

# Constitutional and Institutional Protection of Minorities in Ethiopia

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## Abstract

This article investigates minority rights protection under the Ethiopian federal state structure envisaged in its legal instruments and institutional setups. Ethiopia is a land of diverse society in terms of religion, ethnicity, culture, language, and socio-economic activities. The Federal Democratic Republic of Ethiopia (FDRE) Constitution gives the right to each nation, nationality and people, among other, to preserve its identity, administer its own affairs, and get fair representation. However, the Ethiopian federal system, structured based on ethno-linguistic criteria, apportion the country into ten (including Sidama) regional states, subsuming the rest within them. The interests of minorities, who are lumped with relatively dominant ethnic groups, are not addressed and have not been given self-determination, nor are they recognized as a distinct ethnic group of the country. Recognition of minority groups is not only determined by the Constitution and other legal frameworks but also based on political expediency, which can be unconstitutional. The possible solutions include adopting proportional representation system, enforcement of basic human rights of citizens and consideration of mechanisms of non-territorial autonomy.

**Key words:** *minority rights, federalism, constitutional protection*

## Background

Efforts by non-dominant groups to preserve their cultural, religious or ethnic differences has a long history with roots in the process of state formation in the 18<sup>th</sup> and 19<sup>th</sup> centuries (Kymlicka 2001). People belonging to national, ethnic, religious and linguistic minorities are often victims of multiple discriminations denied of their right

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for self-determination. Thus, protection minorities' rights require particular attention such as recognition of their existence, rights to non-discrimination and equality, promotion of multiculturalism and cultural participation in all aspects of public life (Steytler 2008).

There is lack of clarity about what constitutes a minority group. The 1948 Universal Declaration of Human Rights (UDHR) has no exclusive provision to minority rights nor does it define what minorities are. The declaration takes on the general human rights provision to indirectly address minority rights. The UDHR preamble states that "the equal and inalienable rights of all members of the human family". Within this broad preamble, the UDHR has ignored certain minority rights, including cultural membership, language, and identity of ethno-cultural groups and the discrimination they face (Taylor 1992). The United Nations (UN) Charter, adopted in 1945, likewise recognizes "the principle of equal rights and self-determination of peoples", without making any distinction among populations.

However, lack of a universal and authoritative definition does not lead to denial of minority rights. Indeed, the movement to internationalize minority rights has gained widespread acceptance; there are even tendencies to develop a "universal declaration of minority rights", to supplement the 1948 universal declaration of human rights (Kymlicka 2001).

A more explicit recognition of minority rights is contained in the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966. Article 27 clearly stipulates minority group right as follows:

*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 members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

It was in 1992 the UN developed the first comprehensive international instrument on minorities, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities. The Council of Europe's Framework Convention for the Protection of National Minorities was later developed in 1995, to which thirty-nine states are signatories. Article 5 of the framework obliged Parties to promote the necessary conditions for persons belonging to national minorities to maintain and develop their culture, and preserve the

essential elements of their identity, namely religion, language, tradition and cultural heritage. In both documents, there has not been an official authoritative definition of minority. It leaves member states to define minority by themselves.

There have been, however, attempts to define minorities. To fill the conceptual void, the former Special Rapporteur of the United Nations, Francesco Capotorti developed a definition in 1977, which has become the starting point of many discussions. According to his definition, minority group is:

*A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members - being nationals of the state - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, religion or language (Capotorti 1977).*

According to his definition, there are five criteria to categorize a group as minority. A minority group has to be (1) distinct in their ethnic, linguistic or religious background; (2) in a position of non-dominance; (3) less members than other groups of the population; (4) nationals of a state, as opposed to non-nationals, such as immigrants and refugees; and (5) solidarity among group members to preserve their distinction.

The definition provided by Capotorti, however, is not without limitation. Dominance in a state might not always be related with higher number of members in a group. It also neglects protection of non-citizens, which the Human Rights Committee includes under its General Comment No. 23.

Regardless of the different attempts to define minority rights, besides UN conventions, constitutional provisions in many countries directly or indirectly protect and meet the needs of minorities (Alfredsson 1993). These constitutions, in addition to ensuring the equal treatment, provide the right of minority groups to existence, education, language, self-determination, representation, and others. The Federal Democratic Republic of Ethiopia (FDRE) Constitution, which came into practice in 1995, established a federal state structure with ethno-linguistic political-legal arrangements (Alemante 2003). Ethiopia, home of different nations, nationalities and peoples, entertained diversity as a threat to the country's unity for a long time (Tronvol 2000); there was inattention to the existence and protection of minority groups.

