

# **Legal and Practical Responses to the Rights of Ethno-National Minorities in Federal Ethiopia: Case Study of Amhara and Oromia National Regional States**

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**A Dissertation Submitted to Centre for Human Rights of Addis Ababa University (AAU) in Partial Fulfilment of the Requirements for the Degree of Doctor of Philosophy (PhD) in Human Rights**

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**March 2018**

**Addis Ababa, Ethiopia**

## **Declaration**

I, Sisay Mengistie Addisu hereby declare that this PhD Dissertation entitled **‘Legal and Practical Responses to the Rights of Ethno-National Minorities in Federal Ethiopia: The Case of Amhara and Oromia National Regional States’** is my work and has not been submitted for any degree or examination in any other university or academic institution.

To the best of my knowledge all sources and materials used in this dissertation are duly acknowledged and properly referenced. Hence I declare that this thesis is more than 120,000 and fewer than 150,000 words inclusive of bibliography and appendices.

Sisay Mengistie Addisu      Signature: \_\_\_\_\_ Date \_\_\_\_\_

## Abstract

*Beginning from the agreement of Westfalia to the Second World War, there was an international attempt to address the claims of minorities. Unfortunately, the end of the Second World War, which had heralded a new era for individual human rights, did not sustain the continuation of addressing minorities' problems. On top of that the postWorld War I political order of the international community, the recognition and protection of minority rights remained only in asserting the right to equality and prohibition of discrimination. As a result, the present international human rights instruments are not as such inclusive of minority rights.*

*Ethiopia, as an independent state and part of the world community, its successive regimes were not ready to recognize and protect the rights of ethno national minority groups until 1991. However, following the adoption of federal constitutional framework of the country that recognizes and legally guarantees the rights and freedoms of all ethno national groups of the country, almost all regional states of federal Ethiopia have adopted their own regional state constitutions by recognizing the existence and protection of the rights of minorities settled in their respective administrative territories.*

*Ethiopian federal constitution formed regional states mainly along ethno-linguistic basis. The idea is to allow each ethno national group to exercise the right to self-government. However, not all ethno national groups have their own separate regional states. Hence regional states are supposed to provide constitutional space to create institutional arrangements for managing intra-regional ethnic diversity. But, the regional state constitutions and practical implementations of their respective governments in this regard do not comply with the basic principles of FDRE constitution and properly address the rights of existence, equitable representation and self-government of ethno national minorities settled in their region.*

*Considering this reality, the writer of this dissertation frames a research question as follows: how do the legal frameworks of both federal and regional state governments address the rights of ethno national minorities and how have the national regional states under consideration implemented them? To answer the main research question of this dissertation a qualitative approach of data analysis was employed in consolidating and analyzing this dissertation. As a result, various laws (international, continental, national and regional) and other related documents are utilized as important data sources in addition to the semi-structured interview.*

*Based on their political and social knowledge of the issue at hand, the respondents of the interview, were selected by the researcher using purposive sampling method. Therefore, the study generally attempted to address three interrelated issues on the rights of ethno national minorities such as the right to existence, equitable representation and self-government. It not*

*only investigates the constitutional basis of the aforementioned fundamental rights and freedoms of ethno national minorities but also the perception of the regional state government officials and ethno national minorities covered in the study. The findings from the two case study national regional states of federal Ethiopia revealed that the current political system of Ethiopia -both in terms of its federal design and the operating politico-legal practices have largely failed to respond to the strong demands of ethno national minorities. The federal design of granting autonomy to ethno national groups of the country has fallen short of giving territorial autonomy to all nations, nationalities and peoples of Ethiopia- even to those regarded as indigenous ethnic groups to their respective regional states.*

*Apart from the granting of territorial autonomy, it has also, to a certain extent by design, excluded non-indigenous ethnic groups from effective and equitable representation in the respective regional state legislative councils. Even in circumstances where they have been given restricted representation rights, their decision making powers remain ineffective. Hence this dissertation argues that despite the promises made by the federal government to empower all ethno national groups they continue to face consequences of lack of equitable representation and the right to self-government even in the territory they are considered indigenous.*

*The Ethiopian federal system in this regard has not kept its promise. Because as clearly witnessed in the national regional state of Oromia, only the Oromo nation is political recognized and legally allowed to control territorial autonomy of the region. As a result, even the indigenous people of Zay in Oromia region and Kemant community of Amhara region are not politically recognized and represented in the regional councils of the same national regional states respectively. Although it has certain accommodative legal and political system, the Amhara region too restricts the rights of self-government of ethno national minorities.*

*In circumstances where the historic ethno national minorities have participation at regional council, the majoritarian decision-making process of the region makes them unable to counter any determination even sometimes that goes against their interest. The Kemant case is a living experience in this regard. Therefore, unless the various demands of such ethno national minorities living in those regional states are properly addressed through political and legal mechanisms that accommodate the interest of ethno national minorities, the existing discontent may destabilize the federal system.*

## Acknowledgements

The past five years were challenging not only in my educational conditions but also on my entire socio-economic and political life. Because for various reasons it had been also the most critical and I could not easily think I would reach in this final stage where this dissertation would be completed. In those difficult years there were, however, many people who have strongly encouraged, appreciated and heartily supported me in different ways whom I may have not mentioned all here.

Several people in Addis Ababa and in the national regional states who are related to the study assisted me relentlessly in the collection of data, and some of them provided me the most relevant legal documents, reports and other written materials for the final preparation of this dissertation. Therefore, I am grateful to all of them. In particular, I would like to thank my respondents who reflected their candid views on the issues and ideas incorporated in this dissertation.

However, those whom I am gratefully indebted are so many to list their names in this very page. I would particularly like to thank Dr. Assefa Fiseha who from the very inception of this dissertation to its successful completion has been an exceptional mentor and very good supervisor. Due to this reason I am very much indebted for his invaluable contribution, constant support, unreserved encouragement and excellent guidance in my academic career and achievement.

Dr. Assefa was also my humble and diligent professor and excellent advisor when I was attending my MA program in federalism and local government. He also devoted his precious time, skill and knowledge to make my effort fruitful. Because of this, I was very fortunate to have such a committed as well as insightful mentor and diligent supervisor. For that the phrase “thank you” seems so hollow, but I am heartily grateful.

I would like to extend my heartfelt thanks to Professor Dr. Tove H. Malloy who served as external supervisor from the very development of the proposal and to the last successful completion of this dissertation. I am very grateful for all her invaluable inputs, constructive comments, insightful suggestions and genuine encouragements. I would also like to thank my intimate friends Mebrate Haile G/Medhen, Dr. Beza Desalegn and Dr. Zemelak Aytenew Ayele for spending their precious time and skill to make this dissertation complete in terms of technical and language aspects.

Last but not least, I would like to thank my family as a whole and all friends of mine who stood by my side in different academic, social, economic and political situations. This dissertation would not have been possible if it had not been for the prayer and love that I abundantly received particularly from my beloved mother Meselech Mengesha Tedlla, my wife Dirb Gugisa Gidelew, my children Samri, Elshaday and Leul, my lovely brothers Wedajo, Hailu, Belay and Abebe Mengistie; I thank you all so very much.

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## **List of Acronyms**

AESM All Ethiopian Socialist Movement

ALF Afar Liberation Front

ANDM Amhara Nation Democratic Movement

ATV Amhara Television

BPASC Budget and Public Finance Affairs Standing Committee

CDC Constitutional Drafting Commission

CIC Constitutional Interpretation Council

CSA Central Statistical Agency

COEDF Coalition of Ethiopian Democratic Forces

CSCE Conference on Security and Co-operation in Europe

ELF Eritrean Liberation Front

EPLF Eritrean People's Liberation Front

EORM Ethiopian Officers' Revolutionary Movement

EPDM Ethiopian Peoples' Democratic Movement

EPRDF Ethiopian Peoples' Revolutionary Democratic Front

EPRP Ethiopian People's Revolutionary Party

FDRE Federal Democratic Republic of Ethiopia

FPTP First-Past-the-Post

HoF House of Federation

HoPR House of Peoples' Representatives

HSIU Haile Slassie I University

ICCPR International Convention on Civil and Political Rights

ICESCR International Convention on Economic, Social and Cultural Rights

ILO International Labour Organization

LASC Legal and Administrative Affairs Standing Committee

NRD National Revolutionary Democracy

OLF Oromo Liberation Front

OSCE Organization for Security and Cooperation of European States

PCIJ Permanent Court of International Justice

PDRE Peoples' Democratic Republic of Ethiopia

PMAC Provisional Military Administration Council

SALF Somali Abo Liberation Front

SCCIRA Standing Committee for Constitutional Interpretation and Regional Affairs

SLSP Strategic Leadership Support Provider

TGE Transitional Government of Ethiopia

TPLF Tigray People's Liberation Front

UDHR United Nations Declaration on Human Rights

UN United Nations

UNESCO United Nations Education, Science and Cultural Organization

WPE Workers Party of Ethiopia

## **Glossary of Local Terms**

Afan Oromo – The language of Oromo people/Working language of the State of Oromia.

Awraja- The Amharic name of a province between 1942-1946 and of sub province between 1946-1992 i.e. until proclamation No. 7/1992 came to effect.

Balabbat- Traditional local administrators of Ethiopia who served under centrally appointed provincial and Awraja administrators.

