Examining Minority Rights Protection under the Ethiopian Federal System

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This research investigates minority rights protection under the Ethiopian federal state structure, its legal instruments and institutional setups. Ethiopia is a land of a diverse society having more than eighty distinct ethnic groups, but the federal system conferred only seven ethnic groups, their own regions subsuming the rest within them. The territorial autonomy of ethnonational groups in Ethiopian federal context – in which the constituent units themselves are diverse – imposes a rigid conception of territory. The constituent unit that empowers autonomy for a particular group – the titular ethno-national group – claims exclusive control over territory and dominance within the constituent unit. Thus, the interests of minorities who are lumped with relatively dominant ethnic groups are not addressed and these minorities have neither been given self-determination nor are recognised as distinct nationalities of the country.

Keywords: minority, rights, Ethiopia, federalism, Constitution

Introduction

The concept 'minority' is a very broad and complex term. It is complex in the sense that no consensus has been reached as to what it pertains to, and is broad for it incorporates diverse groups which have ethnic, religious or linguistic features.²

As far as the protection of minorities is concerned, apart from the various UN conventions in many countries including Ethiopia,³ constitutional provisions

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² W Kymlicka, 'Emerging Western Models of Multination Federalism: Are They Relevant for Africa?' in *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, ed. by D Turton (Oxford: James Currey, 2006), 54–55.

³ The following conventions are relevant legal frameworks for minorities in which Ethiopia is a state party: International Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, African Charter on Human and Peoples' Rights, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). More importantly, the Ethiopian Constitution under

have been laid which are directly or indirectly designed to protect and meet the needs of minorities.⁴ These constitutions, in addition to ensuring the equal treatment of minorities with other nationalities, provide special guarantee to specified linguistic or other minority groups within the states regarding their right to existence, to education, language, self-determination and representation.⁵

Ethiopia being a home of various nations, nationalities and peoples, its federal constitution has laid important guarantees for the protection of a sort of minority called 'minority nationalities' together with other nationality groups.⁶ It is, however, sad to say that the past ruling classes had considered this unique and diverse culture of the different nations and nationalities the source of all troubles.⁷ Instead of making concerned efforts to develop their indigenous culture and preserve what was inherited from their ancestors, the past regimes did not give due attention to their very existence and protection.

Following many devastating civil wars to overthrow both the monarchical and dictatorship regimes, Ethiopia adopted a constitution at the end of the cold war in 1995. After the promulgation of the Federal Democratic Republic Ethiopian (FDRE hereafter) Constitution in 1995, Ethiopia has implemented a federal state structure with ethno-linguistic political-legal arrangements. Contradicting the multiculturalism nature of Ethiopia, the Constitution⁸ under Art. 47 has unequivocally declared Ethiopia as the federation of ten ethno-linguistically demarcated regional states (including the recently added Sidama Regional State).⁹ The demarcation of Ethiopia – which has more than eighty-five diversified ethnic groups in only ten territories based on linguistic criteria – created the subordination of national minorities of any kind to the will of the majorities.¹⁰ In the Ethiopian federation, populations are in practice rarely distributed into neat watertight regions. The existences of intra-unit minorities

Art. 9 states that all international agreements ratified by Ethiopia are an integral part of the law of the land, and Art. 13 further elaborates that fundamental rights and freedoms specified in the constitution are to be interpreted in a manner conforming to the principles of the international instruments adopted by Ethiopia. See the link of the UN Treaty Body Database below for Ethiopian status. Available: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty. aspx?CountryID=59&Lang=EN (20. 06. 2020.)

⁴ RL Watts, *Comparing Federal Systems*, 3rd ed. (Montreal: McGill-Queens University Press, 2008), 44–46.

⁵ N Steytler, 'Enhancement of Democracy through Empowerment of Disadvantaged Groups', in Unity in Diversity: Learning from Each Other. Vol. 4: Local Government in Federal Systems, ed. by J Kincaid and R Chattopadhyay (New Delhi: Viva Books, 2008), 20–35.