The 1995 FDRE Constitution, however, has laid an important foundation to protect what is labelled as ‘minority nationalities’ (Assefa 2012). However, the Constitution, under Article 47, unequivocally states Ethiopia as a federation of only nine ethno-linguistically demarcated regional states, out of more than eighty nations and nationalities.<sup>223</sup> The Constitution guarantees nations, nationalities and peoples within the regional states the right to establish, at any time, their own regional administration with stringent legal conditions (Article 47(2-3), Article 39(4)).

In a federation, territorial form of political organization functions as a means of safeguarding distinct groups or minorities that are geographically concentrated in such a way. However, in the Ethiopian federation, in practice, populations are rarely distributed into neat watertight regions; the existences of intra-unit minorities within the regional units have been unavoidable. Territorial demarcation of ethnic groups in Ethiopia hardly applies to minority groups, which had been amalgamated with relatively dominant groups. This fails to address adequately the problem of minorities within the different regional administrations that are often inhabited by ethnically intermixed individuals (Assefa 2007).

Although the FDRE Constitution grants every ethnic group the unconditional right to self-determination under Article 39, it exclusively recognizes only six linguistic ethnic groups with their respective regional states (Tigray, Afar, Amhara, Oromo, Somali and Harari). Under Article 46, the rest of ethnic groups are lumped in Benshangul Gumuz, the Southern Nations Nationalities and Peoples and Gambela regional states.

Such assumption of regional states as homogeneous ethnic groups in the FDRE Constitution does not conform to the Ethiopian context in which there are more than eighty-five ethnic groups with various degrees of interaction and cultural assimilation. The demarcation of Ethiopia into only nine regional states based on ethno-linguistic criteria creates the subordination of minorities against the will of majority ethnic groups. This paves the way for regional governments to formulate their own form of treating minorities living in their respective area, which in some instances resulted in denial of their basic rights.

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223 The Ethiopian federation was initially established with nine regional governments (*Killilis*) and two city administrations until recently when the Sidama people decided to form their own regional government. A referendum was held on 20<sup>th</sup> of November 2019 with a landslide majority in favour of turning Sidama zone into the tenth regional state of the Ethiopian federation.

In this contribution, the author examines the legal norms and institutional setups of the Ethiopian federation to address and safeguard minority rights. Data was collected, among other sources, from legal documents, federal and regional states constitutions, journals, and interviews.

Based on the experiences of minority groups worldwide and international instruments on minority rights, this research analyzed the FDRE Constitutional provisions that safeguard the right to existence, equality, self-determination, and develop and promote the cultural and linguistic rights of minorities.

## **The Scope of Minority Rights under the FDRE Constitution**

### *The Right to Existence and Recognition*

To uphold minority rights and protect such groups, the first step states need to take is recognition. The existence of minorities is a matter of fact, rather than a matter of law (Patrick 1991). The UN General Assembly on Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in 1992, obliged states to protect the existence of national or ethnic, cultural, religious and linguistic minorities within their respective territories and promote such identities. According to the UN Human Rights Committee General Comment 23(1994), such existence “does not depend upon a decision by that state party but must be established by objective criteria”. Even in the absence of legal recognition of minorities by the state, their very existence may assist states to acknowledge and respond to the problem faced by minorities.

Claims of minority groups become meaningless unless their physical, moral and cultural existence is given 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 (Aberra 2006). As provided in Article 4 of the ICCPR, “the bearer of the right cannot voluntarily relinquish his/her right to existence let alone unilateral violation of it by the State”.

The 1995 FDRE Constitution, under Article 62(3), authorizes the House of Federation (HoF), upper house, to give *de jure* recognition to minority people. The recognition or rejection of minorities existence

depends entirely on the subjective criteria set under Article 39(5) of the Constitution. In order to be recognized as an ethnic group, common culture or share custom, mutual intelligibility of language, belief in common or related identities, common psychological make-up, and inhabiting an identifiable and predominantly contiguous territory is required. From these criteria, 'belief in common or related identities' and 'a common psychological make-up' are subjective, difficult to determine.

The process of recognizing identity is also problematic. At federal level, the Constitution empowers the HoF to decide on the recognition or rejection of minorities' existence. However, as a political organ, the HoF cannot decide neutrally in the absence of representatives from claimants (unrecognized minority groups).

