

*The Legal and Practical Protection of the
Rights of Minorities in Self Administering
Nations of Ethiopia: The Case of Oromia*

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Acronyms

WWII----- World War the Second

UN-----United Nations

UDHR-Universal Declaration of Human Rights

PCIJ--- Permanent Court of International Justice

ICCPR ---International Covenant on Civil and Political Rights

OSCE----Organization for Security and Cooperation in Europe

ECHR----European Convention on Human Rights

FDRE—Federal Democratic Republic of Ethiopia

HPR----House of Peoples Representatives

HRC---Human Rights Committee (established in terms of the ICCPR)

Proc.No ---Proclamation Number

HoF--- --House of Federation

SNNP Southern Nations, Nationalities and Peoples

OPDO---Oromo People Democratic Organization

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Abstract

This paper investigated the legal and practical protection of internal minorities in Oromia Region. For this purpose, secondary sources such as relevant legal literatures, books, laws, articles and journals were analyzed while interviews and field observations were the primary sources employed.

Because of the nation-building policy, recognizing Orthodox Christianity as a state religion, Amharic as an official /national language, and other political opportunities, most of the members of Amhara people dominantly occupied in the urban centers of Oromia. The then ethnic dissatisfaction caused the flourishing of ethnic based liberation fronts which have ultimately overthrown the military junta in 1991. In the FDRE Constitution ethnic groups which are territorially defined have become the bearers of sovereign power and entitled to the right to self-determination. Oromia is one of the nine states though none of the regions are homogenous as there are dispersed internal ethnic minorities which either belongs to the majority nation in other region or double minority groups (which are neither dominant at national level nor at regional level) which have got very little attention in the constitution of both levels.

The Constitution of Oromia does not recognize the existence and the distinct identity of ethnic minority groups in this region though the 2007 population census indicates that there are almost all dispersed ethnic groups in this region. Numerically, each is below 1% except the Amhara people which constitute 7.2%. In practice; primary education is delivered either by Oromo language or Amharic depending on the preference of the students. There are also Amharic broadcasting programs on Oromia TV and Radio. In fact, no guaranteed representation for ethnic minority groups in this region at any administrative level though the existence and representation of non Oromo-ethnic groups are recognized in City council of 1st and 2nd grade cities. The Oromo and the Amhara constitute around 89% and 10% of the total Civil servants of the region respectively. The right to elect and to be elected is equally guaranteed to all Ethiopian citizens residing in the region, and regard is not made to an ethnic background for a person to be nominated and appointed in public offices.

Chapter One

Introduction

1.1. Background of the Study

Despite the historical maxim “Nation building”, through the means of assimilation or integration¹ of diversities, the issue of finding political, economic, cultural and social spaces for diversities to run the government has become a necessary choice in multi-ethnic states. Experience has also proved that around ninety percent² of states in the world are created from multi-ethnic/national societies whereby assimilation and accommodation of these diversities has been competing political policies. As experience has indicated ethnic minorities do not let national identity to be equated to the identity of one or few ethnic groups since they believe unity of the state peacefully proceeds ahead and perpetuated only when the identity, culture, language, autonomy, and religion of every ethnic group are granted equal constitutional respect and recognition³. Owing to this, the need to devise political policies to accommodate ethnic diversities granting political space for different diverse groups keeping intact the national unity came in to picture.

For a closer observer, the fact that minority rights are undermined under the shade of nation-building subordinating to the identity, culture, language and religion of one or very few ethnic groups had been the cause for the passing away of life and distraction of property, which in turn is an obstacle to economic growth. Different ethnic groups have been fighting one another for the preservation of their identity, to have political space and self-determination in which yesterday’s oppressor becomes today’s oppressed due to the military strength of the other.⁴ Most of the states in Africa are characterized by

¹ Walker Conner , Nation Building or Nation Destroying ?, World Politics, Vol.24,No.3(1972),Johns Hopkins University Press, <http://www.jstor.org/stable/2009753>, accessed on 07/2008 06:53 , pp. 319-20

² Ibid p.319

³ Ibid p.353

⁴ David A.Lake and Donald Rothchild, Containing Fear: The Origins and Management of Ethnic Conflict, International Security, volume.21,No.2(Autumn,1996), p. 41

considerable diversities in socio-economic, ethnicity and religion which is attributed to the colonial imperialist policies and designs.⁵

However, in the case of Ethiopia, the cause of ethnic diversity is not attributed to the impact of colonizers as Ethiopia was never successfully invaded by foreign colonizers. Rather, it is attributed to the 19th century expansion of the kingdom of Abyssinian⁶ The leaders of the Empire of Abyssinia had been motivated by unification through assimilation after bloody wars during their expansion. Emperor Menilik was mentioned first among the modern prominent leaders whose dream was to create Ethiopia under one identity.⁷ Moreover, in spite of the reality on the ground, the aim of the Emperor was building Ethiopia wherein diversities are denied or erased under the dominance of the culture of Amhara.⁸ National identity is apprehended under the ethnic identity of one nation. Not only post Menilik, but also prior to his kingship, there was a competition for power among different lords from different sides⁹. Nonetheless, because of the imposition of the identity of one ethnic group on all ethnic groups by conquest, it created a sort of dissatisfaction to many ethnic groups. Irrespective of brutal resistance to the then unification from different ethnic groups, successors of Emperor Menilik, specifically Emperor Haile Sellasie, managed to achieve the goals of the former, nation building¹⁰, under the monarchial system. To facilitate nation building objectives, a great number of Amhara political and religious missionaries moved to the Eastern, Southern and Western parts of the country¹¹. Particularly, significant number of Amhara moved to Oromia partly because of the establishment of capital city, Finfine (Addis Ababa) and partly in pursuit of better economic resources including for political, religious and military

⁵ Christophe Van der Beken, Ethiopia: Constitutional protection of Ethnic Minorities at Regional level, African Focus, V.2, No 1, p.105

⁶ Ibid

⁷ Aberra Dagafa, The Scope of Rights of National Minorities under the Constitution of Federal Democratic Republic of Ethiopia, Series on Ethiopian Constitutional Law, vol. 1, Addis AAU Printing Press, Ababa University, 200 p .1

⁸ Beken, supra note 5, p.105

⁹ See the Preamble of the 1931 Constitution of the Empire of Ethiopia

¹⁰ Aberra, supra note 7, p. 1

¹¹ Mohamed Hassen, The Oromo of Ethiopia : A History of 11570-1860, 1990, p.200 and Bahiru Zewude, a History of Modern Ethiopia 1885-1974, (1991), p.16

missions. Moreover, significant numbers of different ethnic groups have been moving from one to the other because of freedom of movement and resettlement programs.

Systematic assimilation in the guise of nation-building by equating national identity to the identity of one nation was strongly challenged by the then university students from different ethnic groups. Even students who belong to the dominant ethnic group had bitterly reacted against denial of the diverse identity and cultures of the Ethiopian people by recognizing only one nation's identity, culture and language as the sole identity and culture of Ethiopia.¹² This University Students' dissatisfaction to the Haile Sellasie's absolute assimilation policy was upgraded to several national fronts on the basis of ethnic groups such as Eritrean Liberation Front, Tigray People's Liberation Front and Oromo Liberation Front with the objective of secession.¹³ In the meantime, the military junta, Dergue, assumed power overthrowing the Emperor in 1974 though still the issue of ethnic diversity was not considered as a big issue as usual. The Dergue regime, which was challenged both internally and externally, without due regard to accommodation of ethnic diversity except mere declaration of equality of nations, the national literacy campaign by local vernaculars and de jure decentralizations of power at the eve of its down fall.¹⁴

The ethnic based liberation fronts successfully penetrated in to the central part of the country after a brutal civil war in which some of them reshuffled their dream from liberating one nation to the sovereignty of all nations¹⁵ in Ethiopia. They succeeded in overthrowing the Dergue declaring the sovereignty of nations under the 1991 Charter of Transitional Government. The framers of the Charter came up with a noble idea as compared to the predecessor Ethiopian leaders who had been strictly adhering to nation building by undermining ethnic diversity. In the eyes of the leaders during the transitional government, national unity and identity are preserved only when ethnic diversity acquires

¹² Randi Ronning Balsavic, *The Question for Expression : State and the University in Ethiopia under three Regimes*, Addis Ababa University Press, 1952-2005, p. 33

¹³ Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative study*, Revised ed, Forum of Federation, 2007, pp. 65 & 72

¹⁴ see the Constitution of the People's Democratic Republic of Ethiopia; Proc No.1/1995 Negarit Gazete 1st year No.1, 21 August 1995, Art .2

¹⁵ Assefa, supra note 13, ibid

due recognition and respect. In short, it aimed at forging unity out of diversity¹⁶. The 1995 Constitution of Federal Democratic Republic of Ethiopia which is similar to the Charter, unlike the usual federations, came up with federal arrangement the units of which are nations, nationalities and peoples of Ethiopia guarantying the right to Self-determination of ethnic groups/ nations which include the right to practice their culture, speak and develop their language; promote their history, self-administration within specific territory up to secession and representation at both levels of governments.¹⁷

However, the ethno-linguistic federal arrangement adopted by FDRE Constitution has not established any more states except nine states and to one city state for those around 80¹⁸ ethnic groups in the federation. Only five ethnic groups (Tigray, Amhara, Afar, Somali and Oromia) which are numerically dominant in their respective regions maintained to establish their own separate regional governments. Harari nation though numerically inferior in the region has managed to establish its own region. The remaining ethnic groups have jointly established one regional government, and separate local government for each, where as some ethnics groups are still waiting for the exercise of self-administration or identity determination.¹⁹

Pursuant to Art.52 of FDRE Constitution, the Oromia Regional Government has established its regional government, enacted its own constitution in which the supreme political organ, the legislature, the executive and the judiciary are established in the same year. In Oromia, the Oromos, the bearer of sovereign power (Art. 8 of the 2001 Oromia constitution), constitutes absolute majority counting around 88% of the total population of the region, the remaining 12% are other nations, nationalities and peoples of Ethiopia in which the Amhara constitute 7.2% of the total population where as all other groups cumulatively constitute 4.8 but separately below 1% of the total population of the

¹⁶ See Art. 2 of The Transitional Period Charter of Ethiopia, Negarit Gazetta, 50th Year, 1991, No.1

¹⁷ FDRE Constitution, supra note 14, Arts. 39 and 47

¹⁸ Ibid. Art.47 of FDRE Constitution

¹⁹ See the Constitutions of Regional State of Southern Nations, Nationalities, and Peoples of Ethiopia, Gambella and Benshangul/ Gumuz which are the conglomeration of Nations most of which have their own separate Local Government.

region²⁰. Most of the Amhara people being beneficiaries of the past regimes (e.g. working language, cultural dominance and others) occupied and still dwelling in the urban centers of Oromia (Cities, and towns particularly in the south west Oromia where Emperor Menilik’s conquest was seriously challenged) for security and resource purposes at the expense of the native Oromo.²¹ Owing to historical unjust eviction of Oromo from the neighboring rural *kebele*, significant number of Amahra, though dispersed, occupies the urban centers, so that there is a tension as to who is legitimate group to establish city administrations in the first and second grade cities in the region.²²

1.2 Statement of the Problem

In most of European states ‘raising minority rights had been considered as a sign of backwardness’, as such many writers dictated as it is possible to over come the tension of minority issues through “education, urbanization and industrialization.”²³ There are also writers who argue that if guaranteed “equal access to resources, ethnic groups can displace loyalty to ethnic group by reinforcing loyalty to national unity.”²⁴ In the eyes of the proponents of this argument, appeal to ethnic group is some thing artificial means used by politicians to mobilize the people which “wither away in to thin air” once access to resource is guaranteed. On the other hand, there are contemporary scholars arguing that ‘access to economic resources may not maintain and resolve the minority issues since ethnic minorities value their language, autonomy, culture, and history to maintain their distinct identity.’²⁵

The FDRE Constitution has also accepted the importance of accommodation of ethnic diversity for the perpetuation of national unity and peaceful coexistence of different ethnic groups in Ethiopia. Beyond accommodation of ethnic diversity, nations, nationalities and peoples of Ethiopia are given sovereign power and have become the

²⁰ See the 2007 Population and Housing Census of Ethiopia

²¹ Assefa, supra note 13, pp. 58-59

²² See the preamble of Proc. No.1116/2006 a Proc to Amend Proc. No.650/2003 of Urban Local Government of Oromia National State

²³ Coner, supra note 1, p. 321

²⁴ Ibid

²⁵ Ibid

units of federation keeping the constitution as a pact among them selves (see the preamble and Art.8 of FDRE constitution). In the eyes of the FDRE Constitution, it seems that there is a hope for all nations to establish their own states. Delimitation of the regional borders, as much as possible, is based on ethnic grouping in which an endeavor is made to make match between regions and corresponding ethnic boarders. The assumption was that, “every ethnic group is fixed to its own region or specific territory” so that it exercises its constitutional right to self- administration.²⁶ As such, as per this constitution, which guarantees sovereignty of nations,” each ethnic(*nation*) can establish its own state, determine its own political institutions together with the structure of each organ and the local governments, determine its working language, and selects its own representatives to regional and federal institutions.”²⁷ It seems that in the minds of the framers of the constitution there will be ethnic homogeneous states.

But, in practice, all ethnic groups remained minorities in one or more other region(s)²⁸. Even in those regions deemed homogeneous, there are internal ethnic minority groups who moved to that region because of nation building, economic migrations, resettlement programs during the past regimes and freedom of movement which are not given adequate space in the FDRE Constitution. Of course, on the basis of the human rights provisions (Art.25 of FDRE Constitution) and with the assumption that the federal constitution provides minimum protection threshold, one may expect state governments and constitutions to provide better protection to territorially confined, and dispersed (non-territorially defined) minorities; the group which may constitute majority in one region but constitute minority in other region/s. For example, the number of Amhara in the cities and towns of almost all regional states, and the number of Oromos in Gambella, Benshangul/Gumuz, Somali, Harari and Southern Nations, Nationalities and Peoples of Ethiopia becomes an issue at regional level z. This reminds us ethnic federalism may not necessarily result in to homogeneous constituent units.

²⁶ Beken, supra note 5, p.105

²⁷ Ibid

²⁸ Assefa, supra note 13, p.243

All regional states of Ethiopia have enacted their own constitution by their legislature though as far as accommodation of diversity is concerned there are slight differences. The definition of nations, nationalities and peoples of Ethiopia provided under Art.39 (5) of the FDRE constitution has influenced the minority perception of regional governments. It is only territorially defined ethnic groups that has got minority protection in a dominant nations. Actually, in addition to the human rights protection against discrimination, the FDRE Constitution should have clear cultural rights of dispersed minority groups which have remained a headache both at regional level. Except reserving 20 seats in the lower house for territorial minorities Art. 54(3) of the FDRE Constitution do not define the minority though it seems nations which may not constitute one electoral district to have their representative are considered to be minorities.

Since politics is local, stability of the country highly depends on the peace, stability and accommodation of diversity at the state level. It is natural to provide and implement better minority and human right protection schemes at regional level. Moreover, around cities and towns of Oromia, there are tensions between the Amhara and the Oromo particularly while the former claims that they are demographically legitimate to establish City Administration, the later claims that they are legitimate owners of the region in general, and significant number of Amhara came to cities and town because of past injustice evicting native/ indigenous Oromos. Particularly, the later forwards historical justification and raise affirmative action as a defense. It seems that the Constitution of Oromia neglects non-Oromo ethnic groups in the sense that it declares that the “sovereign power in the region resides in peoples of Oromo nation” (Art .8 of Oromia constitution). In other words, it claims that the makers of the constitution are the Oromo nation so that the region is homogeneous.

To the contrary, Art.33 of the Oromia Constitution guarantees that ‘every Ethiopian resident in the region can be appointed and recruited in any political and civil service respectively so long as s/he knows the working language of the Region.’ Practically, there are Amharic Language Schools in Oromia towns and cities, and the government Media (Oromia TV and Radio) has reserved Amharic program so that members of

Amhara people can enjoy it. Moreover, there is a chance to the Amhara people in urban centers of Oromia to teach their children in Amharic in primary schools. Hence, in Oromia despite the constitution, the practice in this region provides and guarantees certain protections to the rights of some ethnic minorities which is not acknowledged in the constitution.

In light of this, this research paper mainly aimed at responding:

Whether or not ethnic minorities in National Regional State of Oromia are given legal and practical protections;

1. Why in the presence of clear constitutional principle which recognizes the right to preserve separate identity of Oromo, the Oromia TV and Radio broadcasting and the schooling system acknowledges diversity?
2. Are the concept of minorities in the constitution of Oromia and the practice of the region in compliance with the FDRE constitution as far as accommodation of diversity is concerned?
3. Is the legal and practical human rights scheme advancing the rights of dispersed internal minorities in Oromia?

1.3 Objective of the Study

The objective of this paper was to investigate the legal and practical protection of internal minorities in National Regional State of Oromia. In doing so, it tried to assess whether the practice in Oromia promotes only the interest of the Oromo nation (the majority) neglecting the existence and rights of the minorities in the region. In Ethiopia, which is a complex state, where ethnic majorities in one region are minorities in other regions either in a territorially confined way or in a dispersed manner, harmonizing group rights and individual rights is not an easy task. The FDRE Constitution, introducing ethnic federalism, is left with a lot of assignments to entrench and earn legitimacy. It recognizes both individual human rights and group rights though there are weak scheme of arrangement in harmonizing the two as more attention is given to sovereignty of nations, nationalities and peoples of Ethiopia in which they exercise self-determination up to

secession to rectify past injustice. Thus, this paper tries to assess whether the laws and the practice in the Regional State of Oromia have given adequate protection to internal minorities.

1.4 Scope of the study

The scope of this paper is limited to assessing the legal and practical protection of the rights of minorities in Oromia region in general and in the first and second grade cities in central, eastern and southern Oromia and their surrounding rural kebeles in particular. Particularly, it assesses the protection of the rights of minorities in Adama, Asala, Bishoftu, Burayu and their vicinity together with the general protection accorded to the rights of minorities at regional level. To facilitate nation building objectives, a great number of Amhara political and religious missionaries moved to the Eastern, Southern and Western parts of the country. Significant number of Amhara and other ethnic groups moved to Oromia partly because of the establishment of capital city, Finfine (Addis Ababa) and partly in pursuit of better economic resources including for political, religious and military missions. More over, significant numbers of different ethnic groups have been moving from one place to the other because of freedom of movement and resettlement program.

1.5 Significance of the Study

The study in its findings exposes the inadequacies in the legal, local administrative structures, institutional accommodations, the harmony between the legal and practical protections accorded to internal minorities in Oromia by reflecting up on its implication. It also contributes by forwarding additional way outs by which protection, respect and promotion of internal minorities are effectively implemented and enhanced. How much minority rights are protected at federal level, unless internal minorities created at regional level are duly respected, protected and promoted political stability at the center may not remain reliable. Hence, this research indicates also the challenges to the stability of the

state if internal minorities are accorded inadequate protection since otherwise it remains a mere multiplication of minority tensions.

1.6 Research Methodology

For the proper implementation of the research secondary sources analysis and primary sources were used. As such, relevant legal literatures, books, articles and journals were used so as to conceptualize and to analyze the issues associated with internal minorities. Other legal documents such as international instruments, the FDRE Constitution, the Constitution of Regional State of Oromia, the constitutions of other Regional states in Ethiopia and other laws were analyzed so as to determine whether internal minorities are adequately protected at both levels of government. Moreover, interviews and personal observations were the primary sources employed so as to determine whether there was harmony or other wise between the legal protections envisaged and the practice. Data were collected from the “Caffee”, the executive, the Court of Oromia, the Oromia Civil Service, Educational Bureau of Oromia, Bureau of Oromia Culture and Tourism, the Cities Administrations and the opinion of non-Oromo residents, employees and officials in Oromia cities such as Adama, Assala, Bishoftu, Burayu since they are characterized by significant diversities. Moreover, the author employed field observation in courts, different meetings, cultural museums, Amharic language schools, and other socio-economic and political participation events so as to collect data as far as accommodation of diversities are concerned.

1.7 Limitation of the Study

The author believes that the following constraints may reduce the quality of the research;

- Financial and time constraints to go through the study,
- Lack of adequate relevant data on time because of the reluctance of the concerned interviewees and absence of documented data that the researcher wants to analyze.

1.8 Organization of the Paper

The paper assesses whether the rights of ethnic minorities in Oromia are guaranteed adequate protection and whether the human rights scheme is strong enough to advance the rights of dispersed minorities in Oromia region. To this effect, the paper is classified in to five chapters. The first chapter provides back grounds, statement of the problem, and objective of the study, significance of the study, research methodology and limitation of the study. The second chapter assesses the definitional features of minority and the nature of minorities at both international and European level. The third chapter assesses the scope of rights of minorities under international instruments particularly the ICCPR and other related instruments. The fourth chapter is devoted to assess the accommodation of minorities and the scope of rights minority groups under FDRE Constitution by comparing with the approach of Switzerland, Canada, India and Croatia since they are more or less characterized by ethnic diversities. The fifth chapter is devoted to assess the legal and practical protection of the rights of minority groups in Oromia. Finally, the paper is finalized by drawing conclusions and recommendations.

Chapter Two

The Conceptual and Theoretical Framework

Introduction

Making a choice between policies of assimilation (whether voluntary or otherwise) or accommodation of population diversity by giving a space for diversities has been a challenge to multinational states and international society as well.²⁹ Though at the beginning it was not received with pleasure, providing adequate protection to minority groups in political, social, economic and cultural affairs becomes a necessary measure for both domestic and international peace.³⁰ But, laying down generally accepted standard by which population groups are identified as minority remained a head-ache for contemporary politicians and policy makers because of the “complexity of minority phenomena.” Besides, determining the types of minorities and the scope of their rights are not easy tasks. In the earlier times, priority was given to the policy of nation-building from diverse societies via ‘education, civilization and securing equal access to national resources so that defining the concept of minority was not given weight.’³¹ Nonetheless, experiences in multi-ethnic societies demonstrated that, equal access to resources without recognizing the distinct identity of minorities satisfies the demand of minority groups. The overlook of the issues of diversity has been a cause for civil war in Ethiopia, and caused unconditional transfer of power from one regime to the other.³²

Nowadays, there are multicultural states that have shown positive attitude to have the rights of minorities protected though finding a comprehensive definition to the concept of minority and determining the scope of right of minority have remained unsettled scholar debate. This is partly because minority phenomena require different approach from state to state. The major concern of international society seems to be securing rights of

²⁹ Kristin Hernard, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination*, Martinus Nijhoff, The Hague/Boston/Lodon 2002, p.1

³⁰ David Wippman, *the Evolution and Implementation of Minority Rights*, Fordham LawReview, 1997, p. 1: <http://web2.westlaw.com/result/documenttext.aspx?RS=WIW4.0.64&VR=2.0&SV=Full&FN> accessed on 7/5 / 2004

³¹ Coner, *supra* note 1, p.319

³² Aberra , *Supra* note 7, p.1 and see also *supra* note 27 *ibid*.

minorities at countrywide level rather than at sub-national level³³, however, since ‘politics by its nature is local’, without assessing minority right at sub-national level, any discussion in relation to issues of minorities may not be complete and fairly address all issues that needs to be examined before concluding whether minorities are adequately safeguarded or not.