Chaffee – The name of Oromia National Regional State Council in Afan Oromo

Derg- The military junta (Committee) which ruled Ethiopia from 1974 to 1991.

Gada- A socio-political system of the Oromo people which consisted of ‘age grade classes that succeed each other every eight years in assuming political, social, cultural and to a certain extent religious responsibilities.

Kebele - The smallest legally recognized local unit first created by the Derg regime and still now continued with some modifications under all regional states of Ethiopia as a lowest local administrative unit.

Meison -The Amharic acronym of the ‘All Ethiopian Socialist Movement’.

Niguse-Negest- The literal translation of the term ‘king of kings’. This was the title of Ethiopian Emperor holding the central throne.

Shengo – A local, provincial, or national people’s representatives legislative council during the Derg regime including areas liberated and administered by TPLF/EPDM.

Special Wereda - A local unit which is equivalent to a regular Wereda (district) in terms of population and territorial size, but organised based on territorially concentrated ethnic groups having their own special political power than regular Wereda administration.

Wereda- The basic local government unit since the imperial regime and currently situated under regional states of Ethiopia which is equivalent to a district

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# **CHAPTER ONE**

## **Introduction**

### **1.1. Background**

Since the beginning of the second half of the 20th century, managing the challenges of minorities in general and the fundamental questions of ethno national minority groups in particular have become one of the most pressing issues, especially in countries which have diverse societies. Recently, many scholars suggested that the question of minority rights should get political accommodation and also be given legal as well as institutional protection and thereby maintain sustainable and durable peace including national integrity of a nation.

According to scholars, recognition and guaranteeing the protection of the rights of ethno national minorities is not only an important instrument to avoid unnecessary conflicts that negatively affect the smooth relationship between and among ethno national groups of a given country but also contributes to strengthen national integrity and thereby unity of the people of a country by accommodating diverse interests of ethno national groups of the same.

Considering the aforementioned principles efforts to politically recognize and legally protect the basic rights of ethno national minorities in some multiethnic and multicultural societies has been made and could be also taken as experiences of mixed stories of either positive or negative consequences in many respects. Thus, along with the trends under the international level, especially through different international human rights instruments, several countries have devised special political and legal schemes in responding issues of ethno national minorities.

In this regard, some multi-ethnic federations such as Canada, Belgium and Spain have tried to manage this critical and sensitive political issue by giving not only legal but also practical responses for the political questions of ethnic groups. In fact, Canada was the first of the aforementioned three federations to adopt an official policy of multiculturalism in 1971 so as to treat ethnic minorities of the country. Thus after the 1965 Report of the Royal Commission on Bilingualism and Biculturalism that recommended the replacement of the bicultural policy,

based on the long-established British and French Charter groups, which had operated for over a century, the policy effectively treated the minorities issues. Therefore, in today's Canadian politics, the prime question of the country is how Quebec's region ethno-nationalist aspirations may be accommodated? However, the responses to the prime questions of ethno national minorities vary significantly from federation to federation depending on particular contexts distinct to them which should take account of historical, political, social or economic factors.

Because of this, the scope of the protection of minority rights largely remained in terms of asserting the right to equality and prohibition of discrimination as the mainstream concern of human rights based approaches of the international community. It is also quite significant to note the disparity one finds not only among those who pursue the 'nation-state' principles but also between those who accept diversity seriously as an important value. Nevertheless, the latter were trying to recognize the serious challenges of multiculturalism and positively respond to the questions of ethno national minorities.

In this regard many states in the developing world, such as Spain, Ethiopia, Iraq, Nigeria, and the Sudan to mention some, have adopted federal solutions to manage ethnic base conflicts, often as part of a broader package of post-conflict constitutional reforms. In these federations, internal boundaries are drawn to ensure that territorially concentrated ethno national minorities constitute regional majorities.<sup>1</sup> Ethiopia as a multiethnic country with more than 80 nations, nationalities and peoples<sup>2</sup> having their own languages, cultures, and ways of life, psychological makeup as well as identity markers has adopted federal political system that tries to accommodate the diverse interests of such ethno national groups.

The Ethiopian case is, however, so different from the experiences of the aforesaid developed and developing nations. Because ethnic groups of Ethiopia have gone through a protracted civil war to end such highly centrist and repressive regimes that not only failed to address ethnic, cultural and religious diversity of the peoples of Ethiopia but also resulted in national

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<sup>1</sup>Sujit Choudhry and Nathan Hume, 'Federalism, devolution and secession: from classical to post-conflict federalism' (2011) *Comparative Constitutional Law*(Edward Elgar Publishing) 356

<sup>2</sup>In this dissertation "nation, nationality or people" mean according to Article 39 (5) of the Ethiopian constitution of 1995 a group of people who have or share a large measure of a common culture or similar customs, natural intelligibility of language, belief, in a common or related identities, a common psychological make-up, and who inhabit an indentifiable, predominantly contiguous territory.

oppression in the country unlike those federal countries mentioned above. Following this legal framework of the country, almost all<sup>3</sup> regional states of federal Ethiopia have adopted their own constitutions recognizing and guaranteeing the protection of the rights of ethno national minorities living in their respective administrative territories. Due to this reason adopting the fundamental principles of democratic governance, self-determination, equitable representation as well as political participation including preserving one's own identity and developing the culture and history of every nation, nationality and people have been the most important social norms and strong deriving forces in the new federal political system of the country.

Because of this the aforesated fundamental principles have been incorporated in the Transitional Period Charter of 1991 and proclamation No. 7/1992 respectively and later they become the salient features of the 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE). The FDRE Constitution has also fully and unequivocally accepted the importance recognition of diversities in general and accommodation ethno national minorities in particular for the perpetuation of national unity at the center and peaceful coexistence and cooperation among different ethno national groups within the regional states of Ethiopia.

Beyond accommodation of such ethno national and cultural diversity, ethno national communities of federal Ethiopia are also given sovereign power within their own administrative territory and have become the units of the federation considering the constitution as a pact and covenant among themselves.<sup>4</sup> The FDRE Constitution of 1995 therefore clearly stipulates that every nation, nationality and people of Ethiopia have unconditional right to self-determination, including and up to secession<sup>5</sup> although as clearly mentioned above many regional state constitutions put certain restrictive conditions to exercise the right to secede<sup>6</sup> on the other hand, the Oromia and Somali national regional states revised constitutions did not entirely consider such provisions, ignoring the right to cede. At

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<sup>3</sup>The first constitution of Oromia region was adopted in 1993 before the FDRE constitution came into effect and the preamble and Article 2 of the 2001 Revised Constitution of Oromia does not recognize even the mere existence of ethno national minorities living in the region including the indigenous people of Zay found in Oromia region.

<sup>4</sup>For further understanding see the preamble and Article 8 of FDRE Constitution of 1995.

<sup>5</sup>Ibid, Article 39 (1).

<sup>6</sup>For instance according to Article 39 (4) of the revised constitutions of both Amhara and Tigray where it is of the opinion that the rights mentioned under sub-articles 1-3 of this Article hereof have been suspended, abrogated or abridged and hence could no longer be rectified under the circumstances, while in unity, it shall exercise its right of self-determination up to secession in accordance with the provisions of Article 39 of the constitution of Federal Democratic Republic of Ethiopia. This restrictive condition was directly taken from Transitional Charter of 1991.



the same time, the federal constitution further strengthens the right to self-government and representation of nations, nationalities and peoples of Ethiopia by stating that “every nation, nationality and people in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in the state and federal governments respectively.”<sup>7</sup>

Extending this general trend of constitutional guarantee, legal and political recognition, as noted above except Oromia and Ethiopian Somali national regional states, other regional state governments acknowledge at least the very existence of nations, nationalities and peoples of Ethiopia residing in their regional states as well as officially recognize the fundamental principles guaranteed by FDRE constitution of 1995 in their respective revised regional state constitutions in the same fashion although article 39(4) of most regional state constitutions come up their own conditions to allow secession which contradicts with the FDRE constitution.

This legal and political situation can also be regarded as an important step to the protection of ethno-national minorities living in their respective regional state administrative territories, although as pointed out in the above some regional state revised constitutions have not properly recognized and guaranteed even the mere existence of ethno national minorities in their respective national regional states.<sup>8</sup> In this regard, South Nations Nationalities and Peoples national regional state<sup>9</sup>, and, to a certain extent, the Amhara national regional state<sup>10</sup> have attempted to legally recognize as well as politically protect the basic rights of ethno national minorities and accommodate same living in their respective administrative territories.

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<sup>7</sup>Article 39 (3) of FDRE Constitution.

<sup>8</sup>In addition to Oromia Region constitution Art. 39 of the Revised Constitution of Tigray Region clearly stipulates that ‘the unconditional right of the Tigray nation, Irop and Kunama nationalities to self-determination including and up to secession is in any way guaranteed and protected without any form of restriction’ excluding other nation-nationalities and peoples such as Amharas, Rayan Oromos, Agews and Afars living in the same region. Whereas Article 39 of the Amhara region constitution allows unconditional right of the peoples of the Amhara national regional state.

<sup>9</sup> Although it focuses on the indigenous ethnic groups of the region, the regional state constitution gives some space to the non-indigenous ethno-national groups living in the region.

