the decision of majorities.

   c. The FDRE Constitution has to be amended to guarantee the equitable representation for indigenous internal minorities in the executive and judiciary branches of the federal government. To this effect, article 72ff has to be amended so that the minority representation in

[265]Villiers(n 253)112

executives such as ministerial posts and others would be improved. So does article 78ff to secure the minority representation at all levels of federal courts.

d. Regional governments have to follow the federal government in amending their respective Constitutions in such a way that they would give better protection for minorities.

3. Last but not least, for the smooth application of all aforesaid, separation has to be made between the government administrations and the ruling party internal working system so that the latter's dominance has to end. The undue influence that the EPRDF used to exert on the state machinery and public service institutions must not be repeated by a new party going to be elected to lead the Country.

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