⁶ F Assefa, 'Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet', *Regional & Federal Studies* 22, no 4 (2012), 435–473.

⁷ D Aberra, *The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia* (Addis Ababa: Addis Ababa University, 2008), 23–47.

⁸ Constitution of the Federal Democratic Republic of Ethiopia.

⁹ GS Alemante, 'Ethnic Federalism: Its Promise and Pitfalls for Africa', *The Yale Journal of International Law* 28, no 1 (2003), 51–107.

¹⁰ T Kjetil, *Ethiopia: A New Start?* Minority Rights Group International – Report (London: Martinus Nijhoff Publishers, 2000), 22.

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 perspective fails to address adequately the problem of minorities within the different regional administrations and cities that are often inhabited by ethnically intermixed individuals.¹¹

The UN special Rapporteur's report¹² on minority mission to Ethiopia confirmed the plight of minorities when making an evaluation of the situation of minorities in the country based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other relevant international standards, and identified four broad areas of concern regarding minorities. These are: (a) protecting the existence of a minority, including through protection of the physical integrity of its people and the prevention of genocide; (b) protecting and promoting cultural and social identity, and the right of national, ethnic, religious or linguistic groups to affirm and protect their collective identity and to reject forced assimilation; (c) ensuring effective non-discrimination and equality, including ending structural or systemic discrimination; and (d) ensuring effective participation of members of minorities in public life, especially with regard to decisions that affect them.

As far as numerical dominance is concerned, no nation constitutes half of the total population of Ethiopia but the constitution creates majority–minority divides.¹³ From the three decades of federal experience, one major challenge the Ethiopian federal system is facing relates to the issue of local tyranny at constituent unit level. This research investigates the legal norms and institutional setups of Ethiopian federation to address and safeguard minority rights protection in the country.

1. The scope of minority rights under the Ethiopian Constitution

1.1 The right to existence and recognition

Recognition of minorities facilitates the protection of other minority rights. It is the recognition of ethnic groups that gives rise to other rights. Recognition of minority groups by the state helps minority for claiming other rights. 'The existence of minorities is a matter of fact, rather than a matter of law. According to the UN Human Rights Committee, such existence 'does not depend upon a decision by that state party but [must] be established by objective criteria.'¹⁴ Of course, 'the linchpin of minorities' protection is the right of minorities to be recognized as minorities'.¹⁵

¹¹ Assefa, 'Ethiopia's Experiment'.

^{12 &#}x27;Report of the Independent Expert on Minority Issues: Mission to Ethiopia (28 November – 12 December 2006)', UN.

¹³ Assefa, 'Ethiopia's Experiment'.

¹⁴ United Nations Development Programme, 'Marginalised Minorities in Development Programming. A UNDP Resource Guide and Toolkit', May 2010, 36.

¹⁵ JR Stephen, 'Toward a Minority Convention: Its Need and Content,' in *Israel Yearbook on Human Rights* (Dordrecht–Boston–London: Martinus Nijhoff Publishers, 1990), 102.

⁶Even in the absence of legal recognition granted to minorities by the respective states, *de facto* recognition may assist States to acknowledge and respond to the problems faced by minorities. States will be able to better tackle inequality and reduce tensions within their societies if they acknowledge that ethnic, cultural, religious and linguistic diversity exist; and that groups may challenge discrimination and exclusion along these lines.¹⁶

Ethiopia is home for over eighty-five distinct multi-ethnic groups since time immemorial.¹⁷ The constitution under Art. 62 authorises the House of Federation (Ethiopian Upper House) to give *de jure* recognition to these groups. The recognition or rejection of their (minorities') existence depends on the subjective criteria set under Art. 39(5) of the constitution. In order to be recognised as one of the distinct ethnic groups of the country, any minority people should fulfil the criteria of having a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological make-up, inhabiting an identifiable and predominantly contiguous territory.¹⁸ For example, in case of 'belief in common or related identities' and 'a common psychological make-up', which are subjective ones, their determination is difficult. Apart from the difficulty in determining them, the constitution does not specify as to who has such power. However, as such elements are something that the concerned ethnic group believes in, they are the fundament of their existence, such power should be given to the group itself. No other body should prove (but may confirm) the existence or non-existence of such feelings for them.¹⁹