Proclamation No. 251/2001 empowers regional states councils to entertain any claims related to identity recognition, with the ultimate decision-making power residing in the HoF. Before taking their case to the HoF, regional states need to go through the claim exhaustively. Decisions by the HoF, however, can be biased by member ethnic groups relatively dominant and the absence of claimants' representation in the house. Political incentives of regional states also influence decisions made on recognition of groups. Further, the HoF lacks a standard procedure of addressing identity claims, which have so far been decided case by case.

So far, the HoF has recognized seventy-six ethnic groups out of more than eighty-five. There are more than ten ethnic groups in the country that are not officially recognized as a distinct ethnic group, including but not limited to Kucha, Danta, Manja, Kontoma, Zey and Welene.<sup>224</sup>

### *The Right to Equality and Non-discrimination*

Minorities have a right to equality and non-discrimination. The right not to be discriminated is paramount in protecting the rights of persons belonging to minorities around the world. The principles of equality and non-discrimination are established firmly in international law. For example, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the core international

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224 Interview with Mihirete Tesfaye, an expert from the House of Federation, Addis Ababa, August 2020.

treaty on the right to non-discrimination and equality, has guaranteed equality of minorities. ICERD defines racial discrimination as:

*any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (ICERD 1965: Article 1).*

Accordingly, the convention protects both ethnic groups and individuals from racial discrimination and states ethnic groups shall be treated with equal footing irrespective of any grounds as equal members of a society (Diaconu 2012).

Rights and fundamental freedoms without discrimination of any kind was also repeated by the 2001 Durban Declaration and Programme of Action of the World Conference against Racism. The document from the conference urges states to take measures to eliminate the barriers and broaden access to opportunities for greater and more meaningful participation of people belonging to national, ethnic, religious, and linguistic groups (Durban Declaration on Racism 2001).

According to the FDRE Constitution, each 'nation, nationality and peoples' is deemed equal in culture, language, and dignity. It is stated, under Article 46, the Ethiopian federal state is formed on the basis of settlement patterns, language, and ethnic identity. Unprecedented in the constitutional history of Ethiopia, one third of the Constitution is devoted to fundamental human rights and freedoms including the right to self-determination recognized under Article 39. Under Article 39(2) and (3), nations and nationalities have the right to develop and promote their culture, history and language, and establish self-government. Although there are more than twenty ethnic groups, which do not fulfil the size of electoral constituencies (100,000 population), as per Article 54(3) of the Constitution, only twenty seats are reserved in the House of Peoples' Representatives (HPR), the lower House, for minority nationalities and peoples.

The FDRE Constitution has not yet addressed effectively the demands and equality of all ethnic groups. In effect, there are two categories of ethnic groups: those expressly recognized as 'nation, nationality or people' by the FDRE Constitution and those ethnic groups that have not been yet recognized as such (Article 47(1)).

The following discussion shows the FDRE Constitution, under Article 47, paves the way for unequal treatment and discrimination of minorities at regional level. Although the diversified nature of the Ethiopian polity is also reflected in every regional state, the first sentence of all regional constitutions' preambles invariably begins with an indication of the empowered specific ethnic group(s) (Van der Beken 2016).

The preambles of the constitutions of Benishangul Gumuz, Gambella, and Harar regions explicitly mention the diverse ethnic groups empowered by, or indigenous<sup>225</sup> to, the region. The Benishangul Gumuz Constitution (2002) starts its preamble with the phrase, "We, the nationalities and peoples of the region", and further in the preamble the ethnic groups of the region are identified as the Berta, Gumuz, Shinasha, Mao, and Komo. By the same token, the preamble of Gambella regional Constitution (2002) starts with "We, the Nationalities and Peoples of Gambella peoples' National Regional State", and these are the Anywaa, Nuer, Majang, Upo, and Komo. Other local minorities as well as 'highlanders' (Amhara, Gurage, Oromo, Tigray) were left out of the local administration, for not being 'indigenous' (Van der Beken and Yonatan 2015). The preamble of the Harar Constitution (2002) talks about the nations, nationalities, and peoples of the region and explicitly singles out the Harari and Oromo ethnic groups. In similar vein, the Ethio-Somalia, Afar and Oromia regional state Constitutions reflect on only one ethnic group that has been empowered by the establishment of the respective regions.