<sup>10</sup>Although the 2001 revised constitution of the Amahara national regional state tries to accommodate all nation-nationalities and peoples living in the region, until recent times the claim of Kemant community has been denied by both the executive and legislative bodies of the region.

This is primarily because Ethiopia was able to adopt an inclusive legal framework and political policy towards ethno national minorities and even this inclusive principle is adopted to comply with international laws dealing with the civil, political and human rights regime in general and the rights of ethno national minorities in particular. But recently there are serious legal and political challenges related to the rights of ethno national minorities here and there that clearly show the ignorance of the incumbent party and government officials of both federal and regional states.

The researcher's objective in this study is therefore to address the neglected legal and political rights of ethno national minorities of the country and practically test such assumptions, by exploring the legal frameworks of both federal and certain regional states as well as the actual implementation of the Ethiopian federal political system. In particular, it was important to address the current Ethiopian federal political situation according to the principles of the federal constitution and the legal frameworks of the national regional states under discussion.

In other words, it is a high time to investigate the revised constitutions of such selected national regional states under discussion and how these constitutional principles and other relevant sub constitutional laws dealing with the right of self-government and equitable representation of ethno national minorities are implemented. Thus, the main objective of this dissertation is examining the federal system of Ethiopia in general and the Amhara and Oromia national regional states legal frameworks and political policies towards the accommodation of ethno national minorities as well as the implementation mechanisms of their governments in particular in relation to responses to the rights of existence, equitable representation and self-government.

In fact the rights of existence, equitable representation and self-government are considered as some among the fundamental rights of human beings in general and ethno national minorities in particular. It also includes political and administrative powers and liberties that allow members of such ethno national minorities in order to exercise their culture and substantial parts of their day to day lives within its framework.<sup>11</sup> It should also be noted here that any kind of federal political system having diverse society could not achieve its ultimate goal

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<sup>11</sup>Chaim Gans, *The limits of Nationalism* (Cambridge University Press 2003) 84.

without legally guaranteeing and politically recognizing the very existence of such diverse society. It also expected to practically protect the fundamental rights of ethno national minorities of a given country and allow ethnic groups to rule themselves. In the same token, in the contemporary world, equitable representation and active political participation of minorities in general and ethno national minority groups in particular at central, regional and sub state legislative and executive bodies is one way of the manifestation of democratic governance.

Therefore, examining and critically evaluating this ethno national minority groups legal and political situation in the present day Ethiopian federal political system in general and in the national regional states under discussion in particular is a timely and crucial issue in order to identify the strengths and weaknesses of not only the federal government practical application of the laws but also those national regional states under consideration.

**Map: 1 Political and Administrative Map of Ethiopia which indicates all regional states**



Source: <http://www.mapsofworld.com/ethiopia/ethiopia-political-map.html>, accessed on 23/02/2017

## 1.2. Statement of the Problem

Ethiopia has gone through series of hurdles to build system of democratic governance and install accommodative political culture through applying the principles of federalism despite the establishment of its age-long civilization, rich natural resources and social cohesion among the population of the country. Of the struggles made to ensure fundamental rights and freedoms of nations, nationalities and peoples of Ethiopia as well as equal existence and active political participation of same is the one which significantly contributes to overthrow not only the longstanding established feudal system of the country but also the seventeen years military regime.

Immediately after the downfall of the Derg regime at the end of May 1991 Ethiopian Peoples Revolutionary Democratic Front (EPRDF)<sup>12</sup> led government initiates to convene peace and democracy conference in Addis Ababa, the capital city of Ethiopia since Menilk II and drafting a charter to establish transitional government. After the successful completion of such peace and democracy conference by adopting the draft of transitional period charter, the transitional government introduced predominantly multi-nation/multi-cultural system of governance to the Ethiopian polity and later in 1995 it becomes fulfilled federal political system through adopting not only federal but also democratic and republican type of constitutional arrangement.<sup>13</sup>

Following the legal recognition of such fundamental rights and freedoms of nations, nationalities and peoples of Ethiopia in the transitional period charter and later in the FDRE Constitution of 1995, the implementation mechanisms and practical approaches of such political and administrative power exercise create another types of political and administrative picture in the country in general and in the territories of in almost all regional states of Ethiopia in particular. In this regard to mention some the Kemant movement of identity recognition and the right to

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<sup>12</sup>It is mainly a coalition of ethnic based liberation political parties that consists of Tigray People's Liberation Front (TPLF), Ethiopian Peoples' Democratic Movement (EPDM now Amhara National Democratic Movement (ANDM)), Oromo People Democratic Organization (OPDO) and South Ethiopian Peoples Democratic Movement (SPDM).

<sup>13</sup>Article 1 of FDRE constitution of 1995 stipulates that this constitution establishes a Federal and Democratic State structure. Accordingly, the Ethiopian state shall be known as *The Federal Democratic Republic of Ethiopia*.

self-government in Amhara and the Zay question of recognition as a distinct identity and the right to self-rule in Oromia national regional states are the results of this new political situation of the country. However, until this critical time of the country such new and very sensitive political situation and administrative failure of the incumbent is not properly understood or handled by political leaders of the governing party and officials of federal government institutions including national regional states of the country. Such different politico-legal picture and administrative arrangement of the country caused mainly the emergence of new ethno national minority groups in each and every regional states of Ethiopia and it is a serious socio-economic problem as well as it also can be considered as a critical political challenge necessitating a further investigation based on legal scrutiny and empirical data analysis.

In other words, the question of such new ethno-national minority rights is not as such firstly viewed as a serious social and political problem and legally neglected issue with regard to the current Ethiopian federal political system. Since these new ethno-national minorities have already in one or another way strongly tied with majority populations of their respective regional states and their right not only to live and work in those regional states but also administer themselves and engage as well as equally participate in their respective regional state polity through inclusive scheme of direct participation and their representatives is legally guaranteed by federal constitution of 1995.

However, apart from the existing political problems of the country, in reality there are also serious legal gaps, political and administrative problems as well as practical obstacles in recognizing and accommodating such ethno national minorities living in the respective national regional states under discussion. In this regard, as far as the researcher's knowledge is concerned there is no comprehensive study conducted regarding in the national regional states under discussion which properly addresses the important causes and effects of the denial and unfriendly approach of the officials of the incumbent parties of both Amhara and Oromia national regional states.

Concerning this legal gap and political situation of the country and the current ethno national minority issues of federal Ethiopia Assefa Fiseha strongly stipulated as “the existence of shared

history, people of mixed background as well as the need for enhancing greater mobility of labor and capital are crucial factors that need greater institutional protection. They are important factors that tie the nationalities together in their attempt to forge a common federal union and shared political vision.”<sup>14</sup> Nevertheless, the existing political and social reality is not only in those national regional states under discussion but also in other regional states of Ethiopia do not comply with the aforementioned reality of the country and clearly show such longstanding and visible historical and cultural relationships and that constitutional guarantee accorded to every nation, nationality and people in Ethiopia although there are some different treatments applicable between them.

In other words, political and social developments in the present-day Ethiopia also raise important questions about the existence, role and political representation of ethnicity in the political history, administrative arrangement and culture of Ethiopia at this juncture.<sup>15</sup> Therefore, this dissertation intends to critically investigate the aforementioned legal and political gap and identify the main challenges of the country in general and the national regional states under discussion in particular.

### **1.3 Research Question**

This dissertation basically deals with several interrelated issues of ethno national minority rights but focusing on the right to existence, self-government and equitable representation of ethno national minorities in federal Ethiopia in general and in those purposefully selected national regional states under discussion in particular. Therefore, the dissertation has identified the following main research question and developed some related issues to be answered throughout the study.

- ❖ How does the legal framework of the federal government of Ethiopia address the fundamental rights of ethno national minorities related to existence, representation and self-government and how have the national regional states’ under discussion implemented them?

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<sup>14</sup>Assefa Fiseha, *Federalism and Accommodation of Diversities in Ethiopia: A Comparative Study*(rev edn, Artistic Printing Enterprise 2007) 255

<sup>15</sup>Jon Abbink, ‘Ethnicity and Constitutionalism in Contemporary Ethiopia’ (1997) 41*Journal of African Law* (1997) 159, 160.

For the purpose of elaborating and further discussing the aforementioned main research question of this dissertation, the researcher has also identified and formulated some additional specific research questions. In other words, to substantiate and properly address the main research question of this dissertation and smoothly run the research project certain interrelated issues of ethno national minority questions must be developed and thoroughly investigated in order to find out the existing political and legal problems in relation to the rights of existence, equitable representation and self-government of ethno national minorities living in the national regional states under discussion.

- ❖ What rights do ethno national minorities have under International Human Rights Law and in certain Multiethnic Federations? And what rights do federal constitutions provide to ethno national minorities at sub national level? And what concrete lessons should be drawn to the Ethiopian federal political system from the selected federal countries’?
- ❖ Is there any significant difference between FDRE constitution of 1995 and national regional state revised constitutions in addressing the questions of the rights of ethno national minorities in relation to the right to existence, equitable representation and self-government?
- ❖ In related terms is there any differential treatment between Amhara and Oromia national regional states legal frameworks, political philosophy and practical responses in properly addressing the fundamental questions of the rights of existence, equitable representation and self-government of ethno national minorities living in their administrative territories?