2.1. Definition of the Concept Minority

There are many efforts made to define the concept of minority both at international and regional levels. Certainly, none of them acquired international authoritative status. Some authors, alleging that the issues of minority is so “complex and vague, prefer to set aside an endeavor to develop comprehensive definition. That is why “contemporary legal instruments dealing with minorities fail to include a definition of the rights holders.”³⁴ There are also groups of writers who discourage an effort to define minority asserting the term by itself is patent.³⁵ But, one should take note of the fact that these groups of writers have no hesitation as to the importance of protection of minority rights regardless of the absence of a binding definition. For them absence of universally accepted binding definition of the concept minority does not serve as a defense for states not to work to their best in order to secure protection of the rights of minorities.³⁶

Conversely, for many writers the need to have comprehensive definition of the concept minority is a necessary requirement. For some authors one cannot talk precisely about protection of minorities unless the subject of protection is defined.³⁷ Moreover, having comprehensive definition helps to determine certainly the population group that can be identified as a minority and to identify the special protection each minority group deserves.³⁸ Further more, it is difficult to reconcile the interests of claimant and the state

³³ M. Nowak, The UN Covenant on Civil and Political Rights, commentary on CCCPR, Kehl, P.Engel,1993 ,p.488

³⁴ Wippman, Supra note 30

³⁵ Vassilios Grammatikas, The Definition of Minorities in International Law: A problem Still Looking for a Solution, Hellenic Review of International Law,52nd year, Ant.N.Sakoulos publishers,1999, p.323

³⁶ Ibid

³⁷ Ibid. P.324

³⁸ Spiliopoulou Akermark, Justification of Minority Protection in International Law ,Kluwer Law International, The Hague,1997,p. 87

wherein minorities reside since each may unnecessarily bend the concept so as to advance its own interest.³⁹

More importantly, unless we have generally binding definition “system of minority protection” is open to indefensible abuses⁴⁰ so that states may go to the extent of denying the existence of minorities in their own territory as a result of which groups of people who should be entitled to legal protection would remain unprotected.⁴¹ Any effort to extend protection to the rights of minorities without clearly identifying the right claimant, subjects the enforcement of protection to the will of the majority.⁴² Lack of generally established definition of minority is not only ascribed to the “complexity and diversity of minority phenomenon” but also multinational states view the recognition of territorial ethnic minorities and their ensuing rights as it displace loyalty from national unity to ethnic autonomy which stimulates secessionist sentiment.

2.1.1 At International Level

During the time of League of Nations the issues of minority rights were almost “left to bilateral treaties” thus, it was fragile.⁴³ Considering League of Nations’ minority protection scheme which could not prevent the occurrence of WWII⁴⁴, the UN adopted “universal respect for human rights in combination with elimination of discrimination.”⁴⁵ In isolation, framing universally accepted and binding definition was left to domestic affairs of each member state. The Universal Declaration of Human Rights (UDHR) is devoid of a provision dealing with definition of minority issues due to the fact that member states failed to reach consensus.⁴⁶ At this moment multinational states “have had a tendency to view politically self-conscious territorial minorities as a potential threat to the integrity of the states in which they reside.”⁴⁷ As a result, they inclined to minimize

³⁹Grammatikas, supra note 33, p.324

⁴⁰Gnanapala Welhegama, Minorities’ Claims: From Autonomy to Secession, Ashgate, Aldershot, 2000, p. 50

⁴¹Akermark, Supra note 38, p.87

⁴² Welhegama Supra note, 40 .p.50

⁴³ Henrard, Supra note 29, P. 6

⁴⁴ Ibid. p.7

⁴⁵ Wippman, Supra note 30, p.3

⁴⁶ Akermark, Supra note 38, p.87

⁴⁷ Wippman Supra note 30, p.1

the differences between majorities and minorities via assimilations. On the other hand, some states weakened the potential capacity of minority groups to mobilize their groups to challenge the national integrity by taking primary initiative of promoting and protecting the rights of minorities.⁴⁸ The International Law's reaction to question of minority-majority relations, as one author has argued, "has tended to oscillate between an individual rights focus that implicitly favor assimilation ... into the larger society within a state and quasi-collective rights focuses that stresses protections and promotions of minority's identities."⁴⁹ Owing to the inexcusable minority claims, protection of minorities has acquired international significance.

Thinking the contribution of defining the concept under the sponsorship of the UN, "the first move was made to formulate binding definition of minority that could serve as a guideline to identify groups entitled to recognition and protection" though unsuccessful.⁵⁰ Nonetheless, "there does seem to be a certain measure of agreement regarding essential elements of the definition" of the concept minority. It should be noted that efforts made to define the concept minority have significant contribution for the understanding of minority and their ensuing rights.

Concerning the Greco-Bulgarian case⁵¹ regarding the acquisition of polish nationality", PCIJ made an effort to define the concept of minority as "inhabitants who differ from the rest of population in race, language or religion."⁵² As per the opinion of the court, on the basis of the bilateral treaty, it is possible to prescribe the definitional features of the concept minority. Accordingly, minority is described as:

A group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identify of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their

⁴⁸ Ibid

⁴⁹ Wippman supra note 30,p.1

⁵⁰ Aberraa Supraa note 7, p.22

⁵¹ L.C.Green, Protection of Minorities in League of Nations and United Nations" in A Gotlieb (e), Human Rights, Federalism and Minorities, Tronto, Canadian Institute of International Affairs ,1970,p.180-121 cited in Henrard, supra note 29, p.19

⁵² Henrad, Supra Note 29,p.19

*tradition, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their role and rendering mutual assistance to each other*⁵³.

This definition does not deal with the expressive components of the definition of minorities such as numerical factor, non-dominance and nationality. But, it is not without contribution for the subsequent understanding of the term as it “links the objective and subjective markers together” with the purposive orientation of preserving and developing special characteristics of minority group.⁵⁴

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities formulated in 1950 the following guidelines for the definition of minority. As such the term minority;

*[I]ncludes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; should properly include a number of persons sufficient in themselves to develop such characteristic; and the members of such minorities must be loyal to the state of which they are nationals.*⁵⁵

Though it is not defining the concept minority, Art. 27 of ICCPR is prominently relevant provision of internationally binding instrument related to the scope of minority rights. It states “(i)n those states in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with other member of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.”⁵⁶ As stated by Nowak, this article is the only binding provision for the protection of minorities in the universal human rights

⁵³Ibid.

⁵⁴ Malcolm Shaw, The Definition of Minorities In International Law ,in :Y. Dinstein & M.Tabory (eds.),The Protection of Minorities and Human Rights, Dordrecht, Martinus Nijhoff 1999, p.9

⁵⁵ UN Doc.E/CN.4/358 Cited in Henard, Supra note 29,p.20

⁵⁶ Henard, Supra Note 29,p.20

instruments.⁵⁷ The Human Rights Committee, in its general comment on Art. 27 of ICCPR have broadly interpreted the concept minority neglecting nationality and prolonged residence⁵⁸ within state as a binding requirement to be entitled for minority protection.⁵⁹

There are, however, many proposed definitions though it is worth while to stick to two of them “which are taken up in any discussion of the concept and which consequently are well known and carry some weight.”⁶⁰ The definition of minority which is forwarded by the special rapporteurs of the UN sub-commission, namely Capotorti and Deschenes are well known and have won certain credit. Copotorti’s definition was a result of part of his study in relation to the rights of persons belonging to ethnic, religious or linguistic minorities. The aim of his work was to make available an “insight for the further, concentrated developments of the principles enshrined in Art.27”of ICCPR.⁶¹ His definition is generally considered to be the most widely accredited definition of the concept minority.⁶² As such, he defined minority as follows;

*A group numerically inferior to the rest of the population of a state, in a non-dominant position, where members being nationals of the state-possesses ethnic, religious or linguistic characteristics differing from those of the rest of population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, tradition, religion or language.*⁶³

Deschenes was also requested to develop a proposed definition of the concept of minority in which he stated the concept minority as:

⁵⁷ Nowak, Supra Note 33, p.483

⁵⁸ Hernard, Supra note 29, P.21

⁵⁹ Ibid, p.22

⁶⁰ Ibid, p.21

⁶¹ J.P. Gromacki, ‘The Protection of Language Rights in International Human Rights Law: A Proposed Draft Declaration of linguistic Rights’ .PP.541-542, P.V.Ragma,”the Bases of Minority Identity” H.R.Q,1992, p.410

⁶² M. Nowak, UN Covenant on civil and Political Rights: ICCPR Commentary, Kehl, Engel,1993,p.487

⁶³ F. Capotorti ,Minorities, Encyclopedia of Public International Law,1983,pp.385-386

[A] group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by collective will to survive and whose aim is to achieve equality with the majority in fact and in law ’’⁶⁴

Though no other officially instigated attempts have been made to come up with a universally acceptable definition since Deschenes, his proposal was not accepted to be binding.⁶⁵ The definitions forwarded by both rapourters share much more similarities and win almost the same acceptance.⁶⁶ Both identified certain elements that are relevant to define the concept of minority. On the basis of these proposed components of the definition, today “most theorists insist on the fact that minorities can only be defined by a combination of objective and subjective elements.’⁶⁷

A remarkable divergence between the proposed definition by Capotorti and Deschenes is the fact that the later underlines that the ultimate goal of minorities is to secure “equality in fact and in law” which implies the need to ‘survive in a society without discrimination due to their distinctness’⁶⁸. If a group belonging to a minority wants to assimilate into the majority population instead of maintaining its distinct ‘characteristics, it should be protected based on the “principle of equality”. Therefore, Deschenes` “equality with majority in fact and in law” is criticized as having a tendency of limiting the minority claim.⁶⁹

There are also other authors who proposed definition of the concept minority though seriously criticized being either too narrow or unnecessarily extended. For instance, Fawcett’s suggested definition fails to incorporate both the nationality requirements and

⁶⁴ J. Deschenes, Proposal Concerning a definition of the term “Minority”, UN.Doc.E/CN/Sub.2/1985/31, & 181

⁶⁵ Hernard, Supra note 29, p.23

⁶⁶ Ibid

⁶⁷ Wippman, Supra note 30 p.1

⁶⁸ Akermark, Supra note 38, p.91

⁶⁹ Ibid

the non-dominance position.⁷⁰ Ede's definition is designed in broader sense as referring to "nations, ethnic, cultural and linguistic groups which significantly differ from the majority and are non dominant in the societies in which they reside."⁷¹ As one author noted "this divergence presumably demonstrates that certain components of the Capotorti–Deschenes standard of definition are controversial."⁷²

As far as protection of minorities is concerned, the Council of Europe and OSCE are primarily cited organizations by taking primary proposal at European level though their main attention was on "national minorities."⁷³ The 1992 Charter on Regional or Minority Languages wins special attention owing to its "aims at the protection of minority languages as inherent parts of cultural heritage."⁷⁴ The first clue of understanding of the concept minority is witnessed in Recommendation 1134 given in 1990 in which minorities are stated as "a separate or distinct groups, well defined and established on the territory of a state, the members of which are nationals of the state and have certain religious, linguistic or other characteristics which distinguish them from the majority of the population."⁷⁵ Besides, in 1993 by its recommendation 1201, the Parliamentary Assembly (Council of Europe) developed the definition of minorities in general and national minorities in particular. As such, minorities are understood as;

"a group of persons in a state who reside on the territory of that state and are citizens thereof, maintaining long standing, firm and lasting ties with that state, display distinctive ethnic, cultural, religious or linguistic characteristics, are sufficient representative, although smaller in number than the rest of the population of that state or of a region of that state, are

⁷⁰ 'A group in a country which possesses and has common will however, conditioned to preserve certain habits and patterns of life and behavior which may be ethnic, cultural linguistic or religious, or a combination of them, and such minority may be politically dominant or non-dominant, J.,Fawcett, *The International Protection of Minorities*, London, *Minority Rights Group*, (Report No.41)1979 P.4

⁷¹ A. Eide, Preliminary Report: Possible ways and means of Facilitating the peaceful and Constructive Solution of Problems involving Minorities, UN Doc.E/CN.4/Dub.2/1991/43,4. cited in Henrard, *Supra* note 29,p.24

⁷² *Ibid*

⁷³ Henrard *Supra* note 29,p.25

⁷⁴ *Ibid*

⁷⁵ *ibid*

motivated by a concern to preserve together that which constitutes their common identity, including their culture, their tradition, their religion or their language.”⁷⁶

Contrasting to the Capotorti-Deschens’ definition, recommendation 1201 gives special attention to certain degrees of permanence and numerical threshold” instead of “the requirement of non-dominance.” As a result, it has won greatness in its attempt to address minority issues not only at national level but also at sub-national level. The proposal of Steering Committee on Human Rights in relation to minorities reinforced the idea that owing to the controversial nature of minority phenomenon, it is difficult to find generally accepted definition of minority .Hence, “the issue of defining a “minority” is closely related to the kinds of rights that would be bestowed to members of these minorities” otherwise “the more far-reaching these rights might be, the narrower the states would want the definition to be for the fear the recognition minority rights” will show the way to an acceleration of “nationalistic and even secessionist movements”⁷⁷ for territorially concentrated groups.

This committee, therefore, provided a long list of components of the concept minority against which minority groups to be identified though they are not binding. As stated by Hernard those lists determined by the committee are as powerful as the “Capotorti-Deschenes standard.” All of the definition of the concept of national minority are not binding on the member state of the Council of Europe like those proposed at international level. But, a certain patterns of frequently reappearing components of the concept minority have been emerging at European level. But, the African Charter on Human and Peoples’ Rights does not have any express provision about minority concept. The concept of minority can not be understood with out correctly understanding the objective and subjective markers of the concept.

⁷⁶ Ibid,p.26

⁷⁷ Ibid, p.27

2.2 The Objective and Subjective Components of the Definition of Minority

2.2.1 The objective Components of the Definition of Minority

For Capotorti an objectively identifiable fact of having ethnic, religious and linguistic characteristics differing from those of the rest of the population should be the building brick of every endeavor to devise a definition of minority. Copotorti's definition uses the 'rest of the population' as the reference frame, whereas Deschenes refers to the "majority of the state."⁷⁸ As per the formers conception, the point of reference need not necessarily be one "monolithic group' but can consist of several ethnic or linguistic groups. This helps to overcome the potential difficulties in multi-national states wherein no single majority population.⁷⁹

The numerical minimum above which members may constitute a minority could not have been identified. Unlike Capotorti-Deschenes, the UN Sub-commission setting out the relevant criteria for such a definition and in Recommendation 1201 of the Council of Europe has attempted to emphasis on minimum threshold.⁸⁰ But, the trend inclines to a realistic approach in the sense that "quite a small group has the right to claim the protection provided for in Art. 27 ICCPR to the extent it seems reasonable to the state to introduce special measures of protection."⁸¹ Hence, the necessity of incorporation of minimum threshold is not recommendable. In fact the group claiming minority protection should not only numerically but also politically and socially be in a non-dominant position.

From Deschens's definition one may understand that the numerical size of the group should be seen together with the burden it shoulders on the state in which they reside and "concomitant benefit for the group." In short, it is recommendable to apply the 'proportionality principle to determine the scope of positive state obligations by taking

⁷⁸ Ibid, p.31

⁷⁹ Ibid,p.32

⁸⁰ Ibid

⁸¹ Ibid.pp.32-33

into account the scale of the respective minority groups.’⁸² Ramaga also recommends a case by case analysis to determine whether or not a group can be accounted to be treated as a minority.⁸³

The reference ‘to the rest of population of the state’ raises the interesting question whether a minority can also be determined in comparison with the population of a sub-regional political structure within a state.⁸⁴ In this regard, as one author highlights the state is taken as the exclusive point of reference’ at international plane⁸⁵.Until today, except the definition proposed in Recommendation 1201 by Parliamentary Assembly of Europe, “neither the international nor the European documents that are relevant for minority protection allow the inference that minorities can be defined at a sub-national level.”⁸⁶

Though the definition provided in recommendation 1201 seems to allow a reference smaller than the state, it has no binding effect. But, for a close observer restricting minority issue only to national level may not help to fully achieve the rationale behind protection of minority in multi-ethnic states .It adversely affects the rights of population groups that are minorities in a certain region but constitutes the majority nation wide. In light of this, the Human Right Committee in its observation in *Ballantyne etal V Canada*⁸⁷ has declared that the “English speaking persons in French speaking province, Quebec, cannot be considered a minority because they constitute the majority nation wide.” Hence, the committee firmly concluded that Art. 27 of ICCPR would apply only to minorities at national level.

More importantly, this defensive attitude as one author maintained “results in a lost possibility to provide protection for the so called double minorities or population groups

⁸² G.Gilbert, ”The legal Protection Accorded to Minority Groups in Europe “N.Y.I.L,1992,P.89

⁸³ P.V.Ramaga,”The Group Concept in Minority Protection”, H.R.Q 1993, PP.575,577

⁸⁴ Hernard, Supra note 29,p.34

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ragama supra note 82,p. 293

that constitute minority at both the federal and sub-national level.”⁸⁸ Hernard maintains that ‘the *sub-national* internal political entities should be taken as a frame of reference for the definition of minorities when and insofar as these entities have certain concrete competences which can influence the population groups concerned.”⁸⁹ This restrictive argument is not acceptable since ‘the right to identity the protection of which is the central principle of Art. 27 should be protected at any level of government.’⁹⁰

Moreover, the right to attend education by one’s own language, the right to practice cultural rights and language use between citizens and the public authorities is not necessarily exclusively situated at the national level and may not be guaranteed merely because of being part of the majority at national level. The argument that they can always shift to an area where they are in their member group constitutes a majority is not convincing since there are various practical social and economic impediments and restraints. If this groups needs to move from one region to the other in which the group constitutes majority so as to enjoy their cultural or linguistic rights, it amounts to harassments and should be seen as denying them protection. On the other hand, specific population group constituting minorities both at national and regional level have no opportunity to move.⁹¹

Numerical non-dominance does not necessarily entail being ‘subordinate or oppressed’, as in a multicultural states several ethnic, religious and linguistic group could all be considered minorities since it would be possible that none of the population groups in such a society are in a dominant position.⁹² There is a debate as to whether protection to minorities is sufficient to suppressed majorities. Some authors hold the position oppressed majorities have ‘the right to self- determination’.⁹³ In addition to political factors, economic, cultural or social status of minorities should be accounted for before

⁸⁸ See C.Tomuchat, Protection of Minorities under Article 27of the International Covenant on Civil and Political Rights” in R.. Bernhardt *et al(eds), Volkerrcht as Rechtsordnung ,Internationale Gerichtsebarkeit, Festschrift fu rHermann Mosler,1983* pp,957-958

⁸⁹ Hernard, *supra* note 29, pp.35-36

⁹⁰ Ibid

⁹¹ Ibid

⁹² Ibid

⁹³Ibid , p.36

awarding minority protection.⁹⁴ This is because there is a possibility in which the numerically non-dominant group can still create a pressure on a numerically dominant. Nonetheless, usually political dominance is backed by financial and institutional dominance. Those with political power also have the means to have a direct influence on the cultural and socio-economic status of the other population groups.⁹⁵

In principle, states treat groups that settled and stayed effectively within their territory as minorities regardless of their nationality, hence, upholding discrimination based on nationality of groups has won little acceptances.⁹⁶ During the League of Nations the scope of rights accorded to all inhabitants of the state, all nationals of the state and for all members of minorities who are nationals were clearly differentiated.⁹⁷ As maintained by Musgrave citizenship was a compulsory requirement to qualify minority and to be entitled to the ensuing rights⁹⁸ though foreigners are entitled to enjoy the protections available to inhabitants regardless of their citizenship which is not similar with the rights of citizen minority groups.⁹⁹ As far as the status of foreign minorities PCIJ has identified that ‘members of non-citizen minorities enjoy only rights such as the right to “life, liberty and the free exercise of their religion” excluding some of the individual human rights particularly significant for the protection of the rights of minority groups.¹⁰⁰ The argument that protection accorded to national minorities should not be equated to non-citizens is well founded in Capotorti-Deschenes’ standard. Particularly, Capotorti argues that under International Law, foreigners traditionally enjoy special protection, not available to nationals who are capable of preserving and promoting their separate status in law so that it is sufficient to protect their distinct position and resulting needs.¹⁰¹ But, Copotorti’s assertion can be criticized in the sense that Art. 27 of ICCPR are not restricted to nationals as it refers to persons and not citizens or nationals. The argument

⁹⁴ Nowak, supra note 62, p. 488

⁹⁵ Ragama supra note 82,p. 109

⁹⁶ Ibid, P.38

⁹⁷ Wippman supra note 30,pp.3-4

⁹⁸ T.D Musgrave, Self-determination and National Minorities Oxford Clavendon, press, 1997, p.42

⁹⁹ Green, Supra note 51, p.199

¹⁰⁰ Hernard supra note 29, pp.56-69

¹⁰¹ F.Capotorti, The Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities , Sub-commission on Prevention of Discrimination and Protection of Minorities, U.N.ESCOR, 130th ,sess/ para 568, U.N,Doct/CN-4/sub .2/384/Rev.1/1979

Art.27 is not restricted to nationals can be construed from the wording of Art.25 which specifically refers to “citizens.” Hence, ‘in the absence of clear exceptions under Art.27 like the one in Art. 25 the narrow conception of minority is less acceptable.’¹⁰².

The out right keeping out of foreigners from the concept minority is firmly criticized by Nowak revealing rejection of the proposal of an Indian representative to replace ‘persons by citizens’ was rejected by the majority of the state representatives.¹⁰³ HRC has also rejected exclusion of foreigners which is manifested from its comments on Art.27 and the position of foreigners under the covenant.¹⁰⁴ Though not a binding standard, the attitude of HRC arguably indicates that there is a tendency at international level to include non-nationals in the ambit of the concept minority. The broad interpretation of the scope of minority needs to minimize the manipulation of states and the possible repercussion may the narrow conception may entail owing to change of frontiers during secession.¹⁰⁵

There is a requirement that the group should have durable ties with the state to ¹⁰⁶be considered a minority, though not the case as per Capotorti-Deschenes’ standard *which* is designed to discourage immigrants because they have ‘freely chosen to move and generally to integrate any way.’¹⁰⁷ This requirement is denied acceptance under Art.27 of ICCPR since “the notion to that effect by Uruguay was not accepted” as it was considered unrealistic. Finally, the general comment of HRC on Art.27 rejected both nationality requirement and the requirement of length of residence in the concerned state so that immigrants and visitors should be included under Art. 27¹⁰⁸ though still accused of impracticality.

¹⁰² Nowak, supra note 62, p. 489

¹⁰³ Ibid

¹⁰⁴ Hernard, supra note 29, p.40

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Ibid,p.41

¹⁰⁸ Nowak, supra note 62, p. 490

2.2.2. The Subjective Components of the Definition of Minorities

Other than the objective markers, there must be some subjective markers against which minorities are identified. If one of these markers is missing it is hardly possible to population groups to claim minority rights. However, in addition to the difficulty to measure or determine the subjective standard, to which of the two markers more weight should be given remain a subject of debate among different authors. For instance, Capotorti argues that “(a) group cannot have an identity through out history if its members have no wish to hope preserving it.”¹⁰⁹ Ermarco also concurs with the assertion of Capotorti by stating that for a population group to be a beneficiary of Art.27, it should show its desire and insist on to preserve and promote its separate characteristics.¹¹⁰ Hence, if a group of population is indifferent to preserve its separate identity, an effort to treat a group as a minority merely on objective components may amount to imposition and denying the option to voluntarily assimilate itself with the majority.