The 2007 Ethiopian Census shows more than 3.2 million non-Oromos, Amharas (close to two million), Gedeo (250,000) and Guraghe (250,000), Hadiya (53,000), Dawuro (45,000), Kambatea (42,000), and others reside in Oromia region. Regardless, the Constitution of Oromia regional state, both in its preamble and Article 8, declares that 'the Oromo nation' is the owner of the Constitution and the region Oromia, expressly excluding non-Oromos residing in the regional state.<sup>226</sup> Furthermore, examination of the Constitution of Oromia shows that there is complete identification of the region with the Oromo ethnic group. This identification is clear in the preamble, which makes reference not to the population of the region, but rather to the 'Oromo

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225 The term "indigenous" is explicitly used by the Benishangul-Gumuz Constitution (Article 2) to indicate the regionally empowered groups.

226 Oromia Regional State Constitution (2001) preamble and Article 8



people'. Notwithstanding the fact that Article 2(1) of the Constitution recognizes Oromia as populated by "people of the Oromo nation and other peoples", Article 8 stipulates that "Sovereign power in the region resides in the people of the Oromo nation".

Consequently, regional states and other government subunits, named after particular ethnic groups, are bound to reinforce the feeling of groups officially identified with them (Van der Beken 2016). Due to such an unequal treatment of ethnic groups, minorities living in those regional states have faced discrimination, displacements and killing. The displacement of millions of Oromos from Somali regional state and Amharas from Oromia and Benishangul-Gumuz regional states were exacerbated by the absence of legal protection to these minorities.

The Amhara, Tigray and Southern Nation, Nationality and Peoples' regional states, on paper, in their respective constitutions, have given due recognition to all ethnic groups in the regional states and confer ownership to all people living therein. The Amhara regional state Constitution (Article 48(2)), for example, pays attention to the position of ethnic minority groups by guaranteeing representation of "minority nationalities and peoples". It enables four regional indigenous minorities, the Agew Awi, Agew Himra, Oromo and the Qemant to exercise their right to self-determination within the region.

The preamble of Tigray regional state Constitution also begins with "We, the [peoples] of the Tigray National Regional State". Moreover, the Constitution under Article 8(1) grants the supreme power in the regional state to people of the region. So far, in addition to the Tigrian people, other minorities such as the Irob and Kunamas have been recognized and granted local administration.

Generally, it can be argued, the FDRE Constitution gave more benefits to ethnic groups whose name is used in the forming of the regional states. However, ethnic groups were not consulted, neither was election held when constituting the regional states and protecting the rights of minorities (Tronvoll 2000).

It has to be noted that formal equality does not bring substantive equality; there are those who need to have special rights to minorities, at least temporarily. Within the FDRE constitutional system, the ruling government denies the existence of any 'minorities' in the state, ethnic and religious groups, which are politically oppressed or marginalized (Tronvoll 2000:19). The FDRE Constitution has taken the same

position of the UN in its formative stage by which “minorities and their members were postulated to be fully and satisfactorily protected by individual, universal human rights in combination with the non-discrimination principle” (Henrard 2000:210). Regardless, given the discrimination against minorities throughout the history of the country, the Constitution fails to protect minority rights adequately and guarantee their equality.

### *The Right to Self-Determination*

The right to self-determination is an integral part of human rights law but controversial too. Self-determination has long been a conceptual morass in international law, partly because its application and meaning have not been formulated and partly because the specific international law practice of self-determination does not measure up well to some of the established textual formulations (Kingsbury 2001).

Under the 1945 UN Charter, self-determination is mentioned in Article 1(2) and Article 55, with the wording of “based on respect for the principle of equal rights and self-determination of peoples”. It is possible to state that, while the scope and definition of the right are unclear under the Charter, its development into a rule of law in international public law is almost indisputable. Adopted in 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Civil Rights (ICESCR) constitute perhaps the most crucial phase in the evolution of the right to self-determination.

Article one of the ICCPR and ICESCR have stipulated the right to self-determination, “to freely determine their political status and freely pursue their economic, social, and cultural development”. Castellino (2000:261) states that, in both documents, “the right of self-determination is not restricted to a political or civil right but propounded as the gateway to economic, social and cultural rights”. Another significant feature of these international covenants is that “[it] does not restrict the right of self-determination to colonized or oppressed peoples but includes all peoples”. However, the term ‘all peoples’ is open to interpretation, whether or not it embraces minorities as a group. The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities does not also clearly address the issue of self-determination of minorities. Under Article 2(4), it

states “persons belonging to minorities have the right to establish and maintain their own associations”.