#### **1.4. Objective of the Study**

The main objective of this research project is to investigate the legal frameworks and practical responses of both federal and national regional states under discussion granting the rights of existence, representation and self-government of ethno national minorities. Thus, the extent of legal and practical responses accorded to ethno national minorities in relation to the right to existence, representation and self-rule in the executive and legislative organs have thoroughly investigated based on the general standards of human rights set in the international and continental legal regimes as well as Ethiopian constitutional framework of 1995. Moreover, this dissertation contains the following additional specific objectives:

- To provide a brief and clear picture about constitutional frameworks, political philosophy and practical applications of national regional state governments under discussion in relation to the rights of existence, equitable representation and self-government of ethno national minorities.
- To identify the existing practical challenges as well as critically analyze the importance of such constitutional and practical responses premised to the fundamental rights of ethno national minorities.
- To make a comparative analysis between federal and national regional state revised constitutions as well as between the two national regional state legal frameworks and practical applications under discussion in relation to the rights of existence, equitable representation and self-government of ethno national minorities.
- To identify concrete lessons that would be helpful to national and regional state governments of Ethiopia from other federal country's legal and practical responses accorded to the rights of representation and self-government of ethno national minorities,
- To draw strong conclusions and forward relevant solutions in the form of recommendations for such legal and political gaps as well as practical challenges and problems that would be identified by the study.

### **1.5. Significance of the Study**

It is more or less a recent developing phenomenon that not only in our country but also in international community that giving proper attention to ethno national minority rights recognizing as part of fundamental rights of the people. As Ethiopia is a multination/multicultural state, most of its constituent units share the aforementioned socio-political reality. Hence giving constitutional guarantee as well as legal responses to the rights of equitable representation and self-government of ethnic minorities is the first and the most essential step to create confidence and harmony on these nations, nationalities and peoples of Ethiopia at national regional state level.

In other words, in order to establish sustainable socio-economic development and stable politico-legal systems including maintenance of sustainable peace and order as well as accommodative system of governance in the country, the rights of minorities in general and



ethno national minorities in particular should be recognized, respected and protected by legal means as well as strong political willingness of not only federal but also regional and sub-regional governments. After assessing and seriously evaluating the constitutions and sub constitutional laws of the country and other relevant legislations of national regional states and their practical applications as a governing body, the researcher developing the dissertation using different empirical data will draw it as a relevant reference material for policy makers, researchers and practitioners. According to the strong belief of the researcher, the result of this study will have the following significant contributions.

- Provide empirical data about legal frameworks of Amhara and Oromia national regional states in relation to the rights of existence, recognition, equitable representation and self-government of ethno national minorities and practical responses accorded to them.
- Uncover the perception of federal government officials including regional and sub-regional state politicians towards the rights of existence, representation and self-government of ethno national minorities living in the national regional states under consideration.
- Redraw important lessons from the result of comparative analysis that will show the significant contributions of legal and practical responses accorded to the rights of existence, representation and self-government of ethno national minorities.
- The dissertation will be also a useful reference material not only for academia but also for policy and decision makers of both federal and national regional state governments in order to reconsider the questions of ethno national minorities.
- Give some important insights to future researchers about the legal and practical responses to the rights of existence, representation and self-government of ethno national minorities and thereby stimulates them for further investigation in the area under discussion.
- Provide some important and relevant recommendations having significant contributions in developing suitable legal frameworks, political policies and strategies in order to accommodate such ethno national minorities not only to federal and national regional states under discussion but also for other regional states of the country at large.

## **1.6. Limitations of the Study**

It is inevitable that conducting a successful research work particularly based on empirical data is not an easy task. For one reason, from the researcher's side, it mainly demands strong interest and real commitment towards the topic, and for the other, availability of sufficient reference materials and willingness of respondents to provide empirical data. Hence identifying such limitations and provide possible solutions accordingly helps the researcher to minimize their impact on the result of the research's process. Considering the aforementioned fundamental principles of a research and the expected practical challenges, the researcher reaffirms his interest and develops strong commitment to explore and examine legal and political responses accorded to the rights of ethno national minorities in relation to existence, equitable representation and self-government of ethno national minorities in federal Ethiopia.

Although some of the challenges that the researcher encountered are beyond his capacity to control and tackle them, unfortunately since there were serious political unrests in both national regional states under discussion considered for this particular study, the interview was conducted and necessary documents were collected, and he also worked to his level best to make the negative influences minimal on the final research work. In other word, the researcher has faced certain political and administrative challenges which might, to a certain extent, have their own negative impact on the development and consolidation of this dissertation.

## **1.7. Scope of the Study**

The extent to which fundamental rights accorded to minorities in general and ethno national minority groups in particular under the constitutions of Federal Democratic Republic of Ethiopia and almost all regional states is apparent and can be regarded as innovative action to address the longstanding questions of ethno national minorities. As we can read from Article 39 of the Ethiopian federal constitution of 1995 and international covenant on civil and political rights of 1966 ethno national minorities are allowed to determine their political fate by using the rights of self-determination.

This constitutional recognition not only extends the extent to secession but also it allows to govern their political, social and economic interests as well as expand and develop their own historical and cultural values. However, the claims of such ethno national minorities living in the national regional states of Ethiopia in the study include many things that are important to respect and protect their fundamental rights and addressing all related issues in one specific research project is so difficult. In other words, as I have tried to clearly mentioned in the background and statement of the problem of this dissertation, the scope of this research project is limited in examining the existing legal and political frameworks and practical applications of Amhara and Oromia national regional states in relation to the rights of existence, equitable representation and, self-government of ethno national minorities living in their respective national regional states. Besides, ethno national minority rights include a set of fundamental rights reserved to only a minority group.

This dissertation, however, does not deal with each types of these fundamental rights. As mentioned above it rather thoroughly discusses only the three fundamental rights of territorially grouped ethno national minorities namely, the right to existence, equitable representation and self-government. Basically it covers the issue of territorially grouped ethno national minorities at all levels of legislative and executive branches of both federal and regional states using some selective case studies. It does not, however, mean that other non-territorial minority rights will not be considered; they will be discussed if necessarily found to be invaluable to elaborate the aforestated fundamental rights.

Therefore, the study mainly spot lights on the period starting from 1991 that many of ethno national minorities of Ethiopia began forming their own political parties and actively involving in the politics of the country to strengthen their long standing struggle and debate on the importance of the right to existence, representation and self-government at all levels of government institutions of the country. Thus, in this study the researcher mainly dealt with the salient features of Ethiopian federal political system in relation to responses to the rights of ethno national minorities particularly concerning the rights of existence, representation and self-government of ethno national minorities at federal, regional and sub-regional state levels.

In other words, the study focuses on the period starting from 1991 that many of ethno national minorities of Ethiopia began forming their own interest group to strengthen their political struggle so as to secure their distinct identity and debating on the importance of the right to separate existence, representation and self-rule at all levels of government institutions although it sheds some light on the past regimes political philosophy, legal frameworks and practical responses accorded to ethnonational minorities of the country.

## **1.8 Research Methodology and Data Source**

The researcher planned to use the following research methods and methodology in order to examine and evaluate the issues raised in the study area. This research project primarily employs legal research method and it also consists mainly of a qualitative research approach. For the purpose of analyzing the collected data both doctrinal and non-doctrinal research methods are used. Methodologically the analysis of this research project also involves comparative discussion of some selected federations from different parts of the world and between the targeted national regional states of Ethiopia in this study.

Further the researcher tries to explain similarities and differences in relation to responses to the right to existence, equitable representation and self-government of ethno national minorities living in the regional states under discussion and then identifies lessons to the federal political system of Ethiopia. Moreover, considering the nature of doctrinal research methodology laws and policies of the incumbent government are critically analyzed. As a result, in this research project both primary and secondary data sources are used as an important research method.

In addition to laws and relevant documents of the country including those national regional states in this study, the primary data were also collected mainly through conducting interviews and personal observations. In the interview process more than 60 government officials, both from federal and national regional state legislative and executive organs, legal experts of the same and representatives of the concerned communities having sufficient information and knowledge about the same were involved.

The interviewees were selected using purposive sampling techniques for the reason that some personalities having sufficient information and knowledge about the issue at hand considering their current political, legal and social role in their respective federal, regional state and sub state governments as well as ethno national communities. In the interview, the researcher communicated with the concerned, more willing informants in order to make the process fruitful and to obtain genuine and relevant data from those potential respondents. In addition, individuals who were more appropriate for interview in this study were also selected based on their information and knowledge they have about the issue at hand and administrative and political position they possess in the recent past and the present situation. Accordingly higher officials of federal government, chief administrators of regional states, House Speakers and members of the regional councils as well as chair persons of standing committees of the House of Federation, regional and sub-regional councils have been taken as the most potential candidates to be part of the interviewees. Moreover, legal experts of both national regional states who were active participants and had significant role in drafting and adopting process of such selected regional state constitutions were part of the interview.

Besides, some representatives of the concerned communities having sufficient information, knowledge and experience about the regional and sub-regional state polity were also included during the interview process. Because of this, it was so difficult to access these personalities, particularly higher officials of both regional state governments. Because of this some of the potential respondents were not included in the interview. The interviews were made mainly starting from 1<sup>st</sup> June 2015 to 30 October 2016 which means the interviews were conducted from June 2015 to December 2015 in Amhara region as well as from January 2016 to October 2016 in Addis Ababa at federal government institutions and Oromia national regional state respectively.