However, giving more weight to subjective criteria is not rewarding since it is difficult to prove as it is a state of mind. Because of its subjectivity the majority can easily suppress minority groups in the guise of the fact that they are not conscious to preserve their distinct characteristics. Nonetheless, subjective markers should not be over emphasized since minorities are vulnerable by their nature though it should be interpreted in favor of the population group claiming minority protection. As already stated, the subjective criteria are a desire to remain distinct from the rest of the population and promote it in the future which needs close and fair examination. The population group that wants assimilation should not be forced to assume minority position. But, as to the means by which the ‘collective will to preserve the separate group identity should be evaluated’ is controversial. For example Hernard argues that “not too much importance should be attached to an explicit statement of such subjective mind set”¹¹¹ as silence can also be a result of involuntary assimilation or “denial of the right to retain distinct identity by the state some time in the past.”¹¹²

¹⁰⁹ Capotorti , Supra note 100,para.567

¹¹⁰ F. Ermacora,” The Protection of Minorities before United Nations ”,*Recueil des Cours*, 1983,p.300

¹¹¹ Hernard, supra note 29, p.44

¹¹² Ragama supra note 82,p.115

It would be rather easy to deny the existence of minority simply by stating that no collective will is present¹¹³ or to force a minority that its members unable to make a positive declaration regarding the collective will to survive as a group.¹¹⁴ For Capotorti the will to preserve distinct identity can be revealed in an 'implicit ways'. One can understand the 'will in question generally from the fact that a given group has kept its distinct characteristics over a period of time.'¹¹⁵ The choice to be or not be considered as a minority should be left to the group itself. Regardless of an official recognition of the state concerned, if there are sufficient objective and subjective markers, states are duty bound to apply the international law rules devised to protect minority rights.¹¹⁶

One author denies state's role in the identification of a group a minority as it is up to International Law, and the concerned claimant group to do so.¹¹⁷ On the other hand, some author firmly contends that the national authorities should have the possibility to actualize the extent and meaning of certain formula¹¹⁸. However, unless it is for an advancement of minority protection and conducted in good faith, it may pose a potential danger. In this regard, Art. 27 of ICCPR can be relied upon in that its requirements that the member state 'should respect and guarantee the conventional rights and where necessary take legislative and other measures, can be taken to imply that the multi-ethnic states should at least implicitly admit the existence of the minority groups.

2.3. Types of Minorities

2.3.1. Ethnic Minorities

Before a systematic replacement of the word 'racial' to 'ethnic' by the UN sub-commission in 1950, the word 'racial' was used to identify minority groups. Even the UN

¹¹³ Hernard, supra note 29, p.44

¹¹⁴ Capotorti, supra note 100, para.567

¹¹⁵ Ibid

¹¹⁶ Ibid.p.12

¹¹⁷ Hernard, supra note 29,p.27

¹¹⁸ ibid

had been using the word 'racial' before 1950.¹¹⁹ The later encompasses all biological, cultural and historical characteristics, while the former implies to innate physical features. For a group of people to qualify ethnic minority it should exhibit both the objective and subjective markers. Ethnic groups are entitled to claim minority protection only when they have cultural, historical and linguistic characteristics that distinguish them from the rest of the population.¹²⁰ The group has to be self-conscious¹²¹ to retain its distinctness though it is difficult to prove as it is a mental state. As a result a state may deny protection alleging that the group is not self-conscious. Hence, it is recommendable to focus on objective factors supplemented by at least implicit desire of the claimant.

2.3.2 National Minorities

Finding universally accepted demarcation between national and ethnic minorities is not an easy task. There is an endeavor to lay down the scope and contents of the concept national minority. For instance, as per Art.1 of recommendation No 1201, 'national minorities' are:

*[Residents of a state and citizens thereof having strong and long lasting ties with that state, having distinguishing ethnic, religious or linguistic characteristics, having a representative number in the state although the members of the group are significantly less than the rest of the citizens and that have the motivation to preserve and perpetuate their distinguishing characteristics.]*¹²²

The basic difference between ethnic minority and national minority is that the later considered national minority when "(it) has an image of its collective past image and when its members are aware of and responsive to that image."¹²³ In short, in most of the case ethnic minorities considered unique by outsiders because of more of their objective

¹¹⁹ see, Rehman, Javaid, Weakness in the International Protection of Minority Rights, the Hague: Kluwer Law International, 2004, p.14

¹²⁰ Aberra, supra note 7, p.34

¹²¹ F.Emarco, The Protection of Minorities before the United Nations, Collected courses of the Hague Academy of International Law, IV, 1993, p.295

¹²² Parliamentary Assembly, Council of Europe, Recommendation 1201(1993), on An additional Protocol on the Rights of National Minorities to the European Convention on Human Rights, 1993

¹²³ Aberra, supra note 7, p.37

markers such as distinct culture, language, custom or tradition though they may not as such conscious enough to promote their separate identity. By the moment they are in need of preserving their distinct identity they may qualify national minority. In the case of national minorities the groups “self-identification” is highly important though it should be backed by certain objective markers.

2.3.3. Linguistic Minorities

As culture and common psychological makeup matters in case of ethnic minorities, having distinct language is a key factor to identify linguistic minorities from the rest of the population. In multi-lingual states, certain groups may demand special treatment to retain their language using in both public and private affairs. They are identified on the basis of the language they speak, write or use in private and in public affairs which is distinguishable from the national or regional language¹²⁴ and their desire to preserve and promote of their distinct language. A mere existence of distinct linguistic group may not entitle them to establish institutions and separate schools to teach their language unless there is significant number of member of the group. If their distinctness and the burden it shoulders on the state justifies Art. 27 of the ICCPR recognize the rights of these groups to use their language in public and private settings.

2.3.4. Religious Minorities

Usually, groups of people belonging to a certain religion different from the state religion or the religion of the majority but does not stand in opposition to it in a country where there is no religious tolerance and want to preserve its religious identities constitutes religious minorities.¹²⁵ A group qualifies religious minority when its religion differs either from the state religion or the majority or the rest of the group. As every right has restriction religious right has also the same in the sense that it can be practiced if it does not jeopardize the religion of others.

¹²⁴ Aberra, Supra note,7 p.35

¹²⁵ Javaid, supra note 118,p.21

Though it is difficult to define religion, it is Art. 18 of the ICCPR that dares to lay down certain guide lines while it deals with freedom of thought, conscience and religion.¹²⁶ There this provision extends protection to “theistic, non-theistic and atheistic beliefs as well as the right to profess any religion or not. One of the basic concern is population group should not be discriminated against because of the fact that it subscribes to a specific religion or belief for any reason. They should not be forced to downgrade their religion or should not be forced not to change their religion, belief or disbelief unless they voluntarily submit themselves to the national religion or religion of the rest of the people.

2.3.5. Indigenous peoples

Because of colonization or internal conquest native people might have been subjected to political, social and economic oppression. Taking in to account the concern of indigenous people, the United Nations study on indigenous population has proposed a working definition of indigenous communities, peoples and nations having.

*[A] historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.*¹²⁷

Indigenous communities are entitled to claim their ancestral territories and resume their life the way they had been living prior to the interventions mentioned above. Countries are thus expected to recognize rights of these indigenous peoples by law.¹²⁸ As the name implies these groups are people who are not recognized citizens of a nation in which they are residing. Interestingly enough comment No. 23 talks about Art. 27 of ICCPR, it takes

¹²⁶ Ibid

¹²⁷ UN, United Nations Study on Indigenous Population, U.N. Sales No. E.86.XIV.3, PP-50-51

¹²⁸ Aberra, supra note 7, p.38-39

the question of protection of minority rights beyond the confinement of citizenship and elaborates that groups, aliens or otherwise, sharing a common culture, religion, language etc need also be protected.¹²⁹

2.4. Justification of Minority Rights: Human Rights and Minority Rights

Due to the irritating and devastating world wars international community was forced to come up with universally applicable human rights principles and rules to secure the principles of equality and non-discrimination. As a number of authors believe in almost all major relevant international instruments such as UDHR, the 1966 covenants and the Vienna convention human rights are accepted and recognized as “universal, interdependent, indivisible and interrelated.”¹³⁰

The universality and inherent nature of human rights carries the message that human rights belong to all human persons. It is the inherent human dignity that justifies for respect and recognition of human rights. Human rights are inborn since they exist independently of human acts; whether they are ignored or accepted by state authorities. In principle basic human rights are not the creation of legal rules though they can be enforced only when they are legally recognized. It is impossible for the right holder to relinquish them.¹³¹

The aim of recognition of human rights is to bestow equality among all human beings and to avoid unjustified and unreasonable discrimination on the basis of economic, social, ethnic, language, race, color and other contingencies¹³². Moreover, every person regard less of his nationality should be accorded with those fundamental rights¹³³. Of course, fair discrimination so as to put disadvantaged groups such as women, children and etc in

¹²⁹ Ibid

¹³⁰ Part I, Art.5 the Vienna Declaration and Programme of Action on Human Rights, 1993, World Conference on Human Rights, adopted 25th, June 1993 cited in Ibid.p.41

¹³¹ Marek Piechowiak, What are Human rights? The Concept of Human Rights and their Extra-Legal Justification, in :Rajja Hanski and Marku Suksi (eds.), An introduction to International Protection of Human Rights, 2nd rev.ed., Institute of Human Rights, Abo Akademi University, Turku/Abo, 1999, P.5

¹³² Ibid, pp.5-6

¹³³ Ibid

equal footing with the rest of the people is not against the principle of non-discrimination. Despite the universal nature of fundamental human rights, until the coming in to scene of Universal Declaration of Human Rights by the General Assembly, though not binding, there was no serious attention and deliberation held on global respect, protection and enforcement of human rights.¹³⁴ In UDHR, it is clearly provided that all human beings are equal in dignity and rights (Arts, 1& 2 of UDHR). It also provides that every human being is “at liberty to enjoy all the rights and freedoms set forth in the declaration” with out discrimination on the basis of “race, color, sex language, religion, political, or other opinion, national or social origin, property, birth or other status.”

As already mentioned, the justification of human rights is inherent dignity of human beings which is the leading principle in UDHR.¹³⁵ Human dignity has been serving as a standard against which just and fair rules are determined or evaluated. Tough the issue of universal application of fundamental human rights was well taken; it was not as effective as it was intended to be. In the aftermath of second world war the assumption of most of the framers of UN Charter and International Human Rights instrument was devising a general system of protection resting on respect for universally applicable individual rights so that it brings about the needed international peace and internal stability.¹³⁶ At this moment, the scope of human rights was intended to include “rights to freedom of association, speech, and religion which would by it self protect the legitimate interest of members of national minorities.” What is more, if discrimination on the basis of race, religion and language is avoided not only the rights of individuals but also the rights of members of national minorities can also be effectively guaranteed.¹³⁷

This approach was chosen since the then understanding was that ‘special protection to minority rights run against liberal individualism, stability of the state concerned and it is

¹³⁴ Ibid

¹³⁵ Piechowiak, supra note 130, p.5

¹³⁶ Wippman, supra note 29, p.3

¹³⁷ Ibid

a pre text to secession’¹³⁸ though it was in vein. Minority system during the League was poorly treated at international level though there were positive attitudes in few states owing to bilateral treaties.¹³⁹ The UN Charter is devoted to the universal respect for human rights and non-discrimination as a result of which the discussion of General Assembly on minority rights failed to get acceptance in UDHR. As one author correctly puts for most of the member states “individualistic human rights without any special concession to particular groups in society seemed sensible, modern, and democratic program altogether worth of support.”¹⁴⁰

Minority rights have also won internal attention because of the devastating Second World War¹⁴¹, the disintegration of former Yugoslavia and former Soviet Union and the irritating ethnic conflict at the end of 20th century.¹⁴² In the first place, the traditional involuntary assimilation policies were out rightly disapproved.¹⁴³ This can be understood from the contents of Art.27 of ICCPR which explicitly guarantees the rights of minorities to preserve their culture, religion or/ and language. In light of this, Wippman extends the spirit of this provision to include the positive obligation of states to provide financial and other facilities so that minorities promote their distinct identity. It is praiseworthy to note that while minorities exercise their rights, the concerned state should refrain from taking certain punitive measures.

One should not forget the assimilation policy behind the international instruments which can be understood from the more weight associated with holistic universal application of individual human rights as there was rare explicit provision in most of international instruments that imposes a positive obligation on states to assist minorities. But, the existence of diversity in a state which was considered as cursing become as a “source of enrichment”. Internationally, it is believed that upholding and accommodating diversity by promoting distinct identity of minorities decisively contributes to the “political and

¹³⁸ Ibid

¹³⁹ Ibid

¹⁴⁰ Patrick Thornberry, International Law and the Rights of Minorities 1991, p.137

¹⁴¹ Aberra, supra note 7. p.43

¹⁴² Heinrich Klebes, The Council of Europe’s Framework Convention for the Protection of National Minorities, 16 Human Rights.L.J,1995,P.92

¹⁴³ Ibid.

social stability of states in which they live.”¹⁴⁴ On top of this, maintaining the separate identity of minorities minimizes the potential inter-ethnic crisis that endangers the peace in the world.¹⁴⁵

The trend of the world community spaces positive obligation on the states wherein they reside to extend political, economic and moral assistance in order to enable minorities to protect, retain and promote their separate identity. Besides, it has been maintained that adequate political spaces need to be guaranteed to minorities so that they will effectively exercise their right and retain their distinctness.¹⁴⁶ If given, the right to political participation, minorities may not resort to “ethnic hostility and organized violence.” As one author has argued since the principle of “one man one vote” may not help minorities, it is the principle of “proportional representation” or reserved seat that guarantees their rights to participate in public affairs.¹⁴⁷

As far as the relationship between individual human rights and minority rights is concerned different authors forwarded various proposals. At the beginning, there was a reaction to recognition of diversity thinking it endangers national unity via secessionist movements. However, nowadays the positive sides of recognition of minorities are outweighing its negative sides. For some authors human rights can not fully operate unless some of the important group specific rights are guaranteed. For instance, Kymilicka argues that “individual human freedoms is in fact dependent on the presence of a societal culture providing a meaningful context of choice” in the sense that “access to one’s language and culture is central to the effective enjoyment of freedom.”¹⁴⁸ International and internal peace may not concretize when decision makers neglect accommodation of diversity. Liberal democracy should incorporate the rights of minorities such as self-government and proportional representation. Moreover, “states

¹⁴⁴ Ibid

¹⁴⁵ Aberra, supra note 7, p.51

¹⁴⁶ Gaetano Pentassugila, *Minorities in International Law*, Council of Europe, Germany ,2002,pp.46-47

¹⁴⁷ Wippman, supra note 29, p.25

¹⁴⁸ W.Kymilicka,(ed), *Multicultural Citizenship:a liberal Theorey of Minorities*,1995a cited in Pentassugila, supra note 28,pp.46-47

should protect minority groups whether or not they fit the liberal individualist paradigm.”¹⁴⁹

There fore,” minority rights form an integral part of the international protection of human rights”¹⁵⁰ though both are not identical in the sense that the later refers to equal enjoyment of basic rights for every body ,whereas minority rights is special rights recognized to the exclusive interest of minority groups. In fact, the later is not a privilege rather substantive equality. From this one can see the co-relation between the two as follows:

*Minority rights are also human rights, basic rights for all combine with special rights designed to protect minorities: they are complementary and mutually reinforcing. But, minority rights raise the issue of their individual or collective nature in international law.*¹⁵¹

Despite the existing debates, Art.27 of ICCPR is destined to protect the collective interests since the rights are exercised in community with the group members. That is why Capotorti argued that it is the individual as a member of the minority group, and not just any individual, who is destined to benefit from the protection granted by the Art.27.¹⁵² Art.27 recognizes individual rights premised on the existence of a distinct community. Thornberry considers the rights in Art.27 “as a hybrid between individual and group rights because of the community requirement.”¹⁵³

The concern to international and internal peace has caused the international and national decision makers to revise their sole attention to the universally applicable human rights. It is also true that minority provisions reflect an obvious concern for human dignity. Minority rights guarantee individual dignity and wellbeing in keeping with the very

¹⁴⁹ Pentassugila, supra note 145,pp.46-47

¹⁵⁰ Ibid, P. 48

¹⁵¹ Ibid

¹⁵²Capotorti, supra note 100, para. 206-210

¹⁵³ Thornberry, supra note139,p.12

notion of human rights. Thus, the protection of minority rights rectifies inequalities and preserves effective individual freedom. When they are contained in human rights instruments minority rights assume human dignity as their most basic justification.¹⁵⁴

¹⁵⁴ Pentassugila, *supra* note 149, p. 50

Chapter Three

The Protection of Minorities under the Existing International

Conventions

Introduction

Being the most important foundation and relevant provision to the issue of minorities, Art.27 of the ICCPR provides that “persons belonging to a minority shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.”¹⁵⁵

In multi-ethnic states the spirit of Art.27 can be construed as accommodation of diversity without endangering national integrity designing system in which forces of involuntary assimilation offset secessionist sentiment. In fact, this provision encourages voluntary assimilation. But, the minority phenomena are so diverse and complex. One author clearly stated that it is difficult to recommend one representative and universally applicable protection scheme though based on internationally accepted principles such as equality and non-discrimination minorities are entitled to same rights’ with majorities.¹⁵⁶ Dispersed minority groups the numbers of which are reasonably representative should exercise their culture, language, tradition both at public and private affairs. Moreover, they need guaranteed representation and power sharing in the socio-political affairs.

3.1. Rights to Preserve Separate Identity

The right to existence is the founding brick of rights of minorities as the existence of other rights is necessary only when the group exists. Even the right to retain distinct identity presupposes the right to existence so that the later constitutes “the supreme right in the hierarchy of rights of human beings *be it individual and group right*”¹⁵⁷ italic added. Distinct identities of minorities such as linguistic, religious and cultural identities can be a point of concern when the right to physical existence and preserve separate

¹⁵⁵ Art 27 of the International Covenant on Civil and Political Rights (ICCPR),UNGA Resolution 2200 A(XX) of December 1966,Art.27

¹⁵⁶ Welhegama, supra note 42, P.22)

¹⁵⁷ Aberra, supra note7,p.54

identity are respected.¹⁵⁸ This right to physical existence implies not a mere “continuation of minorities as a separate entity, but it also extends to include all necessary political, social and financial and moral facilities to retain and promote distinct identities.” If minorities are compelled to move from their ancestors home land solely due to the fact that they bear distinguishable identity with out any just cause, it is a challenge to their right to existence¹⁵⁹. That is why International Law has criminalized acts of relocating a population group “to alter a territories’ demographic composition for political, social, religious and other reasons or to uproot a people from their ancestors land.”¹⁶⁰ Hence, states are not only precluded from establishing “settlers in an occupied territory and to change the demographic composition of an occupied territory’ but also from intentional acts of introducing majority population in to the territory homogeneously populated by a minority group.¹⁶¹

For instance, states may intentionally act or adopt policies that are intolerable by national, ethnic, linguistic or religious minorities. This premeditated measures to cause the physical elimination of the entire or some constitutes a crime under International Law. This indicates that international community has accredited the supremacy of the right to existence by imposing on states in which minorities groups resides to make an effort that realizes the right to retain and promote their distinguishing identity.¹⁶² Unless institutionalized and financed by the state, mere constitutional recognition of this rights remain mere promise on the paper.

An identity of a group is identified in relation to its cultural, ethnic, linguistic or/and religious identity. Largely, it includes the rights of persons “belonging to minorities to

¹⁵⁸ Hernard, supra note 29 , P.12

¹⁵⁹ Aberra, supra note 7, .p.54

¹⁶⁰ Claire Palley, Population Transfers,in :Donna Gomien (ed.) Broadening the frontiers of Human Rights, 1993,P.235

¹⁶¹International Law Commission, Report of the International Law Commission,43rd, session, 29August-19 July 1991(UN General Assembly Official Records: 46th Session, Supplement No.10(A/46/10)),P.27

¹⁶² See also Art. II of the convention on the prevention and punishment of the Crime of Genocide,G.A.Res.260 A(III)(1948) inter alia UN, United Nations’ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNGA, Res.47/135,18 December 1992

enjoy their own culture, to profess and enjoy their own language.”¹⁶³ Naturally, the core point in minority protection is preserving their separate identity¹⁶⁴ if the group desires. However, if the group does not want to retain its separate identity, it is at liberty to associate itself with the majority and to share equally all the existing opportunities without discrimination. In such cases the state should lend a hand since what is precluded is coercive assimilation and genocide. Any effort of a state to integrate does not run contrary to the protection of minority groups unless it aims to eliminate their distinguishable identity where as the group dares to preserve it. Minority groups are entitled various rights to preserve their separate identity such as linguistic, cultural and religious rights.

3.1.1. Linguistic Rights

Language is an indispensable attribute of human race not only because it is “a medium of communication but also it is “a source of pride, self-esteem and identity” in the sense that it is a defining characteristic of human society.¹⁶⁵ It plays valuable role for diplomatic co-existence and social life of human beings. Language is an intrinsic element of identity of human person. That is why Fishman states that “ethnic identity becomes impoverished without the linguistic dimension.”¹⁶⁶ It serves as store house of minorities’ culture, history, and tradition and, in effect of their identity. It is also a means to access to resources, employment and even public authority¹⁶⁷ in addition to being a means of preserving one’s ‘pathos and ethos’. How much political empowerment and access to resource is guaranteed, people want to reflect their own culture, values and preserve their history¹⁶⁸. In order to practice culture there must be a right to use one’s own language hence language and culture are indispensable.

¹⁶³ Aberra, supra note 7. p.55

¹⁶⁴ Akermark, supra note, 32,p.23

¹⁶⁵ Tasaku Tsunoda, Language Establishment and Language Revitalization,(Moutonde Gruyter,2005,p.141 cited in Yared Legeses Article on “Linguistic Regimes in Multinational Federations :The Ethiopian Experience in a Comparative perspective” p.126 , Issues of Federalism in Ethiopia: Towards an Inventory Ethiopian Constitutional Law Series Vol.2.

¹⁶⁶ Joshua Fishman, Language and Ethnicity, quoted by Rodriquez, at P.141

¹⁶⁷ Aberra, supra note 7,p.56

¹⁶⁸ Mart Rannut, The Common Language Problem, in:Miklos Kontra,Robert Philipson et al.,(eds.) Language: A Right and a Resource, 1999, P. 101

A state can not remain language neutral as it is impossible to run the government without having one or more working language/s. If the state arbitrarily chose one or very few working languages in multi-lingual states, it creates unnecessary discrimination being an obstacle to an access to employment and education opportunities for those groups whose language fails to get the status of working language. Moreover, if not wisely chosen choice of language may directly affect the political power structure of the state since “native speakers of the official language are more likely to reach the higher echelons of the state machinery.”¹⁶⁹ Not only neglecting the languages but also states may deliberately undermine the language of minorities to make them feel inferior to the linguistic group. Incompetence to make use of the state preferred language could be seen as illiteracy. As such population groups who do not write or speak the state sponsored language can not equally exercise their right to freedom. Minority groups whose language is neglected may feel that they are excluded and they can hardly preserve their distinct identity, and jeopardize their opportunity to equally participate in political, social and economic affairs. That is why in multi-lingual states, ‘it is difficult to the state to remain language neutral in its contracts with the public.’¹⁷⁰ As one author clearly provided, an arbitrary choice of one or few official languages can be equated to “automatically creating a distinction on the ground of language in its allocation of resources, services and benefits, simultaneously creating various levels of difficulty for individuals having different primary language.”¹⁷¹

Where one linguistic group becomes dominant in the power structure, the allocation of individuals to public function offers the dominant group ample opportunities to pursue specific national policies.”¹⁷² In multi-lingual state, a language policy should take into account the competing claims of the existing linguistic groups in its decision to determine which language or languages it uses in political judicial and educational institutions. Non-native speakers of the language can hardly compete in areas of employment and assumption of public authority with the native speakers of the only working language.

¹⁶⁹ Ibid,p.102

¹⁷⁰ Language and Freedom of Expression in International Law,16 Human rights Quarterly,1(1994) cited *de Varennes*,1994), p. 82

¹⁷¹ Ibid

¹⁷² de Varennes supra note 169,p.64

Even though sticking to mono-lingual official language has been believed to contribute to the social bridging, in multi-lingual states cultural diversity may aggravate the centripetal force.¹⁷³ Until today, there is no universally accepted minimum threshold as to the exact numerical size of a linguistic group that is entitled to get the positive state protection. Owing to this, it is difficult to find similar trend in multi-lingual states. For instance, in Europe, “the sliding scale model” is adopted, in the sense that “the bottom end of the scale suggesting the minimum right which members of a smaller, though sufficiently numerous, linguistic minority can expect, where as the higher end of the scale includes much more generous rights, in recognition of the much larger number of individuals involved.”¹⁷⁴ In short, a population group’s claim should be determined in proportion to its numerical size, its contribution and its consciousness to articulate its rights in a country.