Due to the difficulty and subjectivity of the criteria, coupled with the influence of political involvements concerning the decision on the quest for recognition, so far the House of Federation has recognised only 75 relatively dominant ethnic groups. But there are still more than ten indigenous minorities who have not been yet recognised as a distinct nationality of the country. As a result their language, religion and their sheer identity, are at the verge of extinction. Of course, these indigenous minorities have been settled in these areas for centuries. To mention a few of those minorities²⁰

United Nations Development Programme, 'Marginalised Minorities in Development Programming', 16.

¹⁷ Z Bahiru, *A History of Modern Ethiopia (1855–1991)*. 2nd ed. (Oxford: James Currey – Athens: Ohio University Press – Addis Ababa: Addis Ababa University Press, 2002).

¹⁸ C Van der Beken, Unity in Diversity – Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia (Berlin: Lit Verlag, 2012), 289. See also Art. 39(5) of the Constitution.

¹⁹ A Addis, 'Individualism, Communitarianism and the Rights of Ethnic Minorities', *Notre Dame Law Review* 66, no 5 (1991), 615–676.

²⁰ The House of Federation (HoF), the second House empowered to give identity recognition, has rejected claims for recognition of the Danta, Wolene, Bahirwork Mesemese, Zaye, Dube and Kontoma stating that these groups do not have a 'distinct language' of their own, although Art. 39 does not include such a requirement. What Art. 39(5) requires, among other things, is 'mutual intelligibility of language' and not a distinct language in the way interpreted by the HoF.

nationwide claiming such recognition includes the Danta, Wolene, Bahirwork Mesemese, Zaye and Dube.

1.2 The right to self-determination

Self-determination is one of the most important rights of oppressed population groups because of its multi-faces. At the same time, it can be seen from political, economic, social and cultural rights.²¹ The Ethiopian Constitution (Arts. 39 and 52) conferring the right to self-determination to Nations, Nationalities and Peoples which can be understood as the right to autonomy (self-government), the right to speak one's own language, preserve culture, history, identity and to have separate institutions.

In reality, there are only ten regional states and two city states for nearly eighty-five Nations, Nationalities and Peoples in the county. Since the members of the federation are not homogeneous, there are a number of Nations, Nationalities and Peoples in each regional state who are either unrecognised or lumped with other dominant groups. In some others like the Southern Regional State, there exist more than fifty-six Nations, Nationalities and Peoples. As a result, in the states, there exist majorities and minorities. States adopt their own mechanism of accommodating the rights of national minorities living in their own jurisdiction. The Southern and the Amhara Regional States, in their respective constitution, provide for the right of minorities to establish their own nationality self-governments and equitable representation in the state councils. On the other hand, the Constitution of the Oromia National Regional State under Art. 8 provides:

Sovereign power in the region resides in the people of the Oromo Nation and the sovereignty of the people is exercised through their elected representatives and direct democratic participation. It is worth noting that this provision has ignored the existence of non-Oromo ethnic groups, which constitute only 12.2% of the region's population.²²

Moreover, Art. 5 of the Harari Regional State Constitution provides that the Harari people are the owner of sovereign power in the region. This stipulation of the constitution recognises only the Harari ethnic community, which represents a mere 8.65 per cent of the regional population, as the sole holder of sovereign power. Although Art. 6 of the regional constitution provides that Oromiffa shall serve as an official language of the region along with the Harari language, there is no other provision in the regional constitution which recognises the right of the Oromo

²¹ YT Fessha and C Van der Beken, 'Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia', *African Journal of International and Comparative Law* 21, no 1 (2013), 32–49.

²² Van der Beken, Unity in Diversity.