During this time, the researcher was able to interview some of the selected respondents twice and also had a chance to meet a very important respondents. Because of this, the writer of this dissertation was in Bahir Dar in June 2015 when the Amhara region council convenes its regular session and adopting proclamation No. 229/2015 to establish Kemant Special Wereda. As the same time the researcher had a chance to interview the speaker, deputy speaker and

chair persons of legal and administrative as well as Government Budget and Finance affairs standing committee of Amhara region council.

The researcher also interviewed representatives of Agews, Oromos, Kimants and Argobas while they were attending the regular assembly of Amhara region council. In the discussion of the proposed proclamation that intends to establish Kemant Special Wereda the representatives of Kemant community clearly raised their frustration and strongly claimed that the community's question is legitimate and timely issue so that there should be permitted to initiate nationality administrations for Kemant community consisting of more than a *Wereda* although the regional council did not consider such proposal. According to my interviews, ethno national minorities were divided on the issue of whether the incumbent party and its government officials of the region would genuinely engage in recognizing and protecting ethno national minorities. Therefore, when the researcher returned to Bahir Dar in September 2015, it was a good opportunity to discuss policies which the new government had introduced towards ethno national minorities in general and the Kemant community in particular.

It was also proved valuable interviewing some people twice because they were able to analyze their experience of how the new government had dealt with such ethno national minority issues. As already pointed out in separate section, the intelligentsia has also played a major role in forging national identity of the Kemant and Zay communities. This factor had a vital influence on my decision to include certain intelligentsia in my sample. In targeting one strata in the population, the researcher therefore opted for a non-probability sample. Since 'the statistical accuracy of probability sampling is less important than the criterion of "fit for purpose."

Among these samples as the researcher has mentioned elsewhere he used purposive sampling as it is used in a situation where a selection of people who are to be interviewed is made according to a known characteristic. In this study it enabled the researcher to target specific social and political groups who were basically policy and decision makers, policy-implementers, practitioners and representatives of the concerned ethno national communities. The researcher went to Bahir Dar and Gonder in Amhara national regional state as well as Adama, Meki and Ziway towns in Oromia regional state for the minimal pre-existing contacts,

he also had to rely on the purposive sampling method as a means of meeting people to interview them and discuss with relevant persons about the issue at hand.

Hence purposive sampling method helped the researcher to meet more of the people who belonged not only to selected legislatures and both policy makers as well as policy implementers but also to the relevant intelligentsia who are aware of the existing legal and political situations of the country in general and those regional states under discussion in particular. He also attempted primarily to interview people who influenced and shaped policies on the recognition and protection of ethno national minorities, which involved interviewing a wide range of people; as clearly indicated in the tabular expression that is annexed at the end of this dissertation, starting from prominent persons of the communities and advocates to politicians both in government and opposition. The main problem with a purposive sampling is that it targets a very specific group of people whose views may not be inclusive of all community members and representative of the concerned population. However, this sample is usually defended with the ‘fit for purpose’ argument.

The researcher purposely visited twice the majority of them and talked to those members who were willing either to express their opinion or discuss on the issues concerning their ethno national groups. The researcher also attempted to meet members of ethnonational minorities through their various organizations especially the committees organized to pursue their identity claim. Besides the researcher interviewed the Members of Regional state legislative Councils belonging to ethno national minority groups as well as politicians who were engaged in minority issues, and chairpersons or active members of different standing committees.

Furthermore, the researcher interviewed two people who were in charge of the Parliamentary Committee which dealt with the issue of Kemant community in 2015. Being in the regional Parliament in the following days after the May 2015 election, the researcher talked to but did not always interview many Members of Regional Councils to get their views on ethno national minorities’ issues. Officials of the governing parties also proved a valuable source of information and opinion not only about ethno national minorities, but also about the history of the opposition movement in Amhara and Oromia regional states.

It was also important to interview people who played a vital role in the period 1992 to 2007 but who had withdrawn from the public scene as for example the former chair person of Kemant's identity recognition committee as well as advocate and legal advisor of them. They were Kemant origins and the majority of them did not withdraw exclusively eventhough the mistreatment of such ethno national minorities was tough and difficult to sholder.

At the University of Gondar the researcher met lawyers and historians who were not only a valuable sources of information but also found time to discuss related issues which were on the researcher's agenda. Although the researcher targeted the intelligentsia (Amhara, Kemants, Oromo and Zay ethno national minorities) the researcher was ready to discuss to anyone who was prepared to talk to him. The researcher wanted to hear as many different opinions as possible. They were not always different but they were important in getting to know the atmosphere in which ethno national minorities lived, which issues they raised and those they did not and why. The times of interviews varied in length from 45 minutes to two hours. They also took place in different places, from offices of the interviewees to cafes and restaurants that are switable to talk. All of the interviews were made with permission of the interviewees, who clearly knew the researcher' agenda and his purpose.

The researcher's interviews were also organized around semi-structured questions. With this in mind, the researcher's questions were quite generally structured purposive, so he could respond to issues raised by the respondents. Qualitative information about the topic can then be recorded by the interviewer who can seek both clarification and elaborationon the answers given by the respondents. This situation enabled the interviewee to have more latitude to *probe* beyond the answers and thus enter into a rich dialogue with the interviewer.'

The main disadvantage of this type of interview is of course possible difficulties with standardization and comparability. However, the researcher would argue that this disadvantage does not apply to this field-work because clarification, elaboration and discussion helped the researcher to gather sufficient information, to formulate different points of view as well as 'to check them and re-check against each other's opinion'. Furthermore, the researcher was able to compare and contrast these raw data with research materials gathered



by other legal experts and historians. Because of this, the researcher has learned a lot from his respondents and the information they gave him shaped interviews with other respondents.

In some situations, the researcher could create a platform in which two individuals, who were not always willing to discuss to each other, 'communicated' quite happily or angrily. On top of that the researcher followed up radio and television programmes in the country including the Amhara Mass Media Agency and other media outlets. Finally, the researcher kept a diary for the purpose of recalling enormous important issues so as to strengthen his assertion once he initiated writing the dissertation.

In fact it helped the researcher to recall certain events and conversations as well as first impressions of the researcher about them. In addition to this, personal observation by the researcher himself has been employed to make sure that whether the information provided by respondents is correct. Generally the researcher's work began with the hypothesis that the fundamental rights and freedoms of ethno national minorities in Ethiopia are the litmus test of the country's political and legal orientation towards treatment of such ethno national minority rights.

Therefore, it was crucial to examine and thoroughly investigate the emergence of new ethno national minorities in federal Ethiopia in general and in those national regional states in particular, and its approach is mainly focusing on and towards the rights of ethno national minorities living in regional states of the country considered in this study. However, until now the questions of new ethno national minorities' rights is not as such viewed as a serious problem to the country with regard to Ethiopian federal political system. That is why recently, especially in the past two-three years, it becomes stronger than the previous times.

This is primarily because some assume that Ethiopia was able to adopt an inclusive legal framework and political policy towards ethno national minorities and this adopted inclusive legal principle is seen as complying with even international human rights laws dealing with the civil, political and human rights. The ultimate aim of the researcher in investigating these national regional states is therefore to find out the neglect political part of the country and thereby test such general assumption, by exploring how the legal and political situation in Ethiopia actually is.

In particular, the researcher felt that it was important not only to judge the Ethiopian political situation according to the principles of not only the federal constitution of 1995 and the legal frameworks of these national regional states but also to investigate how such constitutional principles, other sub constitutional laws and practical implementation mechanisms of governments dealing with. Particularly how the right to existence, self-government and equitable representation of ethno national minorities were framed and implemented as well as how both the rulers of the majority and the ethno national minorities themselves responded to them. In conclusion to test and realize the hypothesis of the researcher secondary data were also collected from different sources, such as Books, Journal Articles, Book Chapters and other relevant publications. Documents that are relevant to the issue at hand such as laws (national, regional and international) and formal reports of the government institutions of both federal and regional states covered by the study and other institutions were also conducted.

Therefore, the researcher strongly believes that reasonable amount of possible literature was reviewed to establish theoretical and conceptual frameworks of the study and draw strong conclusion. Last but not least it is important to note that the researcher took objectivity and neutrality as an important instrument of not only data collection process but also analysis of the same.

## **1.9 Organization of the Dissertation**

This dissertation intended to explore the ways in which the constitution, other subsidiary laws and practical responses of Ethiopian federal government including Amhara and Oromia national regional states legal frameworks towards addressing the questions of the rights of ethno national minorities in the Ethiopian legal and political system, past and present. Hence the dissertation is arranged in the above sequences and divided into ten chapters; each chapter has its own various sections and sub sections.

As forwarded above, the first chapter mainly dealt with the introductory part of the dissertation, which included background of the thesis, statement of the problem, objective of the study, significance of the dissertation, limitation, scope and methodology of the study among others. Chapter two thoroughly discusses theoretical and conceptual frameworks of the

rights of minorities in general and ethno national minorities in particular, which are the most important precondition to lay the theoretical and conceptual foundation of this dissertation.