If its numerical size together with its contribution to the national economy is insignificant, recognition and extending minority protection may bring unfair shouldering of burden on the state so that it may backfire. In such cases, it is better to accord protection without discrimination on grounds of language. In countries such as India and Ethiopia which are so diverse, it is incredible to secure equal minority protection to all diversities. Particularly, at sub-national level in some states members of majority groups which have home land state may exist as a minority in other state because of freedom of movement, historical events and etc ¹⁷⁵as a result of which it is difficult to accord protection to every dispersed groups as group since it has significant impact on economy and social aspects. Hence, for dispersed minority groups it is appropriate to secure protection through the proportional or guaranteed seat and strong human rights schemes like that of Spain. Besides, there should be an opportunity to learn the language of the majority in order to compete for employment and assumption of political authority without denying them cultural rights.

¹⁷³ see cases of civil war in Somali case

¹⁷⁴ de Varennes, supra note 169, p.64

¹⁷⁵ See the member of Amhara in Oromia, Benshangul-Gumuz, Gambela. There are also significant number of Oromo in Benshangul-Gumuz, Gambela and SNNPs

3.1.2. Cultural Rights

The right to retain one's separate identity of a population group can be meaningful only when the group exercises, practices and develops its cultural assets in addition to its own language. A minority group can make its cultural, traditional and customary values everlasting and cross-generational only through practice. Nonetheless, in order to adequately maintain and develop, the group needs various facilities such as established and adequately financed institutions, and public protection. Disincentive to linguistic and cultural rights of a population groups are considered to be a restraint to recognition of distinct identity of the group. That is why Art. 27 states that cultural minorities are entitled to recognition and protection of their right to enjoy their own culture in community with other members of the group.

As to the contents of 'cultural rights; customs, morals, traditions, rituals, types of housing, wearing, eating habits, manufacture of object of art, the cultivation of music, the establishment of cultural organizations, the publication of literatures in the minority language' may be mentioned.¹⁷⁶ Designing a curriculum that reflects the tradition and customary practices of the group is important to develop the culture. "Educating the following generations, whether by setting up separate schools or by the corresponding respect for the culture of minorities in public schools" play significant role for the preservation of the identity of the population group.¹⁷⁷

As much as possible in multi-cultural states, cultural pluralism should be promoted by adopting accommodative educational and cultural policies and strategies if not it exacerbate conflict. Hence, national culture should not be equated to the culture of one group. In fact, cultural groups need to be guaranteed the right to learn and write and perpetuate their own right history and tradition by their own language. If the numerical size, resource and consciousness of cultural minorities justifies "they must have at judicial, social and cultural institutions *adequate spaces* which allow preserving and

¹⁷⁶ Nowak, supra note 62, pp.500-501

¹⁷⁷ UN, General Comment No.23,Art.27, Human Right Committee,UN,.Doc.CCPR/C/21/Rev.1/Add.5(1994), Para. 50

developing its distinct characteristics under the same conditions as the majority *italics added*.”¹⁷⁸ Aberra also states that “(I)t is also necessary to create and expand cultural infrastructures, including cultural centers, museums, libraries and theatres.”¹⁷⁹

Therefore, equality is bestowed to the minority group only when they are in an environment comparable to those of the majority population¹⁸⁰ though they require beyond equal treatment owing to their vulnerable nature. Since they can hardly exert an influence on the majority preferences they remain dominated unless preferential treatment in areas of social, political, economic, cultural and religious affairs extended to them.¹⁸¹ Affirmative action should be taken to put members of minorities in equal footing with members of majorities.¹⁸² “In plural states in which coercive assimilation is the major goal national, ethnic, cultural and linguistic minorities are compelled to “shed their uniqueness or identity and integrate with the rest of society”¹⁸³ though it rarely succeeds in bring the intended national unity.

States should refrain from depriving members of minorities from enjoying their culture in order to destroy their distinctiveness rather museums, libraries, place of workshop of cultural groups should be respected.¹⁸⁴ In light of this Nowak maintains that any measure that puts at risk “the way of life and culture of a minority such as large scale expropriation of minority lands for commercial purposes, constitute a violation of Art. 27.”¹⁸⁵ Thus, in plural state cultural minorities should have the opportunity to practice, develop, promote and educate their generation their culture, and states should facilitate by extending preferential treatments depending on consciousness of the minority group and economic viability of the state in which minorities reside.

¹⁷⁸ Geof Gilbert, Religious Minorities and their Rights: A problem of Approach, International Journal on Minority and Group Rights , 2(1997) ,P. 113

¹⁷⁹ Aberra, supra note 7, p.63

¹⁸⁰ Gudmunder Alfredsson, Minority Rights and New World Order, in :Donna Gomien (ed.), Broadening the frontiers of Human Rights, 1993, P.62)

¹⁸¹ Aberra, supra note, p.63

¹⁸² Alfredsson, supra note 179,p.62

¹⁸³ Akermark, supra note 38, P.60

¹⁸⁴ Art.III of the Draft Convention on Prevention of and Punishment of the Crime of Genocide(E/794)

¹⁸⁵ Nowak, supra note 62, P.501

3.2. Participatory Rights

The right to participation is also an essential means by which minority groups defend their existence, identity and other rights as they take part in decisions made by the majority. Basically, participatory right is associated to conscious taking part in legislative, adjudicative and administrative powers and the formulation of and implementation of policy at different levels of governance.¹⁸⁶ Admitting members of minority groups in public affairs and reserving political space enable them to have their legitimate share in the exercise of powers. Beyond influencing the decision of majority, it enables minorities to feel belongingness.

Art. 25 of ICCPR provides for the right and opportunity of every citizen “to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guarantying the free expression of the will of the electors” and “to have access on general terms of equality, to public service in his country, without any of the distinctions mentioned in Art.2 and without unreasonable restrictions.”¹⁸⁷ The government should not only refrain from imposing unfounded restriction on minorities’ participatory rights but also it should facilitate. Hence, participatory right includes the right to be protected from forced participation and the right to participate by its own freely made decision.

In fact, a government may legitimately suppress minority right preferring individual human rights for instance where “minority culture disallow women to participate in public affairs.”¹⁸⁸ Under normal course of things, denial of citizenship, obstacles to the exercise of the right to vote, to be elected, under representation of minorities in political and public affairs and the exclusion of citizens who are members of minorities from holding public office encumbers participatory of minorities.¹⁸⁹ Owing to this, in addition to constitutional recognition of human rights, minorities deserve considerable share in the

¹⁸⁶ UN-UN Committee on Human Rights General comment No. 25 1996

¹⁸⁷ ICCPR, supra note, 154, Art.25

¹⁸⁸ Aberra, supra note 7,p.66

¹⁸⁹ de Varenns, Towards Effective Political Participation and Representation of Minorities,E/CN.4/Sub./Ac5/1998/WP4, P.3

socio-political affairs and policy measures of the state .Hence, proportional political spaces should be given to minorities at all levels of the government and at every branches of the government.

3.3. Right to Equality

The right to equality and non-discrimination are relevant and essential elements of individual and minority groups. It is why ICCPR¹⁹⁰ has recognized minority rights to equality and effective protection against any form of discrimination based on contingencies such as “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁹¹ While the right to equality and non-discrimination applies to all human races minority groups deserve special and “extra-protection’ because of their defenseless position in liberal democracy as compared to the majority.

As already stated minority groups want beyond learning in their language, practicing or enjoying their own culture, deserve extraordinary protection to achieve considerable equality with the majority. Minority groups claim “collective rights and collective equality” in addition to “adequate protection to the right to individual equality”¹⁹² among all citizens in the state. Moreover, individual equality sought in plural state may backfire unless due regard is given to collective rights since exclusion of particular group or denying linguistic, cultural or participatory rights in the guise of liberal individualistic democracy kills the fundamental principles like universality and non-discrimination for which the individual human rights protection strives to achieve.

Therefore, if collective rights and equality among members of the minority and majority is disregarded, relying on democratic numerical majority decision overrides both individual and collective rights to which minority groups are entitled. Without according special treatment to the minority groups the right to existence, retain separate identity is

¹⁹⁰ ICCPR, supra note, 154,Art.26

¹⁹¹ Ibid

¹⁹² Ivo Duchacek, Comparative Federalism: The Territorial Dimension of Politics,1970 cited Duchacek,1970), pp. 97-99

going to be under the arrest of the majority and ultimately denied. The right to equality as a group and individual members of the group should be given due attention so as to make minorities accommodated within the political and socio-economic system of the state concerned.

3.4. Rights to Self Determination

Self-determination is one of the most fundamental and enduring principles of the post-war international legal system. Normally, it has developed from a parameter originally associated with the right of states to non-interference by other states, into a distinctive right recognized to all peoples as opposed to states. Later on the UN's Declaration on the granting of independence to "colonial countries and peoples have declared the subjection of peoples to alien subjugation; domination and exploitation constitute denial of fundamental Human Rights." Besides, the right to self-determination explicitly recognized as a valid claim to all 'peoples' by the UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among states.¹⁹³ The same acceptance is also there in Art.1 of the ICCPR in which "all peoples have the right to self-determination so that they can freely determine their political status; freely pursue their economic, social and cultural development."¹⁹⁴ ICCPR entitles people under occupation, indigenous peoples and other communities if they display distinguishable identity, even if they are not under alien rule to exercise the right to self-determination. It does not hinder ethnic minorities from claiming when it is found necessary. More over, the African charter on Human Rights recognizes all peoples whether colonized or oppressed as right holders to self determination.¹⁹⁵

But, still the concept of self determination is subject to deep debate as it can be seen from the angles of forces of pull or push within a plural state. Some times by employing the principle of self determination and federal arrangement unity of a state may be

¹⁹³ Declaration on the Granting of Independence to Colonial Countries and peoples, UN General Assembly Resolution, 14 December 1996, UNGA Res. 1514(XV) inter alia (UNGA Res, 2625(XXV), 24 act 1970.

¹⁹⁴ ICCPR, supra note, 154. Art .1

¹⁹⁵ African charter of Human and peoples Rights 1981, Art. 20/2.

perpetuated whereas in other cases appeal to self determination is a pre text to secession. Self-determination occurs in various ways depending on the circumstances that trigger the population group in need of it. Decolonization and democratic dissolution to form new state are circumstances under which self-determination is usually claimed.

It is also recognized as a right of minority groups within a larger political entity as recognized in Art.27 of ICCPR and in 1992 UN Declaration on Minorities. Usually, minority groups claim the right to internal self-determination which includes freedom to choose one's own government, the right of a group to be free from another's rule and to choose the sovereign and the right to democratic government. It is also meant to be the right of members of a group to freely determine or choose the system and the authorities that will implement the genuine will of the people. Hence, it has both internal and external dimension. The later dimension is concerned about international status of a people.¹⁹⁶ Instead of external self-determination minority groups are entitled to internal self-determination.

3.4.1 Right to Internal Self-determination

In plural states in which coercive assimilation is not the case conscious minority population groups claim internal self-determination in which they take part in determining 'the form of government and the personality of the rulers.'¹⁹⁷ Minority groups seek adequate guarantee to participate in decision making at national, regional and sub-regional levels. The full extent of right to internal self-determination may go as far as having a federal arrangement. Short of secession minority claims to self-determination are deemed to be valid claim under international law as it helps to forge unity out of diversity.

However, if worsen minority groups may unilaterally claim the right to secede from the state in which they reside. In fact, claim to secession is not blame worthy if it secured

¹⁹⁶ Hernard/Simiss, Self-determination and Cultural Diversity, in :*Y.Donders, K.Hernard et.Al.(eds.),Law and Cultural Diversity,(SMS) Special No.25,1999 pp.22-26,29.*

¹⁹⁷ Welhengama, Minorities' Claim: From Autonomy to Secession, 2000, P. 244.

consent of the state from which secession is claimed.¹⁹⁸ There is an argument that there is no “legal ground for the non-colonized population group to claim the right to secession under international law” while others maintain its applicability under “restrictive circumstance” particularly where the existence and identity of the minority groups is under risk and the right to self determination” is rejected.¹⁹⁹ Hence, it is an ultimate remedy as it depends on concrete and restrictive circumstances.

3.4.2. Right to Autonomy

Minorities claim to autonomy and to self-government are exchange-ably used as both signify internal self-determination and it is difficult to trace any meaningful difference between them.²⁰⁰ Minority population groups demand independence in areas of economic, cultural and political affairs so as to preserve their separate identity and order on resources within their territory.²⁰¹ However, the right to autonomy is not confined only to territorially concentrated minority groups since dispersed minority groups also claim personal or cultural autonomy.²⁰² Normally, autonomy may be demanded when groups or individuals want to run their socio-economic and political affairs with out interference of the central authority of the majority provided they comply with the federal law which demands uniformity in areas of fundamental human rights, democratic principle and rule of law. Giving autonomy for oppressed or discriminated groups minimizes the ethnic antagonism.

Territorial federalism guarantees autonomous exercise of certain power for territorially concentrated majorities. But, because of many reasons it is rarely possible to find homogeneous ethnic, cultural, linguistic group concentrated in one region, canton or province. In cases where there are dispersed minority groups in constituent units cultural autonomy is recommendable. Ede states that cultural autonomy as the “right to self rule by a culturally defined group, in regard to matters which affect the maintenance and

¹⁹⁸ (Hernard/ Smiss, supra note 195, P.24.

¹⁹⁹ Ibid

²⁰⁰ Ibid

²⁰¹ Welhengama, supra note 42, p.99

²⁰² Ibid,p.105

reproduction of the culture.”²⁰³ Cultural autonomy is exercised only by the people who are culturally distinct from the rest of the population in the state though their autonomy is restricted to cultural affairs. They should be free to practice, observe and enjoy their culture.²⁰⁴ In fact, cultural autonomy requires establishment of cultural institution and preserving the same²⁰⁵. In turn, this requires an adequate finance which is supposed to be contributed by the state in which minorities reside. Cultural autonomy is exercised by enjoying their holidays, festivals, dress code, arts, by establishing their own museums, libraries, exhibition centers, art centers, concert centers. In short, the culture of the dominant group should reflect the culture of cultural minorities.²⁰⁶ It is also true that cultural practices are perpetuated only when the group writes its culture by its own language learn its language and the national curriculum should also reflect the culture of minority groups.

Nonetheless, indigenous minorities require territorial autonomy as they want to preserve their separate identity and to control affairs and resources within their territory without interference from the center.²⁰⁷ This indicates for the question which type of autonomy best advances the right of minority groups best answered if we first we identify whether the minority in question is territorially defined or dispersed one.

3.4.2. Federalism and Minority Protection

Nowadays, federation is found to be a means to provide political expression for diversities that ensue from religious, ethnic or linguistic disparity to forge unity out of diversity. In multi-ethnic states population groups want to retain their distinct identity under their own self-government with out endangering the national integrity, thus, federal system is taken as one of the best mechanism by which forces of territorial autonomy and national unity are balanced. Despite its base and nature federalism divides sovereignty between the constituent units and the union government. That is why it is defined as “a form of political association in which two or more states constitute a political unity with a

²⁰³ Ibid,p.102

²⁰⁴ Ibid, p.105

²⁰⁵ Ibid

²⁰⁶ Aberra, supra note 7, pp.75-.77

²⁰⁷ Ibid

common government, but in which these member states retain a measure of internal autonomy.”²⁰⁸

Normally, the concept federalism which comes from the word “*foedus*” i.e *covenant* signifies that it is a pact between sovereign population groups to form one polity which has international legal personality.²⁰⁹ Nonetheless, despite the disparity as to the extent and scope of authority of the units in federal arrangement, none of the two levels of the government is superior to each other. Both are sovereign in their respective sphere of jurisdiction though they are coordinate governments.²¹⁰ As Strong puts federating units do not want unity rather union since the former is a threat to independence of the units.²¹¹ The federating units retain their exclusive powers in areas where diversity is required and share power at the federal level proportionally in the three branches of the union government. Federalism certainly has special relevance for ethnically heterogeneous society since it minimizes the majority’s chance to marginalize and exclude minorities from the ambit of political and socio- economic spaces. In doing so, it reduces the political hegemony of the majority since minorities influence the decision of the majority group. Minority groups remain permanent losers if every thing is computed in terms of republican concepts of democracy since it perpetuates majoritarian rule at the expense of the former.

Understanding its merits in heterogeneous states, India, Canada and Ethiopia have adopted federalism by devolving power to the federating units. Federalism should be a desired political structure otherwise it backfires as the case in former USSR, Czechoslovakia and former Yugoslavia which was imposed from the top.²¹² Of course, if based on mutual consent, federalism is a concrete manifestation of the right to internal self-determination of specific communities in multi-ethnic state. It has also the potential to accommodate the legitimate aspiration of all ethnic, linguistic or religious communities

²⁰⁸ Ronald Watts, *New Federations Experiments in the Commonwealth*, 1966, P. 9

²⁰⁹ Daniel Elazar, *Exploring Federalism* (Tuscaloosa,Al:University of Alanama Press,1987, pp.2-7

²¹⁰ Assefa, *supra* note 13, p.228

²¹¹ Charles Strong, *History of Modern Political Constitutions*,1964, p. 104

²¹² Aberra, *supra* note7, p.78

for self government and protection of their distinct identities. At the same time it guarantees equal participation by all communities and by all citizens in political and economic affairs of the country. Owing to this, it is considered as a suitable form of internal self-determination rendering secession unnecessary and undesirable.

Nonetheless, it does not equally guarantee self-administration for every minority groups since mere territorial federalism can not secure self-determination for dispersed minorities as it does for those territorially concentrated ones. Territorially concentrated minorities exercise the right to self-determination by sending delegates to the organs of the federal government and constituent units, and actively participating in both horizontal and vertical intergovernmental policy networks, and play significant role in federal civil service and judiciary. It may not easily operate in multi-ethnic states unless they are territorially concentrated and the sub-states reflect this situation. In states where ethnic groups are dispersed across the country and difficult to stratify to a particular region territorial federalism may reinforce ethnic tension as it does not help to manage ethnic identity conflicts. Hence, it opens new doors to an ethnic antagonism by creating new inter-regional minorities.²¹³ There fore, territorial autonomy should be corroborated by non-territorial autonomy.

However, in multi-ethnic societies national groups looking for political spaces subjected this kind of assumption to be questioned. If federal arrangement is necessitated because of diversity, minorities at the federal level (see French speakers in Canada) may become majority group at the regional level where as members of the majority at the national (English speakers in Canada) level and members of minorities (double minorities- see all nations in Gambella) at national level still remain minority groups in constituent units.²¹⁴

²¹³ Christophe Van der Beken, *Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach, Issues of Federalism in Ethiopia: Towards an Inventory*, Ethiopian Constitutional Law Series, Vol.2, Addis Ababa, 2009, p. 217

²¹⁴ Ibid

As much as possible territories are designed on the basis of major diversities that are capable of distinguishing certain group.²¹⁵ Each series of diversity may require due attention and political expression²¹⁶ within the majority if it is difficult to have the home land states for all those minority groups. Hence, in order to have accommodated diversities, “it is those ethnic groups which dominantly posses a complex diversities strong enough to distinguish” them from their fellow members in the group and thereby make them desire and demand recognition of their relatively individual identities are recommended to have mother states.²¹⁷ This does not mean minorities within the autonomous majority groups are totally neglected. Except the opportunity to have their own states, they are entitled to get adequate representation and influence the policies in the constituent state and retain their separate identity. In cases where no majority in the state to be established we have to assure that each minority has got proportional access to the political power and resources.

When the balance of power is strongly centralized, it may end up with dependent and weak constituent units in which the need for the right to self rule or self administration is subjected to will of the federal government. This might disappoint the constituent units to look for unconstitutional outlet.²¹⁸ Ultimately, secession may become the legitimate question. It is obvious in federal arrangements the base might be territorial, ethnic, religious or linguistic groups in a defined geographical areas. Usually, it is difficult to establish purely ethnic homogeneous territorial units because of historical factors and the nature of diversities. One can understand that federalism is challenging though not a burden. It is challenging in sense that it brings responsibilities and carries by it self the question of revenue capacity and expenditure need. But, federalism is more of an opportunity than a challenge in sense that it brings political, social, cultural and economic opportunities for the diversified societies.²¹⁹

²¹⁵ Assefa supra note, supra note 13, p.166

²¹⁶ Graham Smith, ‘Mapping the Federal Condition: Ideology, Political Practice and Social Justice’ in Graham Smith eds.The Multi Ethnic Challenge(Lodon: Long Man,1995),pp.5-6

²¹⁷ Elazar, supra note, 208, pp.11-12

²¹⁸ Aberra, supra note 7,pp.82-83

²¹⁹ Id,p.83

However, in multicultural/ethnic federation individual rights and group rights /equality of ethnic groups are competing interests. Maintaining of the balance requires a lot of commitments. Political integration of diversity (building in) become healthy only where federal executive, judiciary, other justice institutions, civil service; education and cultural institutions etc proportionately incorporate employees from all section of society.²²⁰ The federal arrangement by territorializing the state concretizes self-rule. With a view to ensure the right to self-rule to the nationalities, the constitutions either grants mother states to the nationalities or ensure self-rule to the nationalities at local government .²²¹ Accommodations in the political system, structure, institutions, and respect for democratic principles, ethno-national justice and the existence of political space for political forces play significant role for perpetuation of federalism. Therefore, despite the existence of threat to integration in multi-ethnic federation, the existence of, genuine division of functions, responsibilities, revenue sources, healthy relationship between the two levels, symmetric treatment among the national groups, accommodative political culture to influence central policy are mentioned among factors that contribute for the balance between building in and building out.²²²

The success of federations are also influenced by other extra-constitutional factors since federalism is more of political than legal matter. In most of the cases federal institutions are reflections of the federal qualities of society. Qualities of federation are also affected by the party system.²²³ Federal institutions can transform or shape and reshape the society like US federalism that comes in picture from weak central government to strong federal government. Fidelity to federal principles should be internalized by the government, the society and individuals. Democratic pluralism is equally important since it permits groups really to be autonomous and consociation party (democracy) has also significant role in accommodating ethnic affiliated opposition political forces as opposed to an autocratic one party system which concentrates all political powers in the hands of one group or

²²⁰ Assefa, supra note 13, p.168

²²¹ Ibid

²²² Aberra, supra note 7, p.81-83

²²³ Ibid,p.82

central point. Particularly in ethnic federation which has the rationale behind is accommodating etno-lingustic diversity and to forge unit out of diversity, the political expression of diversity at all levels of the government is a key factor for the stability of federation.²²⁴ Hence, all political, economic and social calculations should take in to account the interest of minority groups.

²²⁴Assefa , supra note 13 , p.190-192

Chapter Four

Protection to the Minority Rights under the FDRE Constitution: a Comparative Perspective

4.1. General Overview of Minority Groups under FDRE Constitution

As already stated under chapter one defining the concept of minority is not as easy task though we have a large number of multinational states being challenged by the forces of diversity and unity. Switzerland, Canada, India, Croatia and Ethiopia can be cited as exemplary states which have adopted the system of accommodation of diversity to maintain the national unity. Many constitutions of multinational states do not expressly define the concept minority.²²⁵ But, the constitutions of the Republic of Croatia²²⁶ can be cited as an exception. The Federal Constitution of the Swiss contains no special provision on minorities though they avail themselves of the basic rights secured to all citizens as per Art.4 of the constitution which precludes any kind of unfair discrimination. However, in Switzerland, in areas of linguistic minorities there is a special guarantee in addition to the rights of any type of minorities' to take part in the process of political participation and decision making.²²⁷ Likewise, linguistic minorities in Canada receive special guarantee such as the right to have one's children educated in the minority language of a province.²²⁸ The Croatian Constitution defines and extends wider protection to ethnic minorities though criticized because of excluding non-citizens as opposed to the comment of HRC which dictates foreigners deserve minority protection.²²⁹

²²⁵ See the constitution of Switzerland, Canada and India where no clear definition of minority is provided

²²⁶ Art. 5 of the Constitutional Law on the Rights of National Minorities in the Republic of Croatia, Official Gazet, 155/2002 states that "a group of Croatian citizens whose members have been traditionally settled in the territory of the Republic of Croatia, and who have ethnic, linguistic cultural and or religious characteristics which are different from those of other citizens, and who are guided by the wish for the preservation of those characteristics.