The above illustrations show that there is no uniform mode of accommodating the right to self-government of national minorities among the states. This fact opens the room for states to devise their own form of treating national minorities of their region which in some instances resulted in denial of the basic rights of Nations, Nationalities and Peoples of the right to self-government.

1.3 The right to develop and promote cultural and linguistic rights

The survival and flourishing of a minority's culture depends largely on the validity of its language.²³ 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.²⁴ Language and cultural policy are two of the most crucial affairs that need special care in a multi-ethnic state, since unity should be preserved without compromising diversity. For good language policy, policy makers should consider the following considerations while making the policy: 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.²⁵

In the Ethiopian federation, the Constitution, under Art. 5(1) only states that all Ethiopian languages enjoy equal state recognition and as per Art. 5(2) Amharic is the working language of the federal government. It looks like 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 in a country where more than eighty languages are spoken. Still, the constitution uses the official language neither 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.²⁶ The constitution is supposed to lay the ground for the promotion and protection of the minority languages, but the Ethiopian Constitution is silent on the use of languages in administration and the media. There is also no specific law that regulates the use of languages in education, let alone the minorities.²⁷ Minority Nationalities can therefore exercise their right to promote and develop their culture using this constitutional provision guaranteed to minorities and majorities alike. Taking into account their numerical inferiority and political nondominance, minority Nationalities need special measures to preserve and develop

²³ Addis, 'Individualism, Communitarianism'.

²⁴ A Getachew and A Derib, 'Language Policy in Ethiopia: History and Current Trends', *Ethiopian Journal of Education & Science* 2, no 1 (2006), 37–62.

²⁵ L Calvet, Language Wars and Linguistics Politics (Oxford: Oxford University Press, 1998), 34-38.

²⁶ Assefa, 'Ethiopia's Experiment'.

²⁷ Fessha and Van der Beken, 'Ethnic federalism and internal minorities'.

their own culture.²⁸ However, the Federal Constitution did not provide special support to minority nationalities that would enable them to enjoy and develop their culture.

2. Institutional responses: The right to representation of minorities at the Federal Houses

Minority groups of peoples 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 their will reflected are the basic necessary instruments for better protection of minorities.²⁹ In the subsequent subsections, the representation of minorities in the Lower House (House of Peoples' Representatives, hereinafter HPR) and the Upper House (House of Federation, hereinafter HOF) will be discussed.

2.1 Minority representation in the House of Peoples' Representatives (the Lower House)

The House of Peoples' Representatives, the Ethiopian federal law-making body, represents the peoples of the Ethiopian people as a whole. The FDRE Constitution (Arts. 50-51) empowered the HPR, to have a final say on political issues. It is the supreme political body that enacts laws in compliance with the constitution and plays a supervisory role over the executive. Representing the peoples of Ethiopia, members of the 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 the seat. In Ethiopia, where the federal system is structured on the basis of ethnic lines, the election of members of the HPR by such *first-past-the-post* electoral system runs the risk that the one seat in each electoral district will be won by the candidate who represents the interests of the largest ethnic group in the district. This discriminates against minorities from having a single representative at the House of Peoples' Representatives. From the 550 seats of the HPR, relatively populous nations (the Oromo and Amhara) occupy 304 seats of the very law-making body. Therefore, if the Oromos and Amharas form a quorum, their combined vote will suffice to pass legislations to the prejudice of other nations and nationalities.³⁰

Thus, the way members of the House of Peoples' Representatives are elected deviates from the very notion of the Ethiopian federation that aspires to accommodate

²⁸ G Merera, *Ethiopia: Competing Ethnic Nationalisms and the Quest for Democracy, 1960–2000* (Maastricht: Shaker Publishing, 2003), 82–83.

²⁹ N Fasil, *Constitution for a Nation of Nations: The Ethiopian Prospect* (Lawrenceville, NJ: The Red Sea Press, 1997), 51.

³⁰ Assefa, 'Ethiopia's Experiment'.

diversities. The larger ethnic groups are more strongly represented leaving minorities behind from the law-making body of the federation.