This part attempts to define the term minority including ethnic and national minorities, state justifications why the fundamental rights of minorities should be recognized and protected. Chapter three entertains the ethno national minority rights under international human rights law and identify certain substantive rights of minorities in general and ethno national minority groups in particular as well as discusses the principles laid down by continental and international human rights instruments related to minority issues. Chapter four briefly discusses how federalism accommodates diversities in general and ethno national minorities in particular. In other words this chapter deals with the important contribution of federal political system to recognize, respect and protect the fundamental rights and freedoms of ethno national minorities. Chapter five examines some selected multi-ethnic federations' legal and practical responses accorded to ethno national minority groups that may have relevant experience to the Ethiopian multi-ethnic based federal political system.

Accordingly in this chapter mainly Nigeria from African nations, India from Asian states and Switzerland from European countries are purposefully selected and thoroughly discussed. Because of this, important lessons to Ethiopia were drawn. Chapter six thoroughly discusses the Ethiopian constitutional framework and its development process starting from 1931 to 1987 in relation to responses to the rights of self-government and representation of ethno national minorities in the country.

In addition to that chapter six introduces some important legal and practical situations of the previous Ethiopian political system and seriously investigates practical applications of their governments, particularly the Haile Selassie I regime and the Derg's socialist government conception of human rights in general and recognition and protection of the fundamental rights of ethno national minorities in particular. Chapter seven examines and uncovers the main objective of the transitional period charter of 1991, its positive contribution to the future Ethiopian federal political system and the current federal political system of the country.

On top of that it entertains the preparation process of FDRE constitution of 1995 and its implementation mechanisms. The chapter also investigates the establishment process of regional states and evaluates the degree to which the constitutions and practical responses accorded by regional state governments under discussion to the rights of ethno national minorities and practical treatments of the same.

Besides, this chapter deals with the constitutional and practical responses accorded to the rights of ethno national minorities in Ethiopia since the adoption of FDRE constitution in 1995 and an attempt tries to explore the ways how the FDRE constitution and other subsidiary laws of the federal government institutions accommodate the rights of the same. And chapter eight deals with the implications of political policies and practical applications of federal government pertaining to the rights of ethno national minorities in the country. Chapter eight thoroughly discusses about Amhara national regional state legal and practical responses to the rights of ethno national minorities living in it. Chapter nine discusses about legal and practical responses to the rights of ethno national minorities of Oromia national regional state to a certain extent in the same way but with different approach.

After independent discussion of each regional states legal frameworks and political responses accorded to the rights of ethno national minorities in chapter eight and chapter nine respectively chapter ten attempts to illustrate a short comparative analysis between the aforementioned national regional states. This chapter also comprises conclusion and recommendations of the dissertation.

Hence, concluding remarks of the dissertation also sheds lights on the applicability of FDRE constitution on regional state polity and clearly indicates the inconsistencies of such regional state constitutions with FDRE constitution and practical application of regional state governments under consideration in relation to responses to the rights of existence, equitable representation and self-government of ethnic groups living in their respective territory.

## CHAPTER TWO

### **Theoretical and Conceptual Framework on the Rights of Ethno national Minorities**

#### **2.1. Introduction**

This chapter mainly deals with the theoretical and conceptual framework of ethno national minorities focusing on the definition of the term minority in general and ethno national minority groups in particular. To answer whether the fundamental rights of ethno national minorities are recognized under International Human Rights Law, this chapter tries to define what the term minority is and illustrates the international human rights law regime in relation to recognition and protection of minorities. And it also covers the justification why the fundamental rights and freedoms of minorities become important in these days and the possible solutions with regard to the rights of minorities forwarded by different scholars.

Therefore, section two of this chapter discusses general remarks about the problem of minorities and the arguments whether there is a need to have a single universally acceptable definition of the term minority as well as its legal consequences. Section three deals with the general concept and definition of the term minority and followed by two sub sections which specifically discuss about the definitions and related concepts of ethnic and national minorities respectively by referring international covenants, declarations and continental human rights instruments relevant to this sub topic. Finally section four deals with the justifications why the rights of minorities are important and require recognition and legal protection.

#### **2.2. Historical Development of Minority Rights**

The challenges with minorities in general and ethno national minorities in particular was not regarded as the immediate concern of the United Nations considering that the issue of minorities was basically part of domestic matters of sovereign states.<sup>1</sup> And thus, within the United Nations, minority protection was subsumed as a facet of the general United Nations human rights protection regime based on the tenets of liberal individualism as well as the

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<sup>1</sup>Malcolm N. Shaw, 'The Definition of Minorities in International Law' in Yoram Dinstein and Mala Tabory (eds), *The Protection of Minorities and Human Rights* (Martinus Nijhoff 1992) 9

fundamental principle of equality.<sup>2</sup> Because of this, the rights of minorities have not obtained the will of the states at the international level for long period of time as well as this fact is said to have contributed to the exacerbation of internal and sometimes international conflicts among and between different ethno national groups. In fact in the aftermath of the First World War, there had been treaties between the Allied Powers and the vanquished states with regard to treatment and protection of the rights of minorities in European states.

Following its establishment, “the League of Nations also established a rather extensive and detailed system of minority protection, on the basis of peace treaties, minority treaties and unilateral declarations.”<sup>3</sup> Since then up to the Second World War, there was an international attempt to address the claims of minorities. Unfortunately, the end of the Second World War, which had heralded a new era for individual human rights, did not sustain the continuation of addressing minorities’ problems.

As a result, the Universal Declaration of Human Rights of 1948 did not contain any provision regarding the rights of minorities in general and the sufficient protection of ethno national minorities in particular, nor did the subsequent international human rights instruments, provide details with the exception of the Covenant on the Civil and Political Rights (ICCPR) of 1966. It is argued that “Granting minorities a right to defend their special identity and unique characteristics that distinguish them from other members of the human family is an important task for human rights”.<sup>4</sup>

Due to this reason, until around the last decade of the 20<sup>th</sup> century minorities concerns did not reemerge as an important item within the United Nations human right system. The reason why the lukewarmness is displayed towards the treatment of minorities and the protection schemes of them in part flowed from the dominant post war assumption that minority rights were neither necessary nor desirable.<sup>5</sup> However, the Committee on Human Rights later formed an informal working group in 1978 to consider a draft minority’s declaration within Article 27 of

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<sup>2</sup>Thio Li-ann, ‘Resurgent Nationalism and the Minorities Problem: the United Nations and Post Cold War Developments’ (2000) 4 *Singapore Journal of International Comparative Law* 300

<sup>3</sup>Kristin Henrad, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination*, (Martinus Nijhoff 2000) 219

<sup>4</sup> Patrick Thornberry, *International Law and the Rights of Minorities*, (Clarendon Press 1991) 141

<sup>5</sup> Ibid.

ICCPR framework of 1966. And this reality eventuated in the adoption of the Capotorti's report in 1979 though until now it is not regarded as a treaty document remains the most important and relatively comprehensive treatment of the minorities' problem within the framework of conventional obligation of state parties.<sup>6</sup>

Besides, under the auspices of the United Nations, the first move was made to formulate a definition of the term minority that could serve as a guide for the purpose of identifying minority groups who are entitled to recognition and legal protection.<sup>7</sup> Thus, there was a modest re-awakening of interest in minorities concerns within the United Nations after 1979 and following this incident in 1989 after ten years of continues debate Convention on the Rights of the Child was adopted by recognizing this special minority societal groups.

Since then there is an awareness developed towards minorities and this particular convention in its content clearly stipulates that in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.<sup>8</sup>

Moreover, in 1992, fourteen years after it was first proposed, the General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which is called "Minorities Declaration."<sup>9</sup> The minorities' declaration, although it is not considered as a treaty document and has no binding nature for state parties, it embodies the global minimum standards on the human rights of minorities showing at least the social and political commitment of state parties and it is also the first international human rights instrument of universal reach adopted specifically to ethno national minorities.<sup>10</sup> Thio Li-ann, on his part clearly states that international human rights law has long grappled with the intractable problem of minorities; hence according to him there is a need to protect

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<sup>6</sup> Ibid.

<sup>7</sup> Abera Dagafa, 'The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia' (2008) 1 *Ethiopian Constitutional Law Series* Addis Ababa University 22

<sup>8</sup> Article 30 of International Convention on the Right of the Child.

<sup>9</sup> Thornberry, (n 4) 141

<sup>10</sup> Ibid.

minorities considering them as the basic social groups in a given society, particularly within multicultural state. He further strongly stipulates that it was only in the 20<sup>th</sup> century that minimum standards of minority protection and fundamental rights were subjected to systematic and innovative international guarantees underwritten by the UN permanent international human rights organization.<sup>11</sup>

However, even in this 21<sup>st</sup> century, one can often hear the opinion against the adoption of binding international legal instrument of ethno national minorities as if they do not deserve the rights of existence, representation and self-government when they are found territorially grouped in a certain geographical area of a given country. Nevertheless, according to some commentators, much more than the necessity to try to keep them together by giving their own administrative territory, it is also imperative to teach them to live together with others peacefully and integrate with dominant nation.

Erich Bapto on the other hand argues that majorities can suppress minorities; because of this it is necessary to grant fundamental human rights to minorities as an elementary constitutional guarantee and to institutionalize and internationalize them as far as possible instead of teaching them to simply live with others and make concession without properly securing their separate existence.<sup>12</sup>

Besides, through granting autonomy or the rights of self-government in the form of internal self-determination to such ethno national minority groups in order to effectively exercise their fundamental rights, multination/multicultural states should ensure legal and political protection for minorities at large. In the following section therefore efforts are made to define the term minority in general and subsequently ethno national minorities in particular in order to have a clear understanding about the concepts and fundamental rights of minorities and related issues.