²²⁷ The Switzerland New Federal Constitution Art.16 &12

²²⁸ see the report on the replies on the questioner on the rights of minorities(CDL-MIN(94)5 Revised, Point IV.C.)

²²⁹ See the comment of HRC under chapter two section 2.3.1

In Ethiopia, a remarkable formal recognition of the existence of minority groups traces its origin in the 1991 Charter²³⁰ of the Transitional Government of Ethiopia. On the basis of this provision, Proc. No. 7/1992 and Proc.No.11/1992 define minority nationality as “nationality or people which can not establish its own Woreda Self-Government” owing to smaller size of their population.²³¹ In compliance with the majority of multicultural states’ constitutions, the FDRE constitution does not also provide express and direct definition of minority groups. In the eyes of the framers of the FDRE Constitution, if all ‘Nations, Nationalities and Peoples of Ethiopia are guaranteed the right to full self-determination and exercise self-governance²³² in an autonomous manner, there will be a less probability of oppression and discrimination in which the issue of minority phenomena arises. If it occurs, the framers have provided precautionary provision in the constitution which guarantees certain seats to minority nations in the House of Peoples Representatives (HPR).²³³ This constitution does not identify the numerical threshold below which a group is considered minority nationality. Moreover non-territorial ethnic groups which are found in a dispersed manner in each territorially defined nation are not taken in to account

Nonetheless, Proc.No.111/1995 defines minority nationality as “a community determined by the Council of Representatives or its successor to be or a comparatively smaller size of population than that of other nations/ nationalities.”²³⁴ The purpose of this proclamation is to guarantee the presence of delegates of every nation, nationality and peoples of Ethiopia in the lower house regardless of their population size or whether they constitute one electoral district or not. From a close reading of Art.54 (3) and Proc. No. 111/1995 one can understand that it is nations, nationalities and peoples the population size of which is insignificant (may be below 100,000 inhabitants) that are entitled to be considered minority nationality. However, Proc.No.111/1995 is amended by

²³⁰ Art. 13 of The Transitional Period Charter of Ethiopia, Negarit Gazetta, 50th year, 1991, No.1

²³¹ Art 2(7) of proclamation No.7/1992, A proclamation to provide for the Establishment of the national /Regional Self-Governments, Negarit Gazeta, 51st year, No.2, 4th January 1992 and Art.2(5) of proclamation No.11/1992, A proclamation to provide for the Establishment of the National, Regional, and Woreda Councils Members Election Commission, Negarit Gazeta, 51st year, No.6, 8th February 1992.

²³² See FDRE Constitution, *supra* note 14, Art.39(1 &2)

²³³ *Id*, Art. (54(3))

²³⁴ *supra* note 30

Proc.No.532/2007 .As per Art.20 (1(a)) the electoral districts are going to be rearranged in accordance with census results by taking the Woreda as a basis. Arrangement of electoral districts on the basis of 100,000 people is no more operating. Art. 20(1(d)) of this proclamation states minority nationalities believed to require special representation shall be determined by the HoF. Therefore, identifying which nationalities are entitled to special representation can not be identified until the HoF determines. But, it is clear that minority nationalities reside either within the nation, nationality or people that has already established their own homeland; region or local administration or they come together to form one local government.²³⁵ Hence, minority nationalities are entitled to reserved seat in HPR. It is also clear that once a group qualifies the definition of nations, nationalities and peoples²³⁶, it is automatically entitled to exercise the rights available for nations/nationalities regardless of the number of their members except the right to territorial self-government which was provided in Art.2 (7) of Proc.No.7/1992 and Art.2(5) of Proc.No.11/ 1992. In addition to reserved seat minority nationalities are also entitled to cultural and linguistic rights since they constitute nation/ nationality as envisaged under Art.39(5).

Though the concept nation, nationality and peoples seem all-inclusive, it hardly applies to dispersed minority groups at the regional level as they do not qualify the territoriality principle. Though Art.25²³⁷ of the FDRE constitution guarantees the principle of equality and disallows unfair discrimination on the basis of language, ethnic affiliation, religion and other contingencies, it merely protects individual human rights without extending any protection to group specific rights of dispersed ethnic minorities. Unless, we adopt special rules to guaranteed representation and to the right to cultural autonomy of dispersed ethnic minority groups in each State Councils, Zonal and Woreda Councils, dispersed ethnic minorities may remain unprotected at regional level.

²³⁵ see Art.15(2)of Proc.No.111/1995,electoral districts are organized on the basis of 100,000 inhabitants it can be reshuffled if nee be.

²³⁶ Art.39(5),FDRE Constitution, supra note 14

²³⁷ Art. 25, FDRE Constitution supra note 14

As far as numerical dominance is concerned, no one nation that constitutes half of the total population of Ethiopia. In terms of numerical figure all Ethiopian ethnic groups deserve minority protection at federal level. Despite its numerical size, the Amhara had been the most powerful almost for a century. Nowadays, the Tigray nation irrespective of its numerical size,²³⁸ is politically powerful. Still because of the past dominance, the Amhara people is benefited as their linguistic dominance is maintained not only at federal level but also since the working languages of many constituent states maintained to be Amharic.²³⁹ Of course, those regional governments have chosen Amharic as their working language considering it is neutral to the conglomeration of nations in a particular region as none of them are numerically dominant. More over, most of the nations deserve minority protection at regional level and at local level since only few nations managed to have their own separate regional or local autonomy.²⁴⁰ Even members of those nations who are dominant in their respective region have remained dispersed ethnic minorities in almost all regions because of historical factors. Hence, the members of almost all ethnic groups in Ethiopia constitute minorities at sub-national levels. But, this continuous if we take in to account local administrative structures.

The FDRE Constitution has given ethno-national justice to those nationalities which were the victims of national operation. Owing to this, exogenous families of historical legacy, children of empire builders, offspring of villagization, children of settlement program and children of freedom of movement which have residing in self administering nation could not have maintained their historical political and cultural dominance in regions whrein they are exogeneous.. Therefore, their existence, the right to difference, participation and political power sharing as a group is invisible. In the next sections minority rights under FDRE Constitution are briefly analyzed in a comparative perspective.

²³⁸ Kjetil, Tronvol, „Ethiopia: A New Start? Minority Rights Group International , London ,2000,p.19

Tigray nation politically dominates in Ethiopia constituting 6% of the total population of Ethiopia .

²³⁹ See the working languages of SNNPs of Ethiopia, Gambella, Benshangul-Gumuz, Harari, Addis Ababa and DireDawa though until they adopt their own local working language as regional working language.

²⁴⁰ Only the Tigray Amhara, Oromo, Afar, Somali constitute majority in their home land states while nations such like Sidama, Gurage, Walayita and etc are dominant only in their respective Zone. Bertas, Gumuz are dominant only in their respective Woreda. As per Art.54 (3) there other nations who do not have their local autonomy, see Beken, supra note 5

4.2 The Scope of Minority Rights in the FDRE Constitution

4.2.1 The Right to Existence

As it has been already dealt with all minority groups claim become meaningless unless their physical, moral and cultural existence have got constitutional protection. The right to existence both as an individual and as a group is a building brick for every right to be claimed. That is why a number of authors consider the right to existence as the supreme human right.²⁴¹ As provided in ICCPR²⁴² and the FDRE²⁴³ Constitution the right to life is inviolable and inalienable. Physical or moral extermination of minority groups are treated criminal acts under international law. The bearer of the right can not voluntarily relinquish his right to existence let alone unilateral violation of it by the state. Because of being the founding right, usually the right to existence is non-derogable both in international and national human right instruments²⁴⁴ though the right to life is derogable in the FDRE Constitution.²⁴⁵

Moreover, since nations are the bearers of sovereign power, at a federal level there is no neglected nation the existence of which is at risk. However, owing to the territoriality definition of nations, there are members of ethnic groups constituting majority in one region but constitute minority in the other regions with or without having defined territory. Usually, such groups of population which are not territorially identified and dispersed are neglected in some regions from being the owner of the region in which they reside.²⁴⁶ Thus, it is those ethnic groups which reside in an identifiable territory that are beneficiaries of the scheme of minority protection.

4.2.2 The Right to Equality

The right to equality is needed in multi-ethnic state so as to distribute ethno-national justice among ethnic groups beside among individuals. The FDRE Constitution assumes

²⁴¹ Aberra, supra note 7, p.4

²⁴² Art. 6(1& 2) of ICCPR supra note 154

²⁴³ Art. 14 and 15 of FDRE Constitution supra note 17

²⁴⁴ Art. 4 ICCPR, supra note, 154

²⁴⁵ Ibid., Art. 93(3(c))

²⁴⁶ See the preambles of the Constitution of Regional state of Oromia, Gambella, and Benshangul-Gumuz

an obligation to respect and promote the right of citizens and nations and rule of law.²⁴⁷ Ethiopia has also ratified international instruments such as ICCPR which bans unfounded discrimination on the basis of “race, colors, language, religion, national and social origin, birth and other status.”²⁴⁸ Equality can be seen either from the angle of substantial or formal or both. For instance, in Croatia ‘minority rights and freedoms are an inseparable part of democratic system of Republic of Croatia. Each minority group enjoys necessary support and protection, including positive measures of the state from which national minorities should benefit.’²⁴⁹ This does not necessarily mean identical treatment or every differentiation in treatment constituted discrimination, rather it means treating those who are relatively in the same position in similar manner and treat those on different position differently.

Switzerland is cited among the older federations with its unique self conscious, diversified inhabitants, strong cantonal unity, and linguistic, religious, racial, and national diversity. The Swiss federation is based on extra democratic principles in which the constant minorities are as important as the majorities. The majority should have to win the will of the minority so to enact laws and policies. This is ensured by giving equal powers to cantons irrespective of population size and geographical coverage. They, however, overcome the deadlock through qualified majority vote. Equality of citizens is also ensured.²⁵⁰

In Switzerland, almost all linguistic groups are guaranteed to communicate with the court, administration and in law making occasions by using their mother tongue language as the four major languages such as German, French, Italian and Romansh though the later two languages are spoken respectively by 7% and 0.6% population are recognized as a national language.²⁵¹ This indicates that in Switzerland the country is compartmentalized in to four linguistic zones. In fact, German speaking and the French

²⁴⁷ Art the preamble, Art,25 and 39 of FDRE Constitution, supra note 14

²⁴⁸ Art 11.of ICCPR, Supra note 154

²⁴⁹ Art. 5 of the Constitutional Law on the Rights of National Minorities in the Republic of Croatia supra note 236

²⁵⁰ Assefa, supra note 13, p.197,203, 207 &211

²⁵¹ Ibid

speaking ethnic groups are divided in to six cantons and three cantos respectively where as the Italians and Romanche forms each one Canton.²⁵² Owing to the territoriality principle, in Switzerland, minority groups are capable of making use of their own language in official relations with the authorities and schools in cantons they constitute majorities.

The right of initiative enables 100,000 citizens to request the amendment of the Constitution.²⁵³ This institution allows a religious, linguistic or other minority of the population to put forward at constitutional level a set of regulations in its own favor.²⁵⁴ Any one Canton inhabited by a minority (the Italian-speaking Ticino canton) to propose an amendment to the Federal Constitution or the enactment of a law on an issue concerning that minority ,but the statutes proposed must be approved by the majority. The right of referendum enables 50,000 citizens to request that any law passed by Parliament should be submitted to the people for approval. Any minority considering itself disadvantaged by a law can therefore attempt to defeat it at referendum by collecting the required number of signatories. The same holds true for minorities at the cantonal level. ²⁵⁵ What we have to consider here is the Swiss system of minority protection destined to protect territorially concentrated minority groups. Dispersed minorities are guaranteed individual human rights. The fact that there are three official and four national languages have contributed for the preserving of the culture and languages of territorially concentrated minorities.

In Canada segmental autonomy is guaranteed only to territorially concentrated minorities. Canada is historically known in her long lasting ethnic and linguistic tension and antagonism between the English speaking and French speaking groups. The French speaking groups constituting numerically subordinate to the former at national level usually claim political, cultural and linguistic independence. Finally, they succeeded in securing Quebec as their separate and independent constituent unit of the Canadian

²⁵² Ibid. p.207-208

²⁵³ Art.12 of the Swiss Federal Constitution

²⁵⁴ Ibid. Art.93(2)

²⁵⁵ Ibid. Art.89(2)

federation. In Quebec the French speakers constitute absolute majority so that they are politically, socially and culturally dominant.²⁵⁶ French has been recognized as their national language in Quebec. The statutory recognition of French as an official language in 1968 and the electoral victory of an independent party in Quebec in 1978 have guaranteed to minority schools in 1982. In Canada, outside of Quebec, the remaining one million French Speakers would constitute only 5.2% of the total population.²⁵⁷ Compared to the English-speakers majority this number is less significant to be well considered. But, the French-speaker minorities out side of Quebec are the largest language minority number next to the English-speakers majority. Whether to recognize French as an official language outside of Quebec and establishing French language schools were the main concerns of the Canadian government²⁵⁸ which is usefully recognized.

India is also another quasi-federal state that is characterized by ethnic diversities. In India in principle all member states are treated equally as the constitution entitles them to adopt distinctive sub-national policies. Since 1950s all states have been empowered contitutionally to adopt their official language either Hindi or the language in use in state²⁵⁹ though court proceedings, orders, laws and regulations must be in English.²⁶⁰ While Hindi has the status of national language and English is retained for superior courts and national laws and regulations, states choose their own language, either Hindi or the dominant language used in the state.²⁶¹

The FDRE Constitution states every one is equal before the law without any discrimination based on race, national, nationality or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.²⁶² In the provision of the FDRE Constitution which deals with equality, it seems that this right is

²⁵⁶ Richard Joy, Languages in Conflict, Toronto: McClland and Stewart,1972, p.86

²⁵⁷ Roger Gibbons, 'Speculations on a Canada with out Quebec', in Kenneth McRoberts and Patrick Monahan (eds), The Charlottetown Accord, the Referendum the future of Canada, Toronto: University of Toronto Press, 1993,p.271

²⁵⁸ Ibid

²⁵⁹ Art.345 of the Indian Union Constitution

²⁶⁰ Id ,Art.348

²⁶¹ Ibid

²⁶² Art.25 of FDRE Constitution supra note 14

given to individuals not for groups. However, if the rights to equality of individuals who are members of minority groups are protected, we can say that the minority groups are at equal footing with the majority. Even though the protection of minorities is inspired by the principle of equality, it requires state to take positive measures to create favorable conditions to make minorities express their characteristics and to develop their culture, language, religion, traditions and customs.

4.2.3 The Right to Self-Determination

Self-determination is one of the most important rights of oppressed population groups because of its multi-faces. It can be seen at the same time from political, economic, social and cultural rights. The FDRE Constitution conferring the right to self-determination on nations, can be understood as the right to autonomy (self government), the right to speak their own language preserve their own culture, history, identity and to separate institutions.²⁶³

The right to secession is also part and parcel of the right to self determination of nations regardless of their numerical, historical and political status.²⁶⁴The only limitation to nations' right to self-government is that all regional or local organs should discharge their duties and exercise their rights within the frame work of democratic principles, rule of law and in accordance with the mandatory rules and sprits of FDRE Constitution.²⁶⁵ In reality, there are only nine Regional Sates and two City States for nearly around eighty nations in the county. But, theoretically the door is not closed for every nation to establish its regional state in the future.²⁶⁶

4.3.1.1 The Right to Self-Government

The right to self-government as an element of the right to self-determination exists for all nations, the makers of the FDRE Constitution²⁶⁷. It is limited self-determination in areas of political and economic affairs at sub-governmental level. Each nation of Ethiopia has

²⁶³ Arts. 39 & 52 of FDRE Constitution supra note 14

²⁶⁴ Id. Art.39(3)

²⁶⁵ Id. Art.50(2)(a)

²⁶⁶ Id., Art.42 &47(2).

²⁶⁷ Ibid. Art.39(1)

the right to full measure of self-government which consists of the right to establish institutions of government in territory they inhabit and equitable representation at both federal and state government level.²⁶⁸

The FDRE Constitution is unique in granting, theoretically, to all nations regardless of their numerical size and political self consciousness to exercise the right to self-government. In practice, there are various models applied in sense that while some nations managed to establish their own home land regions others have established sub-regional autonomy by establishing their own separate Zone or Woreda. There are also ethnic groups who do not have either regional, Zonal or Woreda level autonomy. Despite the vertical division of power between the federal government and the units there are group of scholars arguing that the expenditure needs of units is by far smaller than their revenue sources since most of the lucrative sources of revenue are almost totally reserve to the federal government. Only insignificant powers are reserved to regional governments²⁶⁹ as a result of which it is less convincing to conclude that those nations which managed to establish their own regions after their name fully exercised their right to self government.

Though land and other natural resources are a common property of nations, it is under the ownership of the federal government and the people of Ethiopia in which individual citizens are only entitled to usufructory right.²⁷⁰ In principle regional governments administer under the dictation of the federal government.²⁷¹ Hence, if the federal government strictly exercises its power over the land, the dependence of regional governments on federal government will be more visible. The right to self-government can be fully evaluated deeply only when there is political pluralism in the sense that opposition parties which may establish regional government can exercise self-government resisting the emergency declaration and central interference.²⁷² In fact,

²⁶⁸ Ibid. Arts.39(3)& 47(2) of FDRE Constitution supra note 14

²⁶⁹ Aberra, supra note 7,pp.120-121

²⁷⁰ Art.40 (3-4) of FDRE Constitution supra note

²⁷¹ Ibid, Art 52(2(d))

²⁷² See Art. 93 of the FDRE Constitution wherein regional governments can not declare state of emergency in case their regional integrity is endangered. For instance, up on the majority seat in one regional

regional governments are guaranteed to determine their working language, preserve their own separate identity and to establish their own independent legislative, executive and judicial powers.

4.2.3.1 Cultural and Linguistic Rights

Among the most crucial affairs that need special care in multi-ethnic state is language and cultural policy are mentioned first since unity should be preserved without compromising diversity. There must be a communication and mutual understanding among the linguistic groups by having at least one common language depending on the countries economic, social, cultural & political past, present realities and future aspiration. Equally important is that language is about identify and a means of preserving once pathos and ethos. Hence, in multi-linguistic states we need to take care as far as language is concerned. How much political empowerment and access to resource is guaranteed, people want to reflect their own culture, values and preserve their history. In order to practice once culture there must be a right to use one's own language as language and culture are indispensable.²⁷³

According to Taylor, culture in ethnographic sense is 'a complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society'.²⁷⁴ Language helps to explain one's own culture and identity²⁷⁵ as it is a storehouse of culture and history of a group.²⁷⁶ Different countries are using different approaches. Fore instance, in India two languages, Hindi and English are recognized as official languages of the federal government²⁷⁷ while in Switzerland; Germany, French and Italy languages are recognized as federal official languages²⁷⁸. In

government is democratically won by opposition party and this party establishes a government the regional government can not legitimately defend its integrity against unlawful appraisal sponsored by the central government. It is true that proc. 359 gives uncontrolled power to the Federal Government to suspend the state council in the guise of national security.

²⁷³ Wehlgeham, supra note 42, pp.103-105

²⁷⁴ Timo Makkonen, Identity, Differences and Otherness, the Concepts of <people>, <indigenous people> and <Minority> in International Law, Helsinki: University Press, 2000, p.26

²⁷⁵ Ibid, p.27

²⁷⁶ Ibid

²⁷⁷ Assefa, supra note 13, p.196

²⁷⁸ Ibid, p.207

India, Hindu is the largest nation constituting 40.2.% of the population as a result non-Hindi speaking ethnic groups succeeded in adopting English as a second neutral official language, though it was intended only for fifteen years. Giving an opportunity for all languages in the states to be the national language is economically difficult though majorities of the states are bilingual depending on various criteria. State legislatures have managed the language issue by recognizing those languages that preserve the culture and linguistic identity of the dominant ethnic group. There are total sum of 18 official languages across state levels.²⁷⁹ States are at liberty to adopt more than one official language complying with political 'integration through pluralism rather than assimilation' despite the interest to have mother states for ethnic groups though the procedure is subjected to stringent requirement.

Switzerland seems more of confederation as every language is equally official language of the federation except the Romanche that is the official language of a canton that comprises German, French and Romanche speaking groups. Out of the total '26 cantons 17 cantons are unilingually Germany, 4 unilingually French, 1 unilingually Italian speaking cantons while 3 are bilingual German and French, and 1(Grisons canton) is trilingual German, Italian and Romanche.'²⁸⁰As far as language is concerned Germany is widely spoken and dispersed except in 5 cantos. However, from this one can learn that there is German speaking minorities in other cantons and every linguistic group is guaranteed to exercise its own language either at the center or cantonal level in which no subordinate language.

Nonetheless, this does not escape criticism; because of equality of languages high probability of gridlocks and its impact on freedom of transaction and speech. It also affects liberty of citizens while moving from one canton to other as there is no one or more common language. Schools are delivering education in official language of respective cantons so any one left German speaking canton has no option rather than joining French speaking schools in French speaking cantons. It also affects freedom of

²⁷⁹ Ibid. P.197

²⁸⁰ Ibid, p.207

political or pressure groups. On the other hand, cantons are destined so as to assure the homogeneity of linguistic territories within their administration as a result the language groups reside in clearly delineated regions. This made the issue of minority of ethnic /cultural groups less serious and linguistic diversity is safeguarded equally by equality of languages and clear delineation of regions along the line with language groups inhabiting the same region.

There is no one ethnic group that constitutes 50% in the federation of Ethiopia though Oromo constitutes the largest group. As far as the ethnic constitution of each state none of the nine states and the city states are homogeneous.²⁸¹ In fact the Oromo, Amhara, Tigray, Somali and Afar people dominate in their respective regions with significant numbers of minorities in each. In Southern NNPs, Gmbella, and Benshangul Gumuz, the range may vary from 4 to 50 minority nationalities in which there is no dominant ethnic group. When we see the city-states of Addis Ababa and Diredawa they are inhabited by hybrid society.²⁸² The FDRE constitution, under Art.5 (1) and (2), states that all Ethiopian languages enjoy equal state recognition and Amharic is the working language of the federal government but does not spell the official language for communication between the federal government and the states although as a matter of practice Amharic is maintained.

The ethno-linguistic groups demand for cultural preservation and distinctiveness by vesting the mandate to determine the working language of their respective state by the state legislatures.²⁸³ This opens the way for the states to adopt their own official languages. Of course, when seen from the perspective of population speaking and geographical size and its contribution to the national economy, Oromo Language could have been the second working language at the federal level. Except the historical imposition in the guise of one nation, one language and one religion motto, there was no justification at the beginning to deny Oromo Language the status of working language at

²⁸¹ Tronvol, supra note 227,p.19

²⁸² Ibid

²⁸³ Art 5(3), FDRE Constitution supra note 14

the center; even it was in a better position than Amharic in number of speakers, economic contribution and size of the territory occupied by the speakers.

In spite of the preamble of FDRE constitution that promises to rectify past injustices, Art. 5/2 of the FDRE Constitution has denied Oromo Language the status of second federal working language. Currently we are hearing a coalition of different political parties named “Medrek” announcing its stand to adopt Afaan Oromo as the second working language ²⁸⁴of the federal government if it is going to win the majority seat and establish its own government. In this party, there are plenty of non-Oromo affiliated parties, some members of the disintegrated influential party, “CUD”²⁸⁵ the motto of which was to build Ethiopia around one language and objects against ethnic federalism. This indicates that it is a proven fact that politicians from almost all sectors of the country have in their mind that it is unfair to deny Afaan Oromo the status of federal working language.