The African Charter on Human and peoples’ Rights also recognizes the right to self-determination of all peoples. Article 20 of the Charter states “all peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen”. Moreover, the document recognizes the right to self-determination to all people, whether colonized or oppressed. Although self-determination, as a principle and a right, was enshrined under international instruments, the beneficiaries of self-determination have never been conclusively determined, stated as ‘peoples’ with no agreed definition (Freeman 1999). The laws in some countries, however, put a ‘restricted interpretation’ of self-determination. Countries such as India, apply “the right of self-determination” only to people under foreign domination and not to sovereign independent states (Freeman 1999).

Coming to Ethiopia, Article 39 and 52 of the FDRE Constitution confers the right to self-determination to nations, nationalities and peoples. This can be understood as the right to autonomy (self-governance), the right to speak one’s own language, preserve culture, history, identity and to have separate institutions. The right to secession is also part and parcel of the right to self-determination as stipulated under Article 39 of the Constitution. As per Article 52(a) of the Constitution, the only limitation to the right of self-governance is that all regional or local organs should discharge their duties and exercise their rights within the framework of democratic principles, rule of law and in accordance with the mandatory rules and spirits of the FDRE Constitution. Putting this right to practice, the Ethiopian state is so far organized into ten regional states and two city administrations. However, there are more ethnic groups that have been and are asking for their right to self-governance.

Despite the vertical division of power between the federal government and the sub-national units, there are groups of scholars that argue the expenditure needs of units are by far smaller than their revenue sources. Looking at the practical experience of self-government status of the regional states, only insignificant powers are reserved to regional governments. This is because most of the lucrative sources of

revenue are reserved to the federal government (Aberra 2006). Even the government did unconstitutional amendment to strengthen its power at the federal level and weaken the regional governments' self-determination capacity. This was evidenced in 1997 when the federal government unilaterally<sup>227</sup> amended Article 98 of the FDRE Constitution that govern the concurrency of taxation power between the federal and regional governments.<sup>228</sup> The spirit of the decision was to change the concurrent power of taxation into revenue sharing scheme (Taddese 2012). Later, it was amended into revenue sharing, which gives more power to the federal government to levy, collect and administer specific taxes while regional governments share the collected money based on the criteria set by HoF (Zelalem 2015). As a result, 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. Recently, the federal government vowed to cut financial support to the Tigray regional government, to weaken their self-determination, following the region's unilateral decision and holding of regional elections, which was postponed by the federal government.<sup>229</sup>

Though land and other natural resources are common property of nations, nationalities and people, it is under the ownership of the federal government with individual citizens entitled to usufructuary rights (Article 40(3-4)). According to Article 52 (2(d)) of the FDRE Constitution, regional governments administer land and other natural resources under the dictation of the federal government. Hence, if the federal government strictly exercises its power over land, the dependence of regional governments on the federal government will be more visible.

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227 Most of the judges, attorneys and law instructors which the author has consulted randomly have no information about the fact that the FDRE Constitution had been amended in 1997. Prominent Ethiopian fiscal federalism scholars- Solomon Neguise and Taddese Lencho - consider, in their works, amendment made on Article 98 of the FDRE Constitution was informal changes and did not in regard to the constitutional amendment procedure set under Articles 104 and 105 of the Constitution. See Taddese Lencho (2012, 2010). Astonishingly, the 'official' copies of the Constitution still reflect the original versions of the two provisions. The copies distributed by the HPR or HoF, and other state entities, such as the National Human Rights Commission, do not reflect the changes.

228 The FDRE House of Peoples' Representatives, Proclamations, Official Discussions and Resolutions Made by the 1st HPR, Vol.2, (1996/97, Unpublished, HPR Library, Addis Ababa, Ethiopia).

229 This research is not trying to determine the legality of holding elections at the regional level.

Although the FDRE Constitution has a procedure for such groups to acquire self-administration and ensure equality, its practicality is far from attainable and sometimes resulted in chaos as had been experienced during the Kemant's and Sidama's referendums.