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<sup>11</sup>Li-ann, (n2) 300

<sup>12</sup>Erich Bapto, 'Federalism and Multiethnic States: the Case of Switzerland' in Lidiya R.Basta and Thomas Fleiner (eds), *Federalism, Rule of Law, Multicultural State; Comparative Administrative and Constitutional Law* (1981)182



### 2.3. The Concept and Definition of the Term Minority

Even though until recent times there has not been legally binding and universally accepted definition about the concept or the term minority, many efforts have been made to propose alternative definitions by different international scholars using certain conceptual analytical terminologies and adjectives including the United Nations' renowned legal experts dealing with the issues of minorities. Among these Francesco Capotorti and Julious Deschanes are known by proposing alternative definitions towards the term minorities.

Of course before the attempt was tried by the aforementioned legal experts of the United Nations there was also a little effort made by the League of Nations. Because in the previous times the League of Nations at least dealt with certain states and specific population groups, these societal groups were called ad hoc 'minorities' without any discussion of a general definition of the same.<sup>13</sup> Following this attempt of the League of Nations according to Kristin Henrad:

In 1930, the Permanent Court of International Justice (PCIJ), in its advisory opinion defined minority community 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 solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instructions and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other among others.<sup>14</sup>

Nevertheless, until now there is no a clear cut and universally accepted agreement among the concerned scholars upon this issue. Following these unreserved and continued efforts to define the term minority, contradictory ideas came into picture concerning the concept and definition of the term minority. Because some scholars boldly argue that since the term minority is self-evident, defining this terminology is unnecessary.<sup>15</sup> However, Grammatikas Vassilios strongly argues against the aforementioned conclusion and in favor of having a universally accepted as well as legally recognized and binding definition of the term minority.

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<sup>13</sup> Henrad (n 3) 219

<sup>14</sup> Ibid.

<sup>15</sup> Grammatikas Vassilios, 'The Definition of Minorities in International Law: A Problem Still Looking for a Solution' 52 *Hellenic Review of International Law* (1999) 323.

According to this commentator “one cannot speak about protection of minorities leaving undefined the subject-matter of protection, since such an attempt would have no practical point of reference.”<sup>16</sup> To strengthen the aforementioned idea about the necessity of having universally accepted definition on the term minority Akermack partclearly stipulates that defining the term minority has practical importance since which social group qualifies as a minority depends upon the accepted definition that we have.<sup>17</sup>

Moreover, Malcolm N. Shaw wrote that defining the term minority would help to minimize “controversy by drawing the boundaries in a clear fashion, thus fitting the relevant rights to undeniable claimants.”<sup>18</sup> Concerning this issue Welhenganma on his part strongly asserts that in the absence of a clear definition that is binding on state parties, the system of minority protection would be exposed to unjustifiable manipulation thereby allowing unwilling states to abuse the system itself.<sup>19</sup>

However, Getachew Assefa W/Mariam strongly argues that although the absence of common definition and universally accepted legal framework has indeed hampered the effort both to identify all the groups that need protection and to develop comprehensive international legal norms for their protection, recently sufficient agreement among scholars and UN experts on the same issue seems to exist on the core elements that constitute a minority group.<sup>20</sup>

As a matter of fact about conceptual and theoretical gap regarding the term minority, states may become more reluctant to recognize and protect the rights of minorities in their respective administrative territories and even they could go to the extent of denying the very existence of minorities since there is no legally binding and conceptually defined international human rights protection law and universally accepted single definition about the terminology itself.<sup>21</sup> Many Third World countries continue to showdoubt even to accept legally binding and universally accepted definition of the term minority because of the resulting legal as well as

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<sup>16</sup> Ibid, p.324.

<sup>17</sup> Akermak Spiliopoulou, *Justifications of Minority Protection in International Law* (Kluurer Law International 1997) 87

<sup>18</sup> Shaw, (n 1) 2

<sup>19</sup> Welhengama Gnapala, *Minorities Claims: From Autonomy to Secession*, (Ashgate 2000) 50

<sup>20</sup> Getachew Assefa Woldemariam, ‘Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality’(PhD Dissertation, Melbourne Law School 2014) 43

<sup>21</sup> Spiliopoulou, (n 17) 87

political consequences of such binding and universally accepted definition of the term minority.<sup>22</sup> One of the main reasons for not having universally accepted and legally binding definition of minority is probably the hesitant conditions of government officials and politicians towards the concept minority itself.<sup>23</sup> However, the main challenge that hinders to consolidate strong and comprehensive international treaty towards minorities that will bind state parties based on human rights instrument and universally accepted definition about the term minority and its subsequent rights is stated as follows:

The difficulty in arriving at an acceptable definition lies in the variety of situations in which minorities exist. Some live together in well-defined areas, separated from the dominant part of the population, while others are scattered throughout the national community. Some minorities base a strong sense of collective identity on a well-remembered or recorded history; others retain only a fragmented notion of their common heritage. In certain cases, minorities enjoy - or have known - a considerable degree of autonomy. In others, there is no past history of autonomy or self-government. Some minority groups may require greater protection than others, because they have resided for a longer period of time in a country, or they have a stronger will to maintain and develop their own characteristics.<sup>24</sup>

One is thus compelled to adopt context specific definition of the term minority and its fundamental rights. Among legal scholars and professional advisors of the United Nations who devoted their time, knowledge and skill to find out the standard definition of minorities, Jules Deschenes is one of the most renowned and frequently cited United Nations legal experts next to Francesco Capotorti who tried to consolidate the term minority in usable terms and setting standards using different adjectives as well as define the term itself in the following comprehensive statement.

According to him the term minority is “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 a collective will to

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<sup>22</sup>Shaw, (n 1) 30

<sup>23</sup>Spiliopoulou, (n 17) 87

<sup>24</sup>OHCHR Fact Sheet No. 18(Rev. 1), ‘Minority Rights Introduction’, [www.ohchr.org/Documents/Publications/FactSheet18rev.1.en](http://www.ohchr.org/Documents/Publications/FactSheet18rev.1.en), accessed 10 April 2015

survive and whose aim is to achieve equality with the majority in fact and law.”<sup>25</sup> The aforementioned definition of the term minority may have its own important conceptual contribution in developing universally acceptable definition of minority but it may not be sufficient to guarantee the fundamental rights of ethno national minorities as a) their demand is not merely to survive as a distinct community and b) their demand goes beyond the right to equality to include at least equitable representation at all levels of government institutions and self-rule.

However, from Jules Deschenes’ standard definition of the concept minority we can identify some important elements that clearly indicate the sensitive nature of the term itself, which have their own positive contribution to develop a universally accepted definition of same. Hence the first indicator i.e. an important element to qualify the term minority is numerically inferior (being small in size) which the researcher has given more emphasis and discusses in detail the basic features of them. Nevertheless, this element by itself does not work always or it might not be true in some specific cases.

For instance the black majority of South African population was not numerically inferior in the country but they were actually political minorities during the time of Apartheid regime. Moreover, currently the Oromos and the Amharas living in Harari People’s regional state of federal Ethiopia, are numerically majorities in terms of population size. But they are still considered to be political minorities since their population size, in terms of numerical expression, does not help them not only to control the regional polity and thereby provide a balanced decision on their own matters through their representatives but even to equitably participate in the polity of the same regional state.

In other words, the Oromos and the Amharas living in Harari region in general and the Amharas in particular do not have any political power on their future socio-economic situation of the regional state and not only to partially control the polity of the region but also even to actively and equitably participate in the present day political affairs of the Harari region. To put it in other way although the Oromos, to a certain extent, have power sharing arrangement with that of the Harari League, whereas the Amharas do not have such kinds of

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<sup>25</sup>Jules Deschenes, ‘Proposal Concerning a Definition of the term “Minority”’ E/CN.4/sub 2/1985/31, 14 May 1985  
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power sharing arrangement in the same region. Concerning the importance of political domination in defining the term minority by citing other writer's empirical research work DataDeaappropriatelypointed out that:

In a report commissioned by Minority Rights Group International (MRCI), Tronvoll (2000) makes an important observation that problematizes the definition of minorities in the Ethiopian context. He points out that the largest ethnic group in the country, the Oromo (about 25 million people, according to 2007 census), is politically and socially marginalized and thus might be regarded, politically speaking, as a "minority" group. The Tigrayans, while constituting about 6 percent of the population, currently hold the central power and thus are not classified as a "minority" in this context. Therefore, Tronvoll notes, minorities need to be understood from the point of view of power relations: who has control, and in what context this control is exercised.<sup>26</sup>

Nevertheless, this indicator leads us to another important element which constitutes the definition of the term minority is non-dominant position in that specific state. In other words, the people who are inferior in political and socio-economic conditions i.e. lack of control over political, administrative and socio-economic power of a nation or sub-nation. This element seems stronger than the first one as it encompasses both numerically inferior but politically dominant in their position as mentioned above like that of White South Africans at the time of Apartheid regime and the people of Harari,<sup>27</sup> in the present day federal political system of Ethiopia.