It looks that Art. 5(1) and (2) of the FDRE Constitution contradict each other because it is difficult to give equal state recognition to all languages in the existence of one federal working language. For instance, Tigray, Afaan Oromo, Amharic, recently Afar and Somali languages are used for daily National TV programs where as several Ethiopian languages are used for local radio stations in the area where they are spoken and still there are many languages which are not even used for local radio stations. Time apportioned for each language is not proportional as more time is allocated to the Federal working language. The right of ethnic groups to officially use their own language in public affairs is constitutionally recognized²⁸⁶ only when they are territorially concentrated. Hence, the language policy has failed to accommodate some people in the cities of the regions since they speak Amharic because of the past assimilation though the official language in Oromia, Afar and Somali is language of the dominate group. It is also true that the federal arrangement is made on the basis of not purely language patterns

²⁸⁴ Personal discussion with Ato Gabru, the Public relation of the Oromo People Congruence political party, on 20/12/2009

²⁸⁵ A coalition for Unity and Democracy, one of the influential opposition parties during the 2005 election.

²⁸⁶ FDRE Constitution, supra note 14, Art. 39(2)

but also ethnic back ground.²⁸⁷ As a result it affects free movement of citizens and transactions in addition to neglecting the children of nation building, freedom of movement and resettlement programs which are dispersed in almost all regional states.

However, in linguistic diverse society, the critical issue is how many languages must be the official languages and the national languages. As already stated most multi-lingual federations such as Switzerland, India, and Nigeria have more than one official language for the federation. This helps both minority and majority groups to make a choice between/among popularly spoken languages. But, having more than a language is not an easy choice; starting from how to choose and how to provide equal service establishing different institutions such as courts, executive organs and civil service or that provide service at least with more than one language. Other ethnic groups may be agitated further to resort to violence so as to secure their language official status which is not only economically difficult but also practically impossible to make all languages official or national languages in countries like Ethiopia where there are more than seventy five languages.²⁸⁸ It may end up with some groups only using one while other are using the other which kills fraternity and become a barrier for unity because of gridlock. As stated under chapter two the population size, economic contribution, geographical coverage of the speakers of the language should taken in to account before recognizing it as working language. On the other hand, single national language serves both as lingua franca and as a means for promoting national unity. Multicultural federations have often adopted either of the two or more or a single official language at federal level to settle the issue of official language.

Looking at the practical records of the regional states three different approaches seem discernible. First, some states have adopted their own majority language as the working language of their respective regional administrations. Amhara, Tigray, Oromia, Afar, and Somali fall in to this category. Other states which do not have a majority ethnic group (Benishangul-Gumuz, SNNPRS and Gambela) have chosen Amharic as their respective

²⁸⁷ Art.46(1), FDRE Constitution, supra note 14

²⁸⁸ Tronvol, supra note 227

working languages. The third trend is the one adopted by the state of the Harari Regional State, where Harari and Afaan Oromo have been chosen as official languages. What is particularly interesting in this development is its significance in portraying how sub-regional political actors may opt to deal with language issue under the general constitutional framework²⁸⁹.

As clearly provided in the FDRE Constitution the building bricks of the federation are nations, nationalities and peoples of Ethiopia in which sovereign power is vested by the constitution. It is a given fact that in multi-ethnic federations like Ethiopia in which the objective of the federation is forging unity out of diversity, the issue of language policy touches every aspect of the countries political, economic, social, cultural and educational affairs. If cultures are promoted and preserved through language, it is inevitable to practice and attend education through mother tongue up to certain levels. Without learning through mother tongue it is difficult to develop the language, culture and maintain equality of cultures and minimize subordination of languages. Through learning one's own language it is possible to exchange the culture of one another in which sense of belongingness, tolerance and pluralism develops. Learning through one's mother tongue helps more the learners to easily understand the lesson than learning through non-mother tongue beyond making the language to be the language of modern technology.

Having cross-ethnic languages that is/are determined fairly is a necessary evil in the eve of talking equality of languages so as to preserve the union. As far as the balance is concerned in Ethiopia the interest to learn Amharic becoming endangered in Oromia, Somalia, Tigray and Afar as they have their own working language in their respective region. Practically most university students from Oromia, Somalia, Tigray and Afar are incapable of expressing their opinion in Amharic. While English is offered since grade one, Amharic except in Amhara, Diredawa, Addis Ababa, Cities and Towns offered since grade five as a course his has an impact not only on communication but also make them incapable to compete for power and employment at the federal level.

²⁸⁹ Assefa, supra note 13

4.2.5 Representation

Federalism by itself is not an end to protection of minority rights. Federal institutions such as executive and judiciary should be adequately established in the regions so as to impartially solve the problems among ethnic group and minority groups while the both houses of the federation, civil service, courts reflect as much as possible the proportional ethnic composition of ethnic minorities. But quality should not be neglected in the guise of equitable representation.²⁹⁰ In Switzerland, at the federal level the language minorities are fairly represented in the Federal Council, the Federal Assembly and the Federal Court with out introducing the quota system.

Every nation, nationality and people of Ethiopia has the right to equitable representation and this is guaranteed under Art.39 of the FDRE constitution .It is also true that though the second chamber is deemed to be the house of minorities in the sense that it counter balances the majority tyrannies²⁹¹. In the first place though no one ethnic group is dominant in Ethiopian the sum of Oromia and Amhara is more than required majority in lower house. In fact, they do not quantify 50% of the 2nd chamber but still they are leading in having larger numbers of seat in this chamber.²⁹² But it is challenging to minorities to over come unless they always side with one another. Minority ethnic groups have not given the opportunity to counter balance the majority tyranny in lower house during law making and issuance of policy at the center since House of Federation has no law making power in proper sense.

4.2.4.1. Representation in the House of Peoples Representatives (HPR)

The FDRE Constitution having adopted the West Minster model empowered the HPR, the lower house, to have final say on political issues. It is the supreme political organ so that enacts laws in compliance with the constitution, and plays supervisory role over the executive.²⁹³ Representing the people of Ethiopia members of HPR are elected directly

²⁹⁰ Assefa, supra note 13.

²⁹¹ Proportional representation at federal level is not in practice More Art 61 of the FDRE Constitution recognizes majoritarian second chamber

²⁹² Currently on the representatives oe nations from SNNPs of Ethiopia is above 50%

²⁹³ Arts. 50 & 51 of FDRE Constitution supra note 14

by the people up on universal suffrages on the basis of the first-past-the post electoral system from candidates in each electoral district. The total number of the members of the house should not exceed 550 of which minority nationalities should have at least 20 seats.²⁹⁴

However, this is not fully applicable even if there is no restriction based on population size of minorities that qualify for special representation in the HPR. There are some procedures that should be followed. First, the HoF should identify minorities to be represented in the HPR. And the National electoral Board, based on the information of the regional state, should give recommendation to establish special constituency to the House of Federation. Then the House of Federation will decide on the issue. However, any candidate of a region should know the working language of the region²⁹⁵ since minorities are expected to know the working language of the majority. Dispersed ethnic groups in self administering nations are represented by the representatives of those territorial defined self administering nations which are the dominant group in a constituency. They are not also entitled to special representation as they are not nationalities because of the territoriality principle.

4.6.2 Representation in the House of Federation (HoF)

The House of Federation is the second federal house empowered to interpret the constitution short of law making power except participating in amendment of laws and recommending the lower house to enact ‘civil laws to establish and sustain one economic unit’⁴. In the second chamber of most of federations states are equally represented regardless of their geographic and population size(US and Switzerland)²⁹⁶ and others manage to balance the population size by giving slight weight to population size in reserving additional representation to the populous states(Germany & India).²⁹⁷The role of second chamber is checking the excess of democracy in lower house. In the lower

²⁹⁴ Id, Art 54 (1-2)

²⁹⁵ A Proclamation to Amend the Electoral Law of Ethiopia Conform with the Federal Democratic Republic of Ethiopia, Proc. 111/1995, Negarit Gazeta of the Transitional Government of Ethiopia 5th year , No.9, 23rd February Arts . 15(2) and 38(1) (b) supra note

²⁹⁶ Assefa, supra note 13 pp.139-45

²⁹⁷ Ibid

house the principle of one man one vote applies while in the upper house the principle of one state one vote works so as to counter balance the majority tyranny in the lower house and empower numerically minority states to have equal say on policies and laws passed at the center²⁹⁸.

However, the second chamber in Ethiopia is unique for many reasons; it has neither law making power nor state representing mission rather represent nations/nationalities.²⁹⁹ It is also true that in some regions of Ethiopia nations and regions overlap while in others states comprise conglomeration of nations. In the former case, representation of nations and state are overlapping incidentally, for instance the state of Oromia, Afar and Somali. The representation formula is neither similar with US model nor with the Germany. It differs from the former in the sense that what are represented in second chamber of Ethiopia are nations but not states, and representation is not on equal basis for all nations. In regard to Germany, like that of US, states are represented unlike ours. Moreover, though attention is given to population size for determining the number of representative in the second chamber, the maximum limit is set in the constitution. The same holds true for India.³⁰⁰

In Ethiopia, each nation is guaranteed a minimum of one representative and shall be represented by one additional representative for each one million of its population. For instance a nation with ten million shall have eleven representatives and no maximum limit if the population of that particular nation is increasing by one million, no doubt the number of representation do so. The composition of the HoF is stated under article 61 of the FDRE constitution as follows;

- (1) The House of Federation composed of representatives of nations, nationalities and peoples.
- (2) Each nation, nationality and people is represented in the federal council by at least one member. Each nation and nationality shall be represented by one additional representative for each one million of its population.

²⁹⁸ Ibid

²⁹⁹ Art. 61(1-2) of FDRE Constitution Supra note 14

³⁰⁰ Assefa, supra note 13, pp.139-45

(3) Members of the HoF shall be elected by the state council. The state councils may elect them directly, or they may hold elections to have members of the Federal council elected by the people.

Members of HoF are elected in two ways; they may be elected by the state council by majority vote among members of the state council (or outside of the council) or directly by the nation³⁰¹. The state council selects representatives from each nation. The question is in the present experience is that why representatives of all nations/nationalities in the state council are given the power to decide as to who should be member of HoF where each represent his/her nation rather than his/her state. For instance, why the Wolayita nation has a vote for the representative of the Hadiya nation? The effect of this is manifested where there is political pluralism particularly in states like Southern Nation, Nationalities and Peoples of Ethiopia where sub-Regional governments are relatively strong. If one opposition party totally wins the required majority at the Wolayita zone and establish its Zonal government and the ruling party wins the required majority to establish a government at the state level, in the present scenario the ruling party because of its majority vote in state council selects representatives in HoF for the Wolayita which neither the nation directly nor indirectly elected. Hence, this defeats democratic principles by eroding the free wills of the minority nations. The second scenario is direct election by the people of the concerned nation. Thus, the right to elect representative of each nation should be left to the representatives of each specific concerned nation or the direct election of the people of the nation otherwise the aim of rejecting judicial review to safeguard the free will of parties to political contract is going to be defeated because of the majority nations in the state council of the state.

There is also a debate among scholars as to whether the HoF is really the home of minorities. Assefa argues that the principle of one man one vote³⁰² is followed in both houses except the fact that for approximately hundred thousand people one

³⁰¹ Ibid

³⁰² Ibid

representative in the lower house and one plus one additional representative for each one million of its population. In fact the sum of Oromo and Amhara constitute more than fifty percent of the population. Owing to this, they have more than half of the seat in the lower house. Nonetheless, the present composition of HoF does not subject minorities to the will of the majority nations if they always sides with one another. This can be evidenced from the present composition in which minority nations from SNNPs have more 50% of the seats in HoF. From this one may infer that the nationalities from SNNPs of Ethiopia which is a conglomeration of more than 50 nations constitute the majority and the majority nations in the lower house, Oromo and Amhara can not at any rate constitute the majority in the HoF. The sum of representatives of both nations, Amhara and the Oromo constitute only 30% of the total members in HoF. Therefore, the numerical majority group should always associate with the minorities to make a decision. Giving reasonable values to the population size for representation is not unique to the HoF.³⁰³

As a rule members of the HoF should be drawn from all nations, nationalities and peoples of Ethiopia as each nation is represented at least by one person and one additional representative for each one million people.³⁰⁴ But, in reality there are nationalities which have representative in this house. The election process can be conducted either directly by the people or indirectly through the regional state councils. Therefore, under FDRE Constitution it is only territorially defined minorities which have political significance are given the right to self government. Moreover despite significant number of dispersed minority groups in all units no group specific right of dispersed minorities has given meaningful weight.

³⁰³ ³⁰³ In present composition of 121 Members of HoF of 61 are from SNNPs of Ethiopia ,see the present composition of House of Federation report

³⁰⁴ see Art.61 of FDRE Constitution supra note,14

CHAPTER FIVE

THE LEGAL AND PRACTICAL PROTECTION OF MINORITY RIGHTS IN SELF ADMINISTERING NATIONS OF ETHIOPIA: THE CASE OF OROMIA

INTRODUCTION

This chapter addresses the legal and practical protections of the rights of minorities in the regional state of Oromia. For this purpose the Constitution of Oromia, the ruling party regulation and pro. No. 116/2006 will be analyzed together with the practical facts which have been gathered by purposive interviews and personal observation of the writer.

Based on the 2007 Population and Housing Census of Ethiopia, the Oromo, the largest ethnic group, constitute 34.49%³⁰⁵ of the total population of Ethiopia. The Oromo people have occupied a total surface area of 353690 Km² which is also the largest surface area.³⁰⁶ Resource wise, this region contributes the largest share.³⁰⁷ Despite its contribution, population size and the size of the region, the Oromo people are mentioned among the politically oppressed ethnic groups.³⁰⁸ As a group they have no significant influence at the central government in the Ethiopian political history. In fact, in the past regimes some individual Oromos under the shade of Showa Amhara succeeded to assume certain key political posts.³⁰⁹ Still there are debates as to the appropriate space of the culture and language of Oromos at the federal level since the language of this largest group (34.39%) is not recognized as the second working language of the federal government.³¹⁰ On the basis of democratic principles(their population size), resource contribution and surface area they occupied, relatively the identity and the language of Oromo people deserves to have more influences even at federal level.

³⁰⁵ Supra note 20

³⁰⁶ Beken, supra note 5, p.7

³⁰⁷ Aberra, supra note 7, p.131

³⁰⁸ Tronvoll, supra note 227, p.8

³⁰⁹ Assefa supra note 13, p .70

³¹⁰ Aberra, supra note 7, p 131

Almost all Oromo people claim the Gada System as their traditional politico-administrative system³¹¹ though nowadays in most parts of the region it is in danger of extinction by religious influences and modern political systems. In Gada system, ‘the male age grades hold the leadership office in the community (abba gada) on an eight-year rotating basis.’ Gada system also provides a frame work for the Oromo way of life and they were all guided by it.³¹² Owing to the suppression of the language, identity and role of Oromo in social and political affairs of Ethiopia, certain groups of Oromo bitterly fought to overthrow the two immediate past regimes.³¹³

The fact that the culture and language of Ethiopia was equated with that of Showa Amhara and the 20th century oppressive political system irritated different ethnic affiliated University students. Some of them has managed to establish different liberation fronts and succeeded to attract the attention of both notational and international community. Particularly, some members of Eritrean, Tigrain and the Oromo people have taken primary initiative to establish ethnic based liberation fronts. After a long brutal war the dominance of the Showan Amhara came to an end with the down fall of the military junta. Finally, ethnic federalism is chosen as a mechanism to accommodate diversity and minimize ethnic conflict. On the basis of the Transitional Charter, the framers of the FDRE Constitution has devised the federal arrangement to enable all territorially defined ethnic groups to have their own self government³¹⁴ so that the identity of no nation, nationality or people will be undermined. As a result of this, the Oromia Region is established for Oromo people. But, the intention all nations shall have their own self government is not yet fully implemented. Of about 80³¹⁵ nations it is only Tigray, Amhara, Afar, Somali and Oromo which are numerically dominant in their respective region established to have their own home land states.³¹⁶ In fact, though the degree varies, none of them is homogeneous as there are economic migrants and settlers which

³¹¹ Tronvoll, supra note 227, p.8

³¹² Ibid

³¹³ The Bale Oromo Movement and later a Oromo liberation fronts Tronvoll, supra note 237, p.5

³¹⁴ FDRE Constitution, supra note 13, Art. 39(5)&47

³¹⁵ Tronvoll, supra note 237, p.3

³¹⁶ Beken, supra note 5, pp.6-7

belong to the majority in other region or double minorities.³¹⁷ However, in the remaining regions and both city states there is no one numerical dominant ethnic group. In the regional State of SNNPS of Ethiopia, of about 56 nations while few of the nations have established their own Zonal self government, some have established their own special Woreda. The remaining majority numbers of nations have not yet established their own separate local government. In Harari region the numerically inferior group, the Harari people, politically dominates in its region.

In regions where numerically dominant “endogenous and non-endogenous”³¹⁸ groups are competing, the former is given priority. This can be seen not only from the experience of Harari but also from the experience of Gambella, Benshangul-Gumuz³¹⁹ and others. In Oromia 1st and 2nd grade City Administrations the issue of numerical minority, non-Oromo people, and historic indigenous Oromos has become a subject of debate at policy level.³²⁰ In general, though the Oromia Region is inhabited largely by the Oromo people constituting about 88%³²¹ of the total population of the region, the remaining 12% are non-Oromo minorities which either belongs to ethnic groups which are dominant in other region or which are minorities all over the regions. Of course, of the 12 % Amhara people constitute 7.2% of the total population of the region while each of the remaining minority groups constitutes less than 1%.³²² These minority ethnic groups hardly have their defined territory as they are more of sparsely populated around urban areas and borders of the region. Hence, it is difficult to make them encompassed within the definition of ‘nations, nationalities and peoples of Ethiopia’ under Art.39 (5) of the FDRE Constitution. Since they may not satisfy the “territorial component” of this provision,

³¹⁷ Compare the number of almost all ethnic groups in Oromia, the number of Oromo & Amara in Gambella, Benshangul-Gumuz, and Harari see the annex which indicates that almost the members of all ethnic groups in Ethiopia resides in Oromia. This indicates those ethnic groups in SNNPS OF Ethiopia Gambella, Benishangul which are minorities both at federal and their own region(double minorities) are residing in Oromia .See also Chritophe Van der Beken,in Ethiopian Constitutional series ,Vol.2: Issues of Federalism in Ethiopia: Towardss an Inventory, Faculty of Lwa edited by Tsegaye Regassa,2009,p. 258

³¹⁸ Beken, supra note 5, p.111

³¹⁹ supra note 326 id

³²⁰ See the preamble of Proclamation No.116/2006 supra note 22, paragraph one

³²¹ Population Census, supra note 20

³²² Ibid

they could not succeed in claiming group specific rights laid down for nations, nationalities and peoples of Ethiopia.

These groups do not as well benefit from Art.54(3) of the FDRE Constitution which guarantee reserved seats in the HPR as it is minority nationalities /peoples that are entitled to guaranteed seat³²³ up on determination of the HoF. There is no provision that guarantees special representation of dispersed ethnic (exogenous) groups at regional level. As a result of this, dispersed minority population in the regional governments are almost constitutionally unable to claim rights such as self-government by establishing their own territorial province, region or separate local government and guaranteed seat in both tiers of government. In fact, it seems logical by their nature dispersed minority groups do not deserve territorial autonomy rather personal (non-territorial) autonomy usually termed as cultural autonomy in which they practice their culture if they do not want to be assimilated voluntarily. In fact, it is advisable to integrate sub-national internal minorities for national unity and economic viability.

As clearly discussed in chapter three personal autonomy works for dispersed minority in the sense that they are guaranteed to preserve their separate identity by practicing their tradition, culture, custom, writing their history by their own language, learning, using and writing by their language both at public and private affairs, and guaranteed representation power sharing in the in existing legislative branches and other organs of the government respectively. Moreover, in order to practice their culture and language they need to have institutional protections and financial sources.³²⁴

5.1 The Regional Constitution and Accommodation of Diversity

Some of the regions in the Ethiopian federation have been created to guarantee self-rule to the dominant nation of which Oromia Region one which is established to accommodate and enable the Oromo people to exercise their right to self-determination. The 2001 Constitution of Oromia claims the region as it is established solely for Oromo

³²³ See Art.54(3) of FDRE Constitution supra note 14

³²⁴ Aberra, supra note 7, pp.56-57

people.³²⁵ To this effect, the constitution expresses it self as it is a pact among Oromo people despite important presence of other ethnic groups in this region. The sovereign power in the region resides in the people of Oromo. This indicates that Oromia region belongs to Oromo people. However, Art. 2(2) of the Oromia Constitution acknowledges that Oromia is not purely inhabited by Oromo people as it states “Oromia is populated by people of Oromo nation and other peoples.” On the other hand, Art 39 (6) of the Oromia Constitution stipulates that the people of Oromo nation shall be construed as meaning “those people who speak the Oromo Language, who believe in their common Oromo identity, who share a large measure of a common culture as Oromos and who predominantly inhabit a contiguous territory of the region.”

Art.39 (6) of the Oromia Constitution recognizes both subjective and objective markers of the concept Oromo people. As objective markers language, culture and identifiable predominantly contiguous territory are required whereas believing in common identity of Oromo is provided as subjective marker. Of course, this provision defines merely the majority in the region. On the other hand, those who speak the Oromo Language and share common culture with the Oromo may not constitute Oromo by operation of the Oromia Constitution as they may not believe in their common Oromo identity though it is difficult to prove as it is a state of mind. Therefore, it is possible for a person who is not non-Oromo who speaks Oromo Language to identify himself as an Oromo if he wishes

Actually, to be admitted to any political positions and other responsibilities loyalty to party program is enough.³²⁶ Accepting the political program of the ruling party is enough to be admitted to membership of the Oromo people Democratic Organization if a person can understand the working language of the region.³²⁷ Hence, in Oromia more weight is given to the objective components of the definition of the people of Oromo as the practice intends to assimilate non-Oromos who accept the political agenda of the ruling

³²⁵ See the preamble and Art.8 of the Enforcement Proclamation of the Revised Constitution of 2001 of the Oromia Region, Number 46/2001(here in after the Constitution of Oromia)

³²⁶ The Party Regulation of Oromo People Democratic Organization 4th Minute as amended,2007(Dambii Ittiin Bulmaata Dhaabbata Democratawaa Uummata Oromoo yaa’ii 4ffaa tii Fooya’ee Ragga’e) here after party regulation,Arts.11 &16(1)

³²⁷ Ibid. the implication of Party regulation, Art 11

party.³²⁸ The practice finds its basis in Art. 33 of the Oromia Constitution which states that “any Ethiopian resident in the region and who speaks the working language of the region has the right to be elected or employed to any public office in the region.” In light of this, instead of group specific rights, individual rights to participation are more visible and guaranteed. The nomination of members of legislative, executive, judiciary and the civil service in this region operates more or less in line with Art.33 of the constitution.