Furthermore, one party rule in the country, guided by political interest, has led to unconstitutional practices that deprived minorities and other groups of their rights, including the right to self-determination. According to Assefa (2012), the ruling party contradicted the constitutionally proclaimed principles of self-rule and state autonomy. Following the coming to power of Prime Minister Abiy Ahmed in 2018, different claims of self-rule have come into the picture, which resulted in the formation of the Sidama regional state in the year 2020. Other ethnic groups such as Wolayita and Guraghe have recently submitted their case to the HoF, a claim for regional state. In cases, such as Wolayita, political discussions have undergone within the zone, contrary to the constitutional provisions that have caused deadly conflicts and imprisonments. The becoming of Sidama regional state was also challenged for a long time until a referendum was held in November 2019 that changed the Sidama zone to a regional state.<sup>230</sup>

According to Article 39(3) of the FDRE Constitution, the right to self-governance of nations, nationalities and peoples includes the right to establish institutions of government in the territory they inhabited and equitable representation in the federal and regional governments. To ensure the right to self-governance, the government created ten regional states.<sup>231</sup> However, members of these regional states are not homogeneous; there are a number of nations, nationalities and peoples in each regional state. In some others such as the Southern Nations Nationalities and People Regional State (SNNPRS), there exist more than fifty-six nations, nationalities and peoples. In theory, in their respective constitution, regional states must provide for the right of minorities to establish their own self-governments and equitable representation in the regional state councils. The Amhara regional state Constitution, for example, under Article 9, explicitly recognizes the existing pluralism within the region and states "the supreme power of

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230 Following the Southern Nations, Nationalities and Peoples' State Council's decision in October 2018 to approve a request for a referendum on Sidama statehood, copycat moves are gathering pace across the multi-ethnic region. On November 26, Gurage zone Council voted to proceed with the process. Two weeks prior, Wolayta zone affirmed a statehood request, which will now be sent to the SNNPRS council for approval. Kaffa zone also approved a demand on November 15.

231 The ten regional governments of Ethiopia are Tigray, Afar, Amhara, Oromia, Southern Nations, Nationalities and Peoples, Gambella, Somali, Harari, Benishangul Gumuz, and Sidama.

the national regional state resides in and belongs to the peoples of the Amhara region”.

On the other hand, Article 8 of Oromia regional state Constitution and its preamble points that ‘the Oromo nation’ is the owner of the region and the sovereignty of its people is exercised through elected representatives and direct democratic participation. It is worth noting that this provision has ignored the existence of non-Oromo ethnic groups of the country, which constitute 12.2 percent of the region’s population.<sup>232</sup> In a similar vein, Article 9 of the Somali regional state Constitution empowers the sovereign powers only to the Somali people. Moreover, Article 5 of the Harari regional state Constitution provides the Harari people ownership of sovereign power in the region. This stipulation of the Constitution recognizes only the Harari ethnic community, which represents a mere 8.65 percent of the regional population, as the sole holder of sovereign power. Although Article 6 of the Constitution provides that Afan Oromo shall serve as an official language of the region along with the Harari language, there is no other provision in the Constitution that recognizes the right of the Oromo community, which constitutes, according to the 2007 Ethiopian Census, 56.41 percent of the region’s population.

This shows there is no uniform mode of accommodating the right to self-governance of national minorities among the regional states. This opens the room for regions to devise their own form of treating national minorities of their region, which in some instances resulted in denial of the right to self-government and equitable representation in the regional government of nations, nationalities and peoples. Such situations threaten the practical commitment of the FDRE Constitution to the effective protection of nations, nationalities and peoples. Thus, the federal government should guarantee and oversee the effective protection of rights in all regions as provided under the FDRE Constitution. Otherwise, the rights of nations, nationalities and peoples provided under the FDRE Constitution will have no significance to the right holders.

Concerning the inclusion of secession provision under the FDRE Constitution, some argue that it is more inclined to the rights of

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232 Parallel Reports Submitted to the Committee on Racial Discrimination, by the Ethiopian Human Rights Council, Ethiopia, August, 2009 Available at [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/EHRC\\_Ethiopia\\_CERD75.doc](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/EHRC_Ethiopia_CERD75.doc). (Accessed on 2 September, 2012), para.34 and the 2007 Ethiopian National Census

nations and nationalities in disregard to national integrity and unity while others claim the unconditional right to secede is procedurally impracticable (Alemante 2003). The inclusion of the secession clause referred to in Article 39 of the 1995 FDRE Constitution was justified as a means to bring the national liberation fronts, such as the Oromo and the Ogaden National Liberation Fronts, to the negotiation table with the agenda of secession (Blasvic 2007). Yet, the experience of Eritrea, who has seceded from Ethiopia in 1993 and had been in warring relationships, hints that secession is not the right means to address a crisis of governance. The Constitution, hence, replicates and legalizes the same old rights of the nations and nationalities in disregard to national integrity and unity. Hence, experts including Habtu (2005) and Erk (2014) suggest more accommodative political solutions, such as federalism, power sharing and decentralization, as a way out.