The fact that the constitution under Art. 54(3) stipulates – out of the maximum number of 550 seats in the House of Peoples' Representatives – to reserve a minimum of 20 seats for *'minority nationalities and peoples*,' lacks clarity. Even though at the federal level all nations, nationalities and peoples of Ethiopia are considered minorities, the attempt of the constitution to assign 20 seats for the Minorities in the House of Peoples' Representatives is not unequivocally stated and raises questions, because, it is not a clear concept in the Ethiopian Constitution who are minorities and what are the possible (objective) criteria for identifying them. And who claims such reserved seats is also not explained.

2.2 Minority representation in the House of Federation (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.³¹

The Ethiopian second chamber, commonly dubbed as the House of Federation (HoF),³² is composed of representatives of each Nation, Nationality and People of Ethiopia. According to the FDRE Constitution Art. 61(2), each ethnic group 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. However, as per the FDRE Constitution Art. 61(1-2), the second chamber in Ethiopia is unique for many reasons; it has neither law-making power nor state representing mission; it rather represents Nations, Nationalities and Peoples. In Ethiopia, each Nation, Nationality and People is guaranteed a minimum of one representative and shall be represented by one additional representative for each one million of its population. By this calculation, those two relatively larger ethnic groups (Oromo and Amhara) have dominated almost half of the seats of the second chamber and have repeated the majoritarian tyranny in the Lower House. This still raises questions: how could the minority groups in the HoF exercise their rights if they are overridden (outnumbered) by the more populated groups that form the ruling party, who have more seats in the house, since the simple majority is a requirement to pass all decisions in the house.

Despite the fact that Ethiopia is home for more than 85 Nations, Nationalities and Peoples, only 69 Nations, Nationalities and Peoples for the third term (2005–2010), and 75 for the fourth term (2011–2015) and 76 for fifth term (2016–2020) have seat(s)

³¹ A Lijphart, Patterns of Democracy (New Haven: Yale University Press, 1999), 3-4.

³² The HoF is composed of 'nations, nationalities and peoples'. Each nation or nationality has one seat and one additional seat is granted for every additional million. The HoF does not have law-making power. It is mandated to resolve disputes among regional states, allocate subsidies to regional states and interpret the Constitution. See Arts. 61 and 62 of the Constitution.

in the HoF. This means about 16 minority groups for the third term and 10 for the fourth and 9 for the fifth term were unrepresented. This is not in line with Art. 61(2) of the Federal Constitution which provides for representation of each nation, nationality and people of Ethiopia in the Upper House. As a result, there are still minorities (re) questing primarily their identity to be recognised, to have self-determination and to get representation in the appropriate level of governments including the HoF.

Conclusion

By taking the objective, subjective and the combination of both criteria of defining minorities, Ethiopia is a land of minorities. There is not any ethnic group that claims to be in a majority position at the federal level. However, the FDRE Constitution tries to create majority ethnic groups at regional levels by making ethnicity incongruent with the territorial demarcation of the constituent units of the federation. But the geographic boundaries of the Regional States are not inhabited by homogeneous ethnic groups. Consequently, every regional state has minorities, which have survived the influence of the majority for many years. Thus, minorities continue to suffer because they are under the mercy of local majorities with no legal framework to protect their very right to existence, self-determination, development and promotion of cultural and linguistic rights and political representation among others. The intermingling nature of the Ethiopian polity at the regional levels was not considered by the framers of the Federal constitutions and the constitution did not set any kind of mechanism for protection of minorities living in each local government. The adopted electoral system in the Ethiopian federation makes minorities to be the losers and to have unfair representation.

The possible solutions to the plight of minorities in Ethiopia can be achieved by designing broader political and policy considerations beyond the normative constitutional stipulations. Thus, the Federal Government should have responsibility as a guardian of intra-regional minorities against possible repression by a regional majority. The proportional representation system is relatively better than the firstpast-the-post system that would accommodate and reflect the interests of minorities, as well.

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