5.2 Regional Territorial Arrangement and Institutional Structures

The National Regional State of Oromia is organized on the basis of four administrative units. These are in their administrative hierarchies from top to bottom; the Regional Government, Zonal, District and Kebele administrations. Except the zonal administration which is a mere extension of the regional executive organ, each of the three administrative units has their own council of representatives directly elected by the people.³²⁹ Recently, City Administration is established by Caffee being directly accountable to the head of the executive.³³⁰ The City Administration has its own council directly elected by the people.³³¹

Any stratification in Oromia region is devised so as to facilitate administrative efficacy and bringing power to grass root level rather than accommodation of diversity. The assumption has been this region is homogeneously populated by the Oromo people, and for those other Ethiopian citizens who have chosen to reside in the region the right to establish their own separate local government is unthinkable. However, as the recent census indicates there are other ethnic groups the presences of which have a political significance in this region.³³² But, separately, except Amhara, each may not have one percent of the total inhabitants of the region. Even the conglomerations of the non-Oromo ethnic minorities have not inhabited one or more contiguous territory as they are dispersed ones. In fact, there are significant number of non-Oromo ethnic minorities

³²⁸ see Art.2 of the Constitution of Oromia supra note 334 party regulation Arts.9 and 16(1)

³²⁹ Art.71&76 of the Constitution of Oromia supra note 334

³³⁰ Ibid

³³¹ Ibid

³³² The 2007 population census indicates that there are about 12.2 % of the total population of the region non-Oromo ethnic groups

mixed up with Oromo people around the urban centers of the region. There is also a fear from the side of Oromo to be dominated in some cities where the sum of Oromo people in some cities is less than the total sum of the other ethnic groups in those cities.³³³

The Caffee Oromia, the Regional Administrative Council, State Court, Regional Constitutional Interpretation Commission and Council of Constitutional Inquiry are the main organs of the regional government. Caffee Oromia is vested with the highest political power in the Region.³³⁴ Caffee Oromia is an organ of the region which comprises representatives of the people from electoral districts. As per Art (48) (1-2) election of members to Caffee is conducted directly, popularly and secretly by the residents of the region on the basis of universal suffrage for a term of five years. Art. 48(3) of this provision also states that “members of the Caffee are representatives of the people of the region as a whole. An individual citizen of Ethiopia and resident of the region are legible to be elected provided s/he is capable of speaking the working language of the region.”³³⁵ Despite the preamble and Art.8 of the Oromia constitution wherein sovereignty resides only in the Oromo nation, the right to be elected and to elect is equally guaranteed to all residents who are Ethiopian citizens. For a close observer, members of Caffee also represent the non-Oromo people though the sovereign power which is exercisable by delegating power to the Caffee resides only in the hands of Oromo people. Moreover, in practice the ruling party does not disallow a person who belongs to non-Oromo groups to be a candidate for membership of Caffee provided s/he is loyal to the party program and speak Oromo Language.

Hence, if a non-Oromo candidate wins majority seat at a particular constituency, he will represent the people of the region as a whole including Oromo people.³³⁶ Despite the existence of independent Woreda and Kebele administrative levels with their own legislative, executive and judicial power, the rationale behind such arrangement is not accommodation of minority (diversity) groups rather for a mere administrative

³³³ See the preamble of Proc. No. 116/2006 supra note 22

³³⁴ Arts. 68, Arts. 45, 71(1), 48(1) (a) of the constitution of Oromia supra note 334

³³⁵ Art .33 of the Constitution of Oromia supra note 334

³³⁶ Ibid. Art 48(3)

convenience.³³⁷ Any resident of the region, who is capable of understanding the working language, can be the member of Woreda Council or Kebele Council.³³⁸ However, currently, in first grade and second grade cities of Oromia where in the number of Oromo people are less than 50%, 30% of the seat was reserved to Oromo people in the 1st and 2nd grade cities while 5% of the seat of City Council was reserved to the surrounding rural kebele.³³⁹ For the remaining 65% of the seat all ethnic groups in the city and surrounding Kebeles including Oromo people equally compete for it.

However, considering this as it endangers the rights of Oromos in the City Council, the reserved seat for Oromo people in city the guaranteed seat to Oromos in these cities has been upgraded to 50% and while that of neighboring kebeles has been upgraded to 20% seats.³⁴⁰ Though the opportunity of non-Oromo ethnic groups to be dominant in City Council has been becoming narrowed, considering themselves as the owner of the region the Oromo people have not completely closed the door for the recognition of the existence of other ethnic groups in the region. If we plainly follow the constitution of the region³⁴¹ other than Oromos no ethnic group that has legitimate claim to have a seat in the City Council. This indicates that the proclamation gives better opportunity for non-Oromos as it at least recognizes the existence of other ethnic groups which have the right to participate in political representation. The Oromia regional government can do away with the issue of City Council if it establishes City Administration in the manner of Zonal Administration which is a mere extension of Regional Government. This may reduce the obstacle to integration. Administrative units below the regional government including City Administration is local governments which are implementing bodies, the law making power of the region is dominated by the Caffee Oromia.³⁴² Therefore, instead of City Council proportional representation of those ethnic minorities in Caffee has paramount importance.

³³⁷ Ibid. Art.8 does not acknowledge diversity

³³⁸ Ibid .Art.33

³³⁹ Proclamation No. 65/2003

³⁴⁰ Arts. 2-7 proc.116/2006 supra note 22

³⁴¹ see the preamble and Art 8 and 39(6) of the Constitution of Oromia Supra note 334

³⁴² Ibid, Arts. 76(1-3),79(1),90(1-3) and 91(1)

5.3 Who are Minorities in Oromia?

As the 2007 Population and Housing Census of Ethiopia clearly indicates there are members of almost all ³⁴³ ethnic groups in the country inhabiting in the Oromia region. However, except the Oromo nation, other groups do not constitute separately one electoral district. More or less they are confined to urban centers and the bordering rural Kebeles. On top of this, as Oromia touches almost all the regions of Ethiopia except Tigray from the borders of the region there are some non-Oromo ethnic groups. The inhabitants of some of the ethnic groups such as Upo, She and Qewama may not exceed 100 persons. The member Somalie, Tigray, Sidama, Guragie, Welaita, Hadiya, Afar and Gamo are relatively larger but each constitute below 1% while the Oromo and Amhara constitute around 88% and 7.2% of the total population of the region.³⁴⁴

Despite the existing fact on the ground, the Constitution of Oromia does not extend protection to group specific rights of ethnic minorities. Basically, as per the Capotorti-Deschenes definition all ethnic groups in this region other than the Oromo constitute minority groups and entitled to the minority protection.³⁴⁵ But, in light of the definition adopted in the FDRE Constitution, none of the ethnic minority group in this region satisfies the definition of minority nationality/people.³⁴⁶ With out satisfying the definition of “nation, nationality and people” the idea of minority under Art.54 (3) of the FDRE Constitution does not operate. In fact, there is strong argument that minority groups in the region are entitled to the right under Art.27 of ICCPR.³⁴⁷ Moreover, the international trend indicates that it is up to the internal politics of the national government to device adequate protection schemes to internal minorities.³⁴⁸ Nonetheless, unless internal peace of member states is maintained, international peace may be jeopardized some time in the future. Therefore, despite the difficulty to find universally accepted definition for minority groups and the manner of accommodation of diversities due to various

³⁴³ Population Census supra note 20

³⁴⁴ Ibid

³⁴⁵ Hernard, supra note 29, pp.33-34

³⁴⁶ see Arts.39(5) and 54(3) of the FDRE Constitution supra note 14

³⁴⁷ Hernard, Supra note 29, pp.33-34

³⁴⁸ Ibid

approaches of states and the nature of the minority phenomena, they must be accorded with reasonable socio-political spaces in the regional affairs.

Within the Oromia Region there are some ethnic minority groups the presence of which needs special attention. But, as stated above those minority groups do not have clearly defined territory. They, therefore, deserve protection of universally respected human rights and cultural autonomy if they are not willing to assimilate themselves. Except the general principles of human rights such as the right to equality and non-discrimination among Ethiopian citizen, in the region it is difficult to find clear Constitutional provision that accords protection to non-territorial minority groups at any administrative hierarchy. In light of the FDRE Constitution there is no minority nationality in Oromia though in practice members of the dominant ethnic group in other regions remain minorities in Oromia.

There are also large numbers of peoples who are born from parents of two or more ethnic groups whom may face difficulty in categorizing themselves either as one or another nation.³⁴⁹ It is at this point the subjective marker; 'believe in common identity of Oromo' matters. In fact, as stated in chapter one the subjective marker is more of state of mind. Therefore, the choice should be left to the concerned individual to categorize him/her self as an Oromo or to one of the other ethnic groups. Nevertheless, as experience in Oromia indicates those people who are born from an Oromo and any other one or more ethnic groups has been in a privilege.³⁵⁰

But, taking in to account the economic constraints of the country as a whole, it is difficult to finance the non-Oromo minority groups in this region to enable them exercise cultural autonomy. Still it is better to examine the economic contribution of these minority ethnic groups. Presently 85%³⁵¹ of the economy of the Ethiopia depends on agriculture in which Oromia is not an exception. Given the fact that most of non-Oromo minority groups reside in urban centers and boards, their economic contribution to the regional economy

³⁴⁹ see the annex fro Oromia CPA

³⁵⁰ Personal discussion with Ato Dajene the former OPDO Member

³⁵¹ Assefa, supra note 13.

is negligent. Hence, unreasonable shouldering of the accommodation of every dispersed minority may not be fairly accepted by the majority .Therefore, for these ethnic minorities, it is not affordable to finance and secure group specific rights. More over, presuming group specific rights of every dispersed ethnic minority groups hampers integration which should be the case at sub-national level. Of course they should not be disallowed to attend primary education by their language and protect their culture But, we should not forget to provide the universally applicable human rights schemes in which unfair discrimination is avoided and the principle of equality is going to be seriously enforced and implemented. On top of this, it is wise to strengthen horizontal relationships and cooperation among regional states in Ethiopia so that those ethnic minorities can easily practice their culture with their dominant members in the neighboring region.

5.4 The Legal and Practical Protection to the Rights of Ethnic Minorities in Oromia

5.4.1 The Right to Residence

The Oromia Region has been alleged to be inhabited homogenously by Oromo people.³⁵² It is why the 2001 revised Constitution of Oromia has reinforced only the sovereignty of Oromo people. The fundamental cause for the denial of existence of minority groups in Oromia Constitution is attributed to the narrow minded general definition of nations, nationalities and peoples of Ethiopia. Particularly, the requirement of living in identified closest territory to be qualified a nation out rightly excludes dispersed minorities from claiming group specific rights to which territorially concentrated groups are entitled.³⁵³ Hence, not only the Constitution of Oromia but also the FDRE Constitution has not recognized dispersed minority groups.

Though there is no nation, other than the Oromo in Oromia in the real sense of Art.39 (5) of the FDRE Constitution, in the regional state of Oromia there are around 3,312,091 non-Oromo residents which belong to ethnic minority groups.³⁵⁴ In the first place the preamble of the Oromia Constitution considers only Oromo people as a sole maker of the constitution. This is reinforced by Art.8 of the same constitution under which sovereign

³⁵² Beken, supra note 5, pp.6-7

³⁵³ Art 39(5) of FDRE Constitution supra note,14

³⁵⁴ see the population census supra note 20

power in the regions resides in the hands of the Oromo people. But, the practice indicates that there is relatively positive attitude to acknowledge certain ethnic diversity in the region.

Proclamation No 116/2006 gives a hint that at first and second grade City Councils there is an opportunity for non-Oromo minority groups to get representation.³⁵⁵ This deviates from the constitution because; if minority groups have the chance to be represented in legislative and administrative affairs it implies they share sovereign power to certain extent. Of course, I am not ignorant of the absence of guaranteed seat in Caffee which dominates law making power in the region. Moreover, in almost all first and second grade cities of Oromia there is Amharic speaking schools which are financed by the regional government.³⁵⁶ In fact, in this region, ethnic groups other than Oromo and Amhara have no chance to teach their children by their mother tongue language. Because of insignificant number of those ethnic groups and economic constraints it is difficult to establish to provide primary education by the mother tongue of every dispersed ethnic minority groups.³⁵⁷ Amharic being considered as a federal language has certain share in Oromia Radio and TV and primary education is also offered in Amharic if at least 50 students register for it at urban centers. This indicates that in Oromia the practice by far extends better protection to Amhara ethnic minority groups.

5.4.2 The Right to Equality and Non-discrimination

Traditionally the Oromo people are known by assimilation of other ethnic groups via adoption (Gudifacha). Still the Oromia Constitution, instead of providing due spaces for ethnic minorities it gives more emphasis to voluntary assimilation. The dispersed nature of ethnic diversity in Oromia made it difficult to extend territorial based protection to non-Oromo ethnic minorities. However, as far as equality and non-discrimination is concerned the Oromia constitution is press worthy. Art.33 of the constitution is highly essential provision which guarantees the right to equality and non-discrimination as it entitles every Ethiopian citizen to assume political authority and to be employed in every

³⁵⁵ Proc No.116/2006 supra note 22

³⁵⁶ see the Annex from Oromia Educational Bureau

³⁵⁷ Interview wit Ato Alemayehu Sha'ule from Oromia Educational Bureau

sector provided s/he speaks the working language of the region. More over, every ethnic group in the region can own property, freely choose their place of residence and etc.

Equal participation in politics is also guaranteed in directives passed by the ruling party, OPDO, in which any Ethiopian citizen who accepts the program of the ruling party can be a member of the Caffee, executive and the judiciary with out any discrimination if he speaks the working language of the region.³⁵⁸ The practice reflects the same as there are Amahra, Tigrain, Gurage and others who are members of OPDO. On top of this, there are non-Oromo groups who have assumed key political positions in the region. During recruitment to the judiciary, the public prosecutor and police officer no regard made to ethnic back ground of a person to be recruited.³⁵⁹

To be recruited in the civil service there is no regard to one's ethnic identity apart from the working language of the region.³⁶⁰ Since 2006 the Regional Government of Oromia has been employing almost all students of the region who graduated from public universities provided they speak the working language and loyal to the policies and the programs of the ruling party. There is also a case where those who are loyal to the policies and programs of the ruling party but hardly speak the working language is going to be employed in Oromia institutions such as Oromia Rural Road Authority, Hospitals and others since knowing of the Oromo Language is not as such a determining factor. This can be correctly understood from the proportion of the non-Oromo ethnic groups in Oromia Civil Service.³⁶¹ In Oromia civil service of the total 204129 employees the Oromo, Amhara and the Gurage constitutes 184868(90.56%), 15793(7.74%) and 1182(0.58%) respectively.³⁶² Currently, around 10% of the total civil servants of the region are non-Oromo ethnic groups. The Amhara and Gurage which constitute 7.2% and 0.9% of the total population of the region constitute 7.74% and 0.58% of the civil servant of the region respectively. This indicates that more or less those ethnic groups

³⁵⁸ Party program, supra note 335

³⁵⁹ Personal discussion with Ato Bahiru, Amsalu and Getachow from Oromia supreme court, justice Breau and investment Bureau on 22/6/2009

³⁶⁰ See the annex attached from Oromia Civil Service Commission

³⁶¹ Ibid

³⁶²

proportionately employed in the civil service. Even the Amhara people are over protected.

As far as access to land and other natural resources is concerned ethnic background does not matter. Due to the fact that the capital city of the country is the center of the National Regional State of Oromia the land around the capital city is highly commercialized. Any resident farmer and their children regard less of their ethnic back ground are entitled to get respectively 500 and 200 square meters of land for the construction of resident house³⁶³ and substitution of land as a compensation where their land is confiscated by the Urban Administration and Investment Authority.³⁶⁴ Land Administration in those cities has been criticized as it is subjected to corruption.

To get any piece of land what matters is not one's ethnic back ground rather having key political authority or large amount of money or any power full relative in administration.³⁶⁵ This conclusion can be demonstrated by practical evidence in al most all first and second grade cities. For instance, most of the newly constructed resident houses and business centers in Oromia are dominantly owned by Siltes since they have large amount of money. Hence, neither all Oromo residents nor all non-Oromo residents are uniformly benefited as land is becoming as precious as gold. In fact, in areas of investment all ethnic groups are visible. Since land for investment is acquired through contract of lease it is accessed only by the rich people.

5.4.3 The Right to Self-Determination

The right to self determination which is so complex is recognized in FDRE Constitution. At international level which group is entitled to the right to self-determination is highly

³⁶³ Interview with Ato Seieda (manager of Assella City Administration, Ato Getacho (secretary of the mayer Adama) and Aberra secretary of Mayer in Bishoftu and Tesema Tulu former public relation of Burayu

³⁶⁴ Land in these cities is highly commercialized and even payment to title dead is unaffordable to poor section of the society. Nowadays even for resident houses land is subject to lease which may cost more than 20000 Ethiopian birr per 200 m²

³⁶⁵ Interview with residents of Assela, Adama, Burayu and Bishoftu uniformly indicates that there is no any practical opportunity for ordinary residents to land unless they are employees of the city administration or corrupt the system.

debatable. Some argue that it is the right of those people who has been under colony or conquest while others also argue that oppressed majorities also entitled to it.³⁶⁶ Under FDRE Constitution every nation, nationality and people of Ethiopia are entitled to the right to self-determination regardless of their past political status and numerical size.³⁶⁷

5.4.3.1 The Right to Autonomy

Both at international and FDRE Constitution, the right to territorial self-determination is not recognized for every pocket minority groups. However, the right to self-determination may not be confined to territorially defined groups as it can be exercised by non-territorial minority groups though it differs from the right exercised by those territorially defined ones. Those who are territorially defined exercise the right to self-determination by establishing their own sub-national or local governments while non-territorial groups exercise the right to cultural autonomy which can be exercised by having guaranteed representation and exercising their own culture and language both at public and private affairs provided they constitute above certain minimum threshold.³⁶⁸

The right to cultural autonomy as group specific right of dispersed minority groups in both the FDRE Constitution and the Constitution of Oromia has been given insignificant attention. It is clear that more emphasis is given to territorially defined groups. There is an international and national trend that considers dispersed ethnic minority groups in each region which have some where else their own home region or local government wherein they constitute dominant group can not claim group specific rights in the region in which they reside in a dispersed manner.³⁶⁹ Similarly, the rights to cultural autonomy as group specific right of ethnic groups who inhabit in Oromia are not explicitly recognized in the constitution of Oromia. But, practically, for that of Amahra minority groups, there are certain indications in which they are exercising the traits of the right to cultural autonomy as their children can learn by their mother tongue , have certain share on Oromia TV and Radio Program and has established their own private primary schools

³⁶⁶ Aberra, supra note 7,p. 69

³⁶⁷ Art.39(5) of FDRE Constitution supra note 14

³⁶⁸ Ibid. P.56

³⁶⁹ Hernard supra note 29,p.35-37

which deliver primary education by their language.³⁷⁰ Moreover, though informal, more or less Amharic is used in courts and other administrative institutions for oral communication. In fact, cultural centers, libraries theatre cinemas are rarely found even for the majority in the region.

One may argue that the Oromia Constitution when it excludes the minorities by stating “we the Oromo people ...” is complying with the definition of nation, nationality and people as per art 39(5) of the FDRE constitution which reads, nation, nationality and people means ‘a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make up and who inhabit an identifiable, predominantly contiguous territory.’ Owing to this, the constitution confers the right to territorial self-determination only to nations, nationalities and peoples of Ethiopia so that ethnic minorities in the region are not entitled to the status of nation, nationalities and peoples because they do not meet the requirement of inhabiting “identifiable predominantly contiguous territory.” One can further argue that from practical point of view also, it is difficult to recognize and grant the right to territorial autonomy to the minorities as there could be as many as 80³⁷¹ ethnic groups living in this region. Still the possibility of implementing proportional representation and cultural autonomy as a group specific right of ethnic minority groups is important for minorities since it makes them decide their own destiny without jeopardizing the rights of the majority group.

Proclamation No. 116/2006 has a paramount importance to the right of minorities who live in 1st and 2nd grade cities of Oromia.³⁷² Though it is stated in the preamble of the proclamation the amendment of proclamation No. 65/2003 is required to amend the provisions that limit the right of Oromos in exercise of self-determination in the cities, still it gives an opportunity to non-Oromos in those cities to be represented in City Council. If the number of Oromo people who live in 1st and 2nd grade city is less than

³⁷⁰ Ibid

³⁷¹ Tronvoll, supra note 227, p.3, see also the extracted annex from the 2007 population census of Ethiopia which indicates almost all ethnic groups in Ethiopia resides also in Oromia

³⁷² Proc. No. 116/2006 Arts.2-7

non-Oromos, 50 percent of the seats in the city council should be reserved to Oromo people.³⁷³ Additionally, 20 percent of the seats in the city council of 1st and 2nd grade cities are reserved for the surrounding Kebeles.³⁷⁴ Therefore, about 70 percent of the seats are reserved for Oromos in the city council. Of course, this proclamation intends to promote the right of endogenous groups with out totally neglecting the rights of exogenous groups. One may argue that this proclamation is undemocratic in the sense the minority rule over the majority in these Cities. Nonetheless, in all cities in which endogenous groups constitute majority if allow them to remain to be the owner of the cities, it amounts to perpetuation of past injustice. In short the Oromo will not have any claim in cities within their region since due to the cultural dominance and opportunities in the past the number of Amhara people in the region is by far greater than the number of the Oromo people in cities. During the expansion of towns and cities the Oromo farmers have been evicted. Hence, unless the rights of the endogenous groups is given better attention they are going to deprived of the right to have full control over those cities in their region. One should not forget also its repercussion in other regions such as Gambella, Benshangul- Gumuz (Assosa-the capital city), SNNP (Hawasa) and Harari in which absolutely the exogenous groups are dominant.

This should be seen in light of Harari region where the numerically minority group has dominated the politics. Moreover, in Gambella and Benshangul in which the presence of Oromo and Amhara people is by far greater than the number of non-Oromo nations in Oromia³⁷⁵ there is no such an opportunity to the exogenous groups. it is possible to disallow other ethnic groups from getting representation in City Council by incorporating large number of Oromo people from the surrounding rural kebele to the urban/city administration so that the Oromo people remain the dominant group within city administration. It is also worthwhile to note the implication of the FDRE Constitution in which the establishment of local government is intended to empower minority nationality/people to exercise their right to territorial autonomy. In short, in regions which are presumed to be inhabited homogeneously by one nation power is localized/

³⁷³ Ibid

³⁷⁴ Ibid

³⁷⁵ Beken, Supra note 5, pp.68-69

decentralized so as to enhance good governance and decentralization of power rather than empowering nations, nationalities and peoples of Ethiopia. Therefore, the establishment of City Administration in Oromia should be seen as establishing local administration for the purpose of good governance. Other wise it will end up with uncontrollable ethnic antagonism not only in Oromia but also in other regions.

On top of this, it is better not to forget the rational behind the federal arrangement that promises to rectify historical injustices. The fact that cities in the Oromia region are dominated by non-Oromo ethnic groups indicates that historically there was some thing wrong in the policies of the past regimes. For instance, in the cities located in the northern part of the Ethiopia it is the indigenous people of the region that dominates. This indicates those people from the northern part of the country had relatively better opportunities. In most of the case urban residents are economically in better position, they can get access of infrastructures and other public services than those in rural areas. In addition to the difficulty to finance every dispersed ethnic minority groups in Oromia to exercise their culture autonomy, some times it is better to take in to account its repercussion all over the country which provokes others ethnic minorities in other regions to claim the same. It is also better to note that adequate spaces are usually given to major diversities in the country or region.

No doubt, the FDRE Constitution is concerned about the empowerment of endogenous groups. There is unclear standard at international level as to the status of groups who constitute dispersed minority in one or more regions having their own home region in which they constitute majority. Similarly, the FDRE Constitution does not also provide guidelines to dispersed ethnic minority groups.³⁷⁶ It is obvious minority groups need special protection and special representation but in the case of the regional state of Oromia, no such an arrangement at regional level except at City Council in which the non-Oromo ethnic groups because of their numerical dominance may totally win all the 30% remaining seats in the 1st and 2nd grade city council. Actually, in City Council until

³⁷⁶ see Arts 25, 39(5)&54(3) of the FDRE Constitution talks respectively only about the universally applicable human rights and the rights of nations with out making reference to the group specific rights of ethnic minority groups within the nine regions.

to day there is no any political party of the minority group. But, the practice is highly influenced by the ruling party so that it is not yet properly implemented as preference is given to political out look³⁷⁷ than one's ethnic identity. If the representation of minority groups in City Council is recognized, the question why it is not recognized in Caffee has not any answer in this region. Even on the remaining 30% of the seats, the smaller ethnic groups may not win a single seat due to the first-past-the-post³⁷⁸ electoral system that is applied rather than proportional electoral system.