### *The Right to Develop and Promote Cultural and Linguistic Rights*

Language and cultural policy are one of the most crucial affairs that need special care in multi-ethnic State since unity should be preserved without compromising diversity. The survival and flourishing of a minority's culture depend in large part on the validity of its language. Language is not a mere medium of reality, but is constitutive of that reality (Adeno 1991). A language policy is a high-level governmental document that sets decisions and guidelines for and determines what language and for which purposes shall be used in a given country. In other words, language policy is a legal document about political decisions on the statuses, developments, and functions of languages in a state (Getachew and Derib 2006).

For good language policy, policy makers should consider the following considerations while making the policy (Amlaku 2011): human rights implications for minorities, economic utility of each language, national integration and government efficiency, group identity as a well as personal identity and aesthetic expression. Hence, in multi-linguistic states, caution has to be taken as far as language and cultural issues are concerned. Most of the time, however, such policies are made by politicians and politically committed experts, and so fail to consider one or more of the above.

In Ethiopia, Article 5(1) of the FDRE Constitution states that all Ethiopian languages enjoy equal recognition with Amharic as the working language of the federal government. The Constitution,

however, does not indicate the official language for vertical communication between the federal government and the states nor for the horizontal communication between the regional governments although as a matter of practice Amharic is maintained (Assefa 2012). The FDRE Constitution did not regard the economic utility and national integration issues the language policy might bear (Hirut 2007). Otherwise, the country would have adopted an official language that binds the existing multilingual people. In light of this, the Council of Ministers, in early 2019, has made an executive order to include four additional languages (Afan Oromo, Somaligna, Tigrigna and Afargna) as federal working languages in parallel with Amharic.

As per the FDRE Constitution Article 5(3), the ethno-linguistic groups' demand for cultural preservation and distinctiveness is recognized by vesting the mandate to determine the working language of their respective regions. This opens the way for regions to adopt languages that have relatively larger numbers of speakers, leaving the minority languages aside. To this effect, Oromia region, one of the regional states of the Ethiopian federation, has adopted Afan Oromo as the only language of the region, denying the remaining minority languages comprising over 12 percent of the total population of the region. Some other regional states, like the SNNPRS and Amhara, provide constitutional guarantee to the use of minority languages in their own administrations, zones or special *woreda* as the case may be. This is, thus, substantial variation in the application of language policy in the various regions in Ethiopia.

In Ethiopia, the right of every nation, nationality and people to express, develop and promote its culture has got a constitutional recognition (Article 39(2)). Minority groups can, therefore, exercise their right to promote and develop their culture using this constitutional provision guaranteed to all. Taking into account their numerical inferiority and political non-dominance, minority groups need special attention to preserve and develop their own culture (Assefa 2007). However, the Federal Constitution does not provide special support to minority groups that would enable them to enjoy and develop their culture.

### **Institutional Responses: Right to Representation of Minorities at Federal Houses**

Minority groups are always in need of special protection and consideration from survival to preservation of their identity, culture,



tradition and ways of life. Institutional setups where minorities are represented and reflect their will is the basic necessary instrument for better protection of minorities in certain political societies (Gizachew 2019). The protection of minority rights can partly be materialized when they get fair representation at various levels of the federal and regional governmental institutions. Federal institutions such as the lower and upper Houses, executives and judiciary organs are among others to reflect fairly the interest of minority groups (Gizachew 2019).

The FDRE Constitution, under Article 39, guarantees a number of rights to nations, nationalities and peoples including, among others, the right to have equitable representation in the federal and regional governments. In the subsequent subsections, the representation of minorities in the HPR and the HoF and in other federal institutions will be discussed.

### *Minority Representation in the House of Peoples Representatives (HPR), the Lower House*

Federalism allows distinct communities, defined by their territorial boundaries or with their collective features, to exercise autonomy over certain matters of particular importance while being represented in the larger federal union. Having representation is one of the mechanisms through which shared powers can be exercised over matters of common concern (Watts 2008). The HPR, the law-making organ, is composed of representatives of the Ethiopian people as a whole.