The right to secession which is an external self-determination is provided in the Constitution of Oromia. But, since almost all group specific rights and guaranteed representation are only to nations (those ethnic groups inhabited identified territory predominantly defined contiguous territory) ethnic minority groups in Oromia are not entitled to the right to secede. Even for Oromo people Art.39 (4) of the constitution of Oromia made the right to secession conditional which is unconditional rights of nations under Art.39 (1)³⁷⁹ though the later prevails

5.4.4 Cultural and Language Rights

By exercising language and cultural rights minority groups preserve their distinct identity. As already stated language is not only a means but also an end.³⁸⁰ It is the most explanatory feature of culture, since it constitutes the vehicle through which culture and history of a group are transmitted.³⁸¹ As per Art.5 of the Oromia constitution, the regional state of Oromia opted to use Oromo Language as the working language. People who do not speak Oromo Language are linguistic minorities. The fundamental right of minority groups, the right to maintain their distinct identity is not expressly recognized under Art.39 (1) of the constitution of Oromia. This provision simply states that “the people of

³⁷⁷ Interview with party leaders in Assala, Adama, Bishoftu and Burayu indicates that each candidate to the membership of Caffee, Woreda, Kebele and City Council is determined on the basis of their loyalty to the party program and certain ethical standards.

³⁷⁸ Art. 54 (2) of the FDRE Constitution supra note 13

³⁷⁹ See elements the violation of which entitles the Oromo nation to exercise the right to secession.

³⁸⁰ Yared, supra note, p.5

³⁸¹ Timo, supra note 29 p.27

Oromo nation shall have the right to maintain their national identity, preserve and promote their history and heritage, to speak, develop and make use, in any other manner, of their own language and enjoy their culture.” Nothing is provided as to the rights of ethnic minority groups to exercise their cultural rights though not prohibited. Language rights of linguistic minorities which include the oral or written, public or private use of one’s language and cultural rights which include the right to establish their own libraries, cultural centers and etc requires the majority to extend necessary protection and financial support.

The UNESCO document of 1953 on the use of vernacular language in education insists on using mother tongue for education generally and in primary education in particular as children can easily understand when the medium of instruction is their mother tongue.³⁸² Ministry of Education’s Education and Training Policy states that use of mother tongue in primary education is very important. In Practice, in Oromia media of instruction in primary school is either Oromo Language or Amharic depending on their preferences of the students. If the number of students who are registered for Amharic is at least 50³⁸³ the government makes available education in Amharic. As far as educational facilities are concerned education in both languages is given in the same school. Those who learn in Oromo Language had been beginning learning Amharic as a subject from grade five. Ato Alemayehu complained that this is wrongly developed through practice.³⁸⁴ The directive issued by Oromia Educational Bureau orders learning Amharic course from grade three. Since 2009 the government is seriously implementing this directive. By the same token those who learn in Amharic have begun learning Oromo Language from grade five though since 2009 the appropriate policy on the ground wherein Oromo Language should be given beginning from grade three has been implemented.³⁸⁵

Currently, there are different private Oromo Language or Amharic speaking primary schools though there is no other language speaking schools despite the existence of more

³⁸² Ibid

³⁸³ Interview conducted by the author with Ato Alemayehu ,the Process owner of educational Professional assistance and supervision of Quality of Education, on September,28 2009

³⁸⁴ Ibid

³⁸⁵ Ibid

than 60 ethnic groups in the region.³⁸⁶ Ato Alemayehu stated that the Oromia Educational Bureau is expected to offer education either by the working language of the region or the federal working language. Even if there is a demand from other ethnic minority to teach their children by their mother tongue as he explained it is unaffordable to provide in all languages of ethnic minorities in the region. As to the contents of the curriculum Ato Alemayehu stated with out concealing the fact that more or less it inclines to the culture, history and tradition of Oromo people. But, in future, as he stated, it will be balanced.³⁸⁷

Currently, three are 89.6% of the total grade 8 students in the region are learning in Oromo Language while 10.4 of the students are learning in Amharic.³⁸⁸ Non-Oromo ethnic minorities chose one of the two since there is no other option. While delivering primary education in mother tongue, most of the teachers of Amharic course in Oromo Language Speaking Schools complain that students are not willing to attend the subject properly.³⁸⁹ The same is true in Amharic speaking schools as the students do not care about Oromo language course.³⁹⁰

Owing to this, there is a communication gap among students in the same school who are learning primary education in Amharic and Oromo Language. Ultimately, those who are not capable of speaking Amharic will be excluded from getting employed at federal offices and can not compete for job in other regions where Amharic is chosen as a working language. In the same fashion, those who do not speak the Oromo Language are excluded from getting any opportunity to be recruited in the regional civil service, to be a judge and member of the legislature and from holding political offices. Normally, minority groups are expected to know the working language of the region. Besides, it is not economical to recognize every language in the region as working language of the region. On the other hand, choosing many languages as a working language may weaken the bonds among ethnic groups.

³⁸⁶ see the Population census 2007 annexed

³⁸⁷ Ibid

³⁸⁸ . See the data from Oromia Educational Bureau annexed

³⁸⁹ Interview conducted by the author with teacher Alemayehu, Barecha and Yedenek can be cited from Assela elementary school on December 10 /2009

³⁹⁰ Interview conducted by the writer with teachers Frewu, Gashaw and Aster Can be cited from Bishoftu primary school on December 4/ 2009

Hence, so as to accommodate linguistic minorities, there must be adult education offered particularly by the working language of the region. The majority should take the responsibility to facilitate adult education otherwise language becomes a ground of exclusion of ethnic minority groups from sharing power and resource and participating in socio-political affairs of the region. In Oromia, though there is adult education in Oromo Language, it is rarely known by residents as there is no promotion to initiate the society to know the language thereby they will be competent to partake in the affairs of the region. In Burayu city there are group of Gurage who inhabited in one kebele particularly called 'Xache' who become as fluent as native Oromo simply by attending the adult education offered in the evening.³⁹¹ Despite the existence of an opportunity, there are groups of people who are not willing to learn Oromo Language considering that it is a big injustice made to them when Oromo Language is chosen as a working language of Oromia.³⁹² These groups of people recommend Amharic should be the second working language of Oromia. Given the fact that the number of Amhara people which is 7.2% of the total population of the region unless the Oromo Language which is spoken by 34.49% the total population of the country is recognized as a federal working language, it is hardly reasonable to expect the Oromia region to recognize Amharic as a second working language of Oromia. It is also possible to forecast the possible implication in Addis Ababa, Gambella and Benshangul-Gumuz wherein the population size of Oromo people is not less than the number of Amhara people in Oromia³⁹³. Of course, having one national language has paramount importance to the national unity but it seems the Oromo people which constitute the largest ethnic group because of its largest economic contribution and surface area it covers may not accept Amharic as their working language unless their language is accepted as a second language of the federal government.

³⁹¹ The author personally observed and vested the locality there are more than fifty family unit who managed to speak Oromo Language as fluent as Native Oromo people simply by attending adult education in Oromo Language

³⁹² Interviews with many adults in Adama discussion with non-Oromo individuals around courts disclosed that they feel losers as Amharic failed to be the working language of Oromia.

³⁹³ See the number of Oromo people in Gambella and Benshangul-Gumuz in Beken supra note 5

Every body wants to present his case in a court by his mother tongue though this may not be available for every ethnic minority because of practical reasons. But, every one has the right to get translator before the Court.³⁹⁴ In Oromia, the writer observed that those who do not speak Oromo Language but Amharic are privileged than those who neither speak Amharic nor Oromo language. In practice, judges in Oromia have been using both Amharic and Oromo Language as media of oral litigation except in serious criminal cases where examinations of witness are conducted by a translator.³⁹⁵ In almost all hearing, trial and examination of witness in civil cases it is the judge himself who serves as a translator. As a matter of practice one may safely conclude that courts in Oromia particularly in civil benches are orally bilingual though any written litigation should be reduced to the working language of the region. The same holds true in the offices of Justice and Investment bureaus.³⁹⁶

Moreover, the writer has also observed many occasions where in public meetings including the 19th year inaugural ceremony of OPDO which was held in Amharic.³⁹⁷ Announcements, posters, banners and etc are made in both languages.³⁹⁸ This indicates that the majority has not been strictly implementing the working language of the region as provided in the constitution. On the other hand, the practice is more of accommodative. However, linguistic minorities that exist in Oromia are not only Amharic speakers. There are other ethnic groups who are in a minority status who have not used their language right like mother tongue education because of economic and practical difficulties. It is difficult to offer equal protection to every ethnic minority because of their lesser population size in the region. Despite their significant number at the regional level, their numerical figure at local level may not be significant as they are dispersed one.

³⁹⁴ Art 19(1) of the FDRE Constitution supra note 14

³⁹⁵ In Oromia, in a case between Oromia Anti Corruption v. Keneni Wagi and others there witnesses who do not speak Oromo Language whose testimony was taken down by translation. While in Woreda Courts witness give their testimony in any of the languages they prefer. (East Showa High Court and Woreda Court) But, in almost all civil hearing the judge serves as a translator.

³⁹⁶ Any person who speaks information about license authorization, investment permission or any other affair from justice bureau can either use Oromo Language or Amharic though every written communication is in Oromo Language.

³⁹⁷ Party program, supra note 335

³⁹⁸ see every announcements in the cities, posters, ribbon and others which are in both languages

5.4. 4 Equitable Representation and Power sharing

Minority groups needs to partake in socio-economic and political affairs. They need special representation in different government organs since they are numerically permanent losers

5.4.4.1 The Legislative Branch

The first constitution of Oromia National Regional State was established in 1995 recognizing three major organs of the region which were the state council, administration and the judiciary.³⁹⁹ The president was serving as chief executive and speaker of the state council. Latter on when the 1995 constitution of the region was revised with the purpose of incorporating the principles of separation of powers, check and balance and accountability separate speaker of the state council, Caffee has been established.⁴⁰⁰

Caffee Oromia is the supreme political organ of the region which comprises representatives of the people of the region as a whole from different electoral districts.⁴⁰¹ An individual citizen of Ethiopia and resident of the region are legible to be elected provided he speaks the working language of the region. Discrimination on the basics of sex, color, language, ethnic, religion, political affiliation, property and others are prohibited.⁴⁰² But, owing to the First-past-the-post electoral system in Ethiopia⁴⁰³ as a whole, in Oromia ethnic minority groups rarely succeed in having representatives in the region.

Moreover, considering the vulnerability of ethnic minority groups in the region the constitution says nothing as to the guaranteed representation of ethnic minorities. As a group, ethnic minorities have rare opportunity to be represented at Caffee. However, this should not mislead us since it does not mean there is no possibility of having members of Caffee who are non-Oromo ethnic minorities. It is clearly provided in the regulation of

³⁹⁹ Art 8 of the 1995 constitution of Oromia

⁴⁰⁰ See the preamble of the Constitution of Oromia supra note 334

⁴⁰¹ Ibid

⁴⁰² Ibid. Arts.38(1)(b)

⁴⁰³ Art 54 (2) of FDRE Constitution supra note 13

the ruling party; any resident of the region can be the member of the ruling party, OPDO⁴⁰⁴ so that he will be nominated and appointed to be member of Caffee provided he is loyal to this party and speaks the working language of the region.⁴⁰⁵ The same holds true at Woreda and kebele councils. For non-territorially defined groups the constitution and the regulation of the ruling party provide protection, respect and promotion of the universally applicable human rights. Both expressly reflects the right to equality of all human beings and promises to eliminate discrimination on the basis of ethnic identity.⁴⁰⁶

All over the regions in Ethiopia dispersed minorities are not given guaranteed representation in the regional parliament.⁴⁰⁷ Even though it seems the constitution of Amhara, Tigray, SNNPS of Ethiopia has positive attitude towards ethnic diversity nothing make them different from that of Oromia since the non-endogenous (despised ethnic minority groups) are not accorded adequate protection to their group specific rights and guaranteed representation. The Amhara people in Tigray have not got guaranteed representation in Tigray Parliament and vice versa. Moreover, nothing is stated about guaranteed representation of the Amhara people and Oromo people despite their significant number in Gambella and Benshangul-Gumuz constitutions.⁴⁰⁸ As per Art.39(5) of the FDRE Constitution ethnic groups are guaranteed groups specific rights and guaranteed seats only when they inhabit identifiable predominantly contiguous territory.

5.4.4.2 The Executive Branch

The regional administrative council and the president constitute the highest executive organ of the region. It is constituted form the president, vice president, Bureau heads, the president office and others under the leadership of the president.⁴⁰⁹ As far as accommodation of ethnic minorities in administration is concerned nothing is provided in the constitution of Oromia. In fact, at the Federal level as a matter of practice there is

⁴⁰⁴ Party program, supra note 335

⁴⁰⁵ Ibid

⁴⁰⁶ See Art.33 of the Oromia Constitution supra note 334 Party programs, supra note 335

⁴⁰⁷ Beken supra note 5, pp.11-12

⁴⁰⁸ Ibid

⁴⁰⁹ Art. 53(1) and Art.54(1) of the Oromia Constitution supra note 334

proportional power sharing at the top executive authority. On the other hand, in Oromia, no regard is made to ethnic back ground of a person to be appointed except his loyalty to the party program.⁴¹⁰ Even any non-Oromo can be appointed a president of Oromia if he is capable of speaking the working language and sponsored by his party.⁴¹¹ At regional, Zonal, City Administration, Woreda and kebele levels it is possible for both Oromo and non-Oromo people to be appointed to key political positions if he knows the working language of the region.⁴¹² Of course, since Oromo people are dominant, it seems that other ethnic groups rarely succeed in holding top political position. But, it is decided by the party rather than the majority, Oromo. In practice, in Oromia, questioning the ethnic identity or discrimination on the basis of ethnic identity subjects a member of the party to punishment.⁴¹³

5.4.3.4 Judicial Branch

Despite the absence of discrimination on basis of recruitment and appointment in Oromia there is also no provision in the constitution of Oromia that contain guaranteed representation in judicial organ. No doubt, there are many different non-Oromo judges including high and Woreda presidents though the court has no data as to the ethnic back ground of judges since during recruitment ethnic background is not taken in to account. However, any one whose educational status, ethical background, competence and age meet the standard set by the judicial organ can be nominated and appointed. Recruitment of the judges is centralized at the regional level as ethnic minority groups do not have the right to territorial self administration. The Zonal and Woreda levels are not ethnic-based territorial entity as they are merely designed on the basis of administrative convenience. There fore, no guaranteed representation in the judiciary at any level.

5.4.3.5 Constitutional Interpretation Commission

As per Art 67(1) of the Oromia National Regional State the power to intemperate the constitution is vested in the regional Constitutional Interpretation Commission which

⁴¹⁰ Party program, supra note 335

⁴¹¹ Ibid

⁴¹² Ibid

⁴¹³ Ibid

comprises representative nominees from each District Council. The political nature and composition of members and procedures it follows during it makes decisions ⁴¹⁴ makes it quite different from regular courts. The Oromia Constitutional Interpretation Commission in its composition differs from the constitutional interpretation commission of other member states because its members are not drawn from different nations/ nationalities.⁴¹⁵ As already stated the Oromia National Regional state is treated as a homogeneous .Hence, as a group except the Oromia people no other ethnic group is represented in the constitutional interpretation commission. But, as individual any non Oromo can also be nominated if the district council appointees him. Moreover, the Council of Constitutional Inquiry is an organ constitutionally established to assist the Regional Constitutional Interpretation Commission does not reflect any diversity.

As it has been already discussed in Oromia the administrative hierarchy consists of regional government, Zones, Districts and Kebeles. Non-Oromos are not represented as a group in any one of the administrative hierarchies of the region. Even if they are elected, they are elected as representatives of Oromos not the minorities. The constitution does not provide any space for the special representation.

⁴¹⁴ Art. 67 of the Constitution of Oromia supra note 334

⁴¹⁵ Ibid Art.67(1)

Conclusion and Recommendations

The main concern of FDRE Constitution is empowering those ethnic groups which inhabited in an identifiable contiguous territory to exercise the right to territorial autonomy in which they determine their destiny by having their own institutions and governments. The identity and language of the Region, Zone or Special Woreda is equated to the identity of those nations which managed to have their own region, Zone or special Woreda as the case may be. Those ethnic groups which already left their original home land and settled in different Regions, Zones and Special Woreda because of the opportunities they had in the past regimes have been not taken as “nations, nationalities and peoples of Ethiopia” since they are not considered indigenous population groups in the locality they reside. The FDRE Constitution excludes dispersed ethnic groups from being beneficiaries of the rights of “nations, nationalities and peoples of Ethiopia” enshrined in the constitution. The fact ethnic groups should occupy an identifiable contiguous territory to claim group specific right has left some of the members of historical dominant groups to remain minority groups in almost all regions in the country. The territoriality approach has also left certain economic migrants and children of resettlement programs none beneficiaries of those rights exercisable by those ethnic groups which are territorially concentrated (nations/nationalities).

Due to the fact that there is no ethnic group that meet the territorial requirement enshrined under Art.39 (5) of FDRE Constitution certain regions in the federation of Ethiopia treat themselves as they belong to one nation/nationality. For instance, the Afar, Somali and Oromia regions are considered as though they belong only to Afar, Somali and Oromia nations respectively. Though the territorial approach seems inclusive enough at national levels (since all ethnic groups are sovereign), direct adoption of this approach to regional level out rightly deprives of certain ethnic groups to exercise the sovereign power at region level. Naturally, if ethnic groups are deprived of the right to exercise

sovereign power at the regional and local levels, the intended sovereignty of nations, nationalities and peoples of Ethiopia could not be fully exercised and meaning full at national level.

Of course in terms of numerical size no one ethnic group that constitutes even fifty percent in Ethiopia as the largest ethnic group, Oromo only constitutes 34.39% of the total population of the country. Hence, all nations and nationalities and peoples of Ethiopia deserve minority protection at the national level. By the same token though the Tigrain, Amhara, Afar, Somali and Oromo nations constitute majority group within their respective regions, dispersed minority people that belongs to these nations who resides in other regions is deserves minority protection. Despite the main concern of Art.27 of ICCPR to guarantee universal respect for individual human rights, there is a strong argument that minority groups at any level of government are entitled to exercise those rights enshrined under this provision as most of them are exercisable by groups. Though Art. 25 of the FDRE Constitution has greater importance to ban exclusion on the basis of ethnicity, religion, race, language, culture and other unfounded contingencies, its contribution to group specific rights of dispersed ethnic minority groups is not satisfactory. Art .54(3) of the FDRE Constitution does not help to dispersed ethnic minorities in each region to advance their groups specific rights as it requires ethnic groups to concentrate in an identifiable, contiguous territory. Generally, the following conclusions are drawn from the findings of this paper;

The Constitution of Oromia has adopted the territorial approach of the FDRE Constitution. As a result of this, ethnic minorities in this region are not recognized as bearers of sovereign power. The constitution of this region does not even acknowledge the rights to preserve the distinct identity of minority groups since it is only the majority that is entitled to preserve its distinct identity. Taking their vulnerable nature no ethnic minority groups entitled as a group to guaranteed representation in any organ of the region at any administrative level. Never the less, as can be inferred from the population census indicates there are around 12% of the total population of the region are dispersed ethnic minority groups.

In fact, of the ethnic minorities in Oromia, the Amhara people have been practically enjoying some minority rights which are not stated in the constitution. There is undeniable fact that all ethnic minority groups in Oromia are not treated alike since members of Amhara ethnic groups are relatively more privileged than others. The member of Amhara people can send their children to the regional government financed schools where education in primary school is offered in Amharic in almost all urban areas. They also have the rights to access to media on Oromia TV and Radio by using Amharic to exercise and promote their culture. Moreover, in practice oral communication and litigation in courts and other offices indicates that ethnic minority groups capable of speaking Amharic are in a better opportunity than those who speak neither Oromo Language nor Amharic. The Oromia government is also not ready to offer primary education in a language other than Oromo Language and Amharic (being considered as a federal working language).

As provided under Art 39 of the Oromia Constitution the right to preserve their separate identity, to develop their culture and to promote their language is guaranteed only for Oromo people. The minority ethnic groups (which constitutes around 12% of the population of the region) in Oromia are non-territorial who have inhabited around urban centers and boarders of the region. Even the Amhara ethnic group, the largest group next to Oromos does not deserve territorial autonomy in the region as they are not residing in an identifiable contiguous territorial area; they exist in urban centers of the region mixed up with Oromo and other people. Of course, the Amhara people constituting 7.2% of the total population of the region are already allowed to exercise cultural autonomy in the sense that they can exercise their culture, dressing style, and custom, write their history by their language, having libraries and cultural centers. Since there are also ethnic minority groups at the boarders of the region which requires special attention hence they also deserves to exercise their cultural rights cultural autonomy though it is economically unaffordable to government to sponsor every dispersed minority group the right to attend primary education by mother tongue .

The fact that Ethiopia is among the poorest countries in the world, the numerical size of almost all minority groups and the dispersed nature of ethnic minority groups may subject the region to unbearable burden if those all dispersed ethnic groups are going to be entitled to be financed by the regional government to exercise even cultural autonomy. Moreover, this kind of protection generates conflict as every dispersed ethnic minority in each region claims the same. As Oromia is part and parcel of Ethiopia and other regions in the country where different ethnic minorities reside, the issue of minorities cannot be treated in isolation. That is, the territorial autonomy claim will potentially be of all minority groups which are not manageable, and even lead to restructuring of some regions such as Harari, and some urban centers of Gambella, and Benishangul-Gumuz where the endogenous groups are not dominant in number. Where as the fundamental assumption of Ethiopian federalism is rectifying historical injustice by the means of empowering endogenous people who are territorially defined.

This does not mean that the principle of non discrimination and equality is violated in Oromia. The human right schemes are by far better in advancing the equality and non-discrimination of members belonging to ethnic minorities. Beginning from Art.33 of the constitution of Oromia, proportional composition of the civil service, absence of ethnic criteria to be recruited in the judiciary and to be appointed to top executive position and the possibility for any other resident to be member and the head of the ruling party substantiated with the reality in almost all the institutions in Oromia reflect the absence of non-discrimination and the equal treatment among all Ethiopian resident of the region

Unlike the constitution, the party regulation, Proc.No.116/2006 and the practice acknowledge the existence of ethnic diversity in Oromia. In the first and second grade cities, the Oromia government is forced to accept the existence of ethnic groups which deserves to be represented in City Council. However, in any of the three independent administrative level of the region no guaranteed representation to ethnic minority groups. In the same fashion, the Constitutional Interpretation Commission does to give any attention to power sharing between the majority and the minority ethnic groups.

Therefore, the writer recommends that:

1. Since the practice in the regional state of Oromia recognizes the existence of internal ethnic minorities, it needs to get constitutional base. Minority ethnic groups need to have proportional representation in Caffee and in the Regional Constitutional Interpretation Commission.
2. Though it is economically difficult to finance for the regional government the right of each dispersed minority ethnic groups to preserve their distinct identity by practicing their culture, tradition and learning in their language, it should be recognized provided it does not compromise integration. As much as possible voluntary assimilation should be given special attention other wise the repercussion may not be restricted only in Oromia.
3. For those ethnic minority groups around the boarders of the region it is better to strengthen the horizontal intergovernmental cooperation with the bordering regions, thus, ethnic minorities residing around the boarder of the region can practice their culture with their dominant members in the other region.
4. In order to strengthen the bond between the majority and the minority, adult education in Oromo Language and promotion of voluntary assimilation have paramount importance. Every member of ethnic group in the region is going to be competent to fully enjoy its rights and share the power and resource in the region. . On top of this, the regional government should work hard to make the Oromo students capable of speaking Amharic, and Amhara students in the region should work hard to improve their skill of using Oromo Language.

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- Interview with Mr Gabru, the Public relation of the 'Medrek' political party, on 20/12/2009.
- Interview with Mr. Dajene Cufa the former OPDO Member.
- Personal discussion with Mr. Bahiru, Amsalu and Getacho from Oromia supreme court, Justice Bureau and Investment Bureau on 22-26/6/2009.
- Interview with Mr. Seieda (manager of Assella City Administration).
- Interview with Mr. Getachow, Secretary of the Mayer of Adama City Administration, on 28/09/2009.
- Mr. Aberra Takel secretary of Mayer of Bishoftu and Mr. Tesema Tulu former public relation of Burayu, on 12/10/2009.
- Interview conducted by the author with teacher Alemayehu, Barecha and Yedenek can be cited from Assela Elementary school on December 10 /2009.
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