The FDRE Constitution (Article 50 and 51) empowered the HPR, to have final say on political issues. It is the supreme political organ that enacts laws in compliance with the Constitution and plays a supervisory role over the executive organs. Representing the people of Ethiopia, members of HPR are elected on the basis of the first-past-the-post electoral system from candidates in each electoral district. This means that each candidate who gets the larger votes in each electoral district will win a seat. In Ethiopia, where the federal system is structured on the basis of ethnic lines, the election of members of the HPR by such a first-past-the-post electoral system runs the risk that the one seat in each electoral district will be won by candidate who represents the interests of the largest ethnic group in the district. This discriminates against minorities from having a representative at the HPR. From the 550 seats of the HPR, relatively populous nations (the Oromo and Amhara) occupy 304 seats. Therefore, if the Oromo's and Amhara's

form a quorum, their combined vote will suffice to pass legislations to the prejudice of other nations and nationalities (Assefa 2012). Thus, the way members of the HPR are elected deviates from the very notion of the Ethiopian federation that aspires to accommodate diversities.

Under Article 54(3) of the Constitution, out of the maximum number of 550 seats in the HPR, a minimum of twenty seats are reserved for 'minority nationalities and peoples'. However, what constitutes minority groups and the possible (objective) criteria for identifying them is not a clear concept in the FDRE Constitution. So far, according to an expert from the HoF, the twenty seats reserved for minorities have not been implemented.<sup>233</sup>

### *Minority Representation in the House of Federation (HoF), Upper House*

Partly, it is the fear of the majority tyranny in the first chamber that many federal constitutions avoided by setting a non-majoritarian second chamber where the rights of minorities will be exercised and counterbalance the majority rule (Lijphart 1999). The Ethiopian second chamber, commonly known as House of Federations, is composed of representatives of each nation, nationalities and people of Ethiopia. Each ethnic group, according to the FDRE Constitution Article 61(2), shall be represented by at least one member. Moreover, those ethnic groups whose population exceeds one million are entitled to have one additional representative for every increase by a million. By this calculation, the two relatively larger ethnic groups, the Oromo and Amhara, have dominated almost half of the seats of the second chamber and have repeated the majoritarian tyranny in the lower house. However, Article 61(1-2) states the HoF has neither law-making power nor state representing mission. Thus, the HoF cannot protect the interest of minorities as it lacks law making roles in the parliament and members have no power to veto national legislation in the areas of culture, language and education that affect minority rights.

Despite the fact that Ethiopia is home for more than eighty-five nations, nationalities and peoples, seventy-six have seat(s) in the HoF for fifth term (2016-2020) (Assefa 2017). There has been an increase from previous terms; sixty-nine for the third term (2005-2010) and

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233 Interview with Mihirete Tesfaye, an expert from the House of Federation, Addis Ababa, August 2020.

seventy-five for the fourth term (2011-2015). However, this is not in line with Article 61(2) of the FDRE Constitution, which provides for representation of each nation, nationalities and people of Ethiopia in the upper House. As a result, there are still minorities (re)questing primarily their identity to be recognized, to have self-determination and to get representation in the appropriate level of government structures including the HoF.

### **Concluding Remarks**

By taking the objective, subjective and the combination of both criteria of defining minorities, Ethiopia is a land of ethnic groups that claims to be neither in a majority or minority position at federal level. However, the making of regional states along the lines of ethnicity incongruent with the territorial demarcation of the constituent units of the federation creates majority and minority groups. The geographic boundaries of regional states are not inhabited by homogeneous ethnic groups. Consequently, every regional state has minorities, which have survived the influence of the majority for years. There are no legal frameworks to protect the right of minority groups to existence, equality, self-determination, promote linguistic rights and political representation among others. The intermingling nature of the Ethiopian polity at regional levels has not been considered by the FDRE Constitution, which did not set any kind of mechanism to protect minorities living under local governments. Concerning the institutional representation of minorities, it is those relatively larger ethnic groups that have dominated almost half of the seats of the two Houses at the expense of minority groups. The possible solution is designing broader political and policy considerations beyond the normative constitutional stipulations. The federal government should take responsibility to accommodate the interest of minority groups in the different regional states. Finally, the enforcement of basic human rights of citizens enshrined in the Constitution can also protect minorities in Ethiopia.

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