As a result, some writers clearly stipulated thatthe establishment of a separate regional state for the Harari people is often considered to be anomalous, due to the very small size of this minority ethno national group (and the fact that the Harari account for less than 10 per cent of

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<sup>26</sup>Data Dea Barata, 'Minority Rights, Culture, andEthiopia's "Third Way" to Governance' (2012)55 *African Studies Review* 61, 64-65

<sup>27</sup>According to Central Statistical Agency of Ethiopia (CSA) census conducted in 2007, the number of Harari people living in the Harari Region is only 15,858. However, the total population resides in the region is 183,344 which is not comparable to political set up of the region. In other words, though the Harari people do not have a numerical majority in their region, they have got a political dominance through control over the regional government institutions.

the regional population).<sup>28</sup> Of course some other people, who was active political participant in the process of the establishment of regional states of Ethiopia during the Transitional Period, strongly argues that the Harari historical facts, their endangered socio-cultural and language situation as well as geo-political advantages had their own positive contribution to establish their own regional state, unlike their population number and geographic size, in order to save from total extinction and preserve their language and distinct cultural identity markers.<sup>29</sup>

With regard to the term minority there are also some other important elements which constitute the definition of the general concept of minority, such as definitive markers (culture, language, ethnicity, religion etc.), internal solidarity (cohesiveness in identity), collective will of members of such minority group to remain as a distinct citizens in the state and aim to achieve legal and political equality with the majority others. However, according to the United Nations relevant organization:

The term minority includes 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; such minorities should properly include a number of persons sufficient by themselves to develop such characteristics and the members of such minorities must be loyal to the state of which they are nationals.<sup>30</sup>

Apart from the aforesaid definition, sociologist Arnold M. Rose generally defines a minority as a group of people-differentiated from others in the same society by race, nationality, religion or languages-which both think of themselves as a differentiated social group and are thought of by others as a differentiated social group with negative connotations, for instance as a cast social group.<sup>31</sup> The important elements one can consider in this sociological definition are a set of attitudes – those of group identification from within the group and those of

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<sup>28</sup>Christophe Van Der Beken and Yonatan Tesfaye Fesseha, 'Empowerment and Exclusion: The Legal Protection of Internal Minorities in Ethiopia', in Asnake Kefele and Assefa Fisseha (eds), *Federalism and Local Government in Ethiopia*, (2015) 55

<sup>29</sup>Gebreab Barnabas, former State Minister to Federal Affairs, public lecture about Ethiopian federalism and its implications for MA students of Center for Federalism and Governance Studies, Addis Ababa University, 2016.

<sup>30</sup>United Nations Sub-Commission for the Prevention of Discrimination and Protection of Minorities, a sub-organ of the Commission on Human Rights.

<sup>31</sup>Arnold M. Rose, 'Minorities', *International Encyclopedia of the Social Sciences* 10 (1972) 365

prejudice from without – and a set of behaviors – those of self-segregation from within the group and those of discrimination and exclusion from without. According to the aforementioned sociologist minorities are relatively lacking in economic as well as political power and hence subjected to certain exclusions, discriminations and other types of differential treatment.<sup>32</sup>

Therefore, the most important elements for this sociological definition are race, nationality, religion and language, which are also commonly used by experts of the same issue and legal scholars to consolidate standard definition of the concept minority although until the present days international legal and political arena we do not have legally binding as well as universally accepted definition of same. In this regard Samia Slimane stipulates that:

While both (legal and sociological) definitions contribute to an understanding of the concept of minorities they are not without their difficulties. For example, the criterion of numerical minority is not entirely satisfactory where there may be no clear numerical minority or majority. And, indeed, a distinct ethnic group can constitute a numerical majority and be in a non-dominant position and thus be similarly entitled to the application of many minority standards in order to ensure their rights to non-discrimination and to protection of their identity – which form the foundations of minority rights. Also, the limiting criterion of citizenship can be used to exclude certain groups from their rights as minorities has in fact not been accepted as a defining minority characteristic.<sup>33</sup>

However, in the aforesaid definition ethnic and national minorities for example are not included amongst the criteria to identify the minorities. As a result even within the United Nations system prior to 1989, no general minorities' treaty or declaration was adopted, although discrete minorities' provisions did crop up in various international legal instruments including International Covenant on Civil and Political Rights (ICCPR), International Labor Organization (ILO) and International convention on the rights of the child among others.

Most significantly although it is arguable, Art.27 of the International Convention on Civil and Political Rights remains the sole conventional minorities' obligations in a major United Nations human rights instruments. Therefore, generally speaking minorities concerns were

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<sup>32</sup> Ibid.

<sup>33</sup> Samia Slimane, *Recognizing Minorities in Africa*, minority rights group international (2003) 2

submerged within the United Nations' project of developing universal, individual-oriented human rights protection regime.<sup>34</sup> In addition to this legal and political situation, minority rights have been also viewed as destabilizing threats in so far as they might inhibit national cohesiveness. At worst, they may encourage increasingly extensive claims for minority autonomy, which might escalate to secessionist or irredentist claims entailing the breakup of states.

However, the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was inspired by Article 27 of the International Covenant on Civil and Political Rights which clearly states that 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language among others.

But neither Article 27 of ICCPR nor the Minorities Declaration defines the concept minority although the term minority is qualified in the aforementioned human rights documents by the following adjectives, namely ethnic, religious and linguistic social groups. For the lack of binding legal instrument and universally acceptable definition of minority Thio Li-ann on his part strongly argues that a fundamental definitional difficulty is that 'minorities' are not self-evident entities but different social groups constituted by international human rights law.<sup>35</sup>

Despite the fact that the existing definitional problem, recognizing the existence of minorities and protecting their fundamental rights are in the present day political system, formally perceived not as a threat rather as 'a constructive alternative to the extreme dangerous drifts towards secessionism.' That is why over the past two decades, certain nations such as Canada, Ethiopia and South Africa have created legal frameworks to institutionalize the existence of minorities as multicultural societies. Moreover, the lack of a single binding legal definition has not hampered standard-setting process within the United Nations human rights system, although the seeking of a definition may be seen as a delaying tactic where there was little political will to press ahead with an elaborating substantive content of minority

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<sup>34</sup> Li-ann, (n 2) 300

<sup>35</sup> Ibid.



rights.<sup>36</sup> Because of this, to define the term itself and the concept of minority we can get different approaches even though they have some similar elements common to them. In this regard Thio Li-ann on his part further explains the same issue using the international human rights law perspective and hence he clearly stipulates that minorities in international legal system may be described as social groups or peoples exhibiting distinct ethnic, linguistic or cultural traits among others, which differentiate themselves from the dominant social group (s).<sup>37</sup>

Nevertheless, the commonly accepted definition of the term minority, although until now, as we have already mentioned above, it is not legally binding and universally acceptable in the international community, is provided by Francesco Capotorti, United Nations Special Rapporteur, in the context of Article 27 of the International Covenant on Civil and Political Rights on the Rights of Persons Belonging to Ethnic, Religious or Linguistic Minorities. According to this renowned UN human rights expert the term minority is:

A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members being nationals of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.<sup>38</sup>

This standard definition is almost similar with that of Jules Deschenes definition of the term minority and in the Capotorti's definition, like that of Jules Deschenes, we could not find the political rights of minorities that may help them to claim the rights to proper and equitable representation at all levels of government institutions and even to have their own system of self-governance. That is why Bas de Gaay Fortman comments on this definition that "A group numerically inferior to the rest of the population of a State" is not only arithmetic nonsense, but also neglects the primary background of the minority problematique: abuse of dominant positions that are based on exclusive collective identities.<sup>39</sup> Although Capotorti's

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Francesco Capotorti, 'Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities' (New York: United Nations, 1979) E/CN 4/sub 2/384/Rev 1, UN Sales No E 91XIV 2 96

<sup>39</sup> Bas de Gaay Fortman, 'Minority Rights: A Major Misconception?' (2011) *Human Rights Quarterly* 265, 276-277

standard legal definition mainly depends on numerical expression like that of Julious Deschanes proposal, it has also its own eyes' opening contribution about the development of comprehensive international definition for the term minority and to have universally acceptable legal norm on the same issue. Considering the sensitive nature (social and political situation) of minority issues even though it is not, legally speaking, binding in its capacity the United Nations General Assembly passed a resolution on minority rights and imposed some soft obligations on state parties.

Accordingly Article 1 of the United Nations General Assembly Resolution No 47/135 of 18 December 1992 clearly states that State parties shall recognize and protect the existence of the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that specific identity.<sup>40</sup> Considering this legal and practical gap in 1992 the General Assembly also adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities to recognize the existence of minorities in general and to facilitate the protection of their fundamental rights that indicate the commitment of member states.

However, the declaration is not until now changed in to treaty based document so as to make it as one of those binding human rights instruments of the international community. Besides, in 1993, 170 member states have had adopted the Vienna Declaration and Programme of Action by consensus, which referred to minorities' issues, albeit in individualist terms, and further urged State parties to implement and promote the 1992 Minorities Declaration.<sup>41</sup>

This social and political commitment of state parties by itself clearly shows the positive attitude of government officials of state parties towards the recognition and legal protection of human rights of their citizens in general and the existence and fundamental rights of minorities in particular. This political willingness and commitment has also its own important contribution to move forward about the recognition and protection of the existence of minorities and their fundamental rights of protection, equitable representation as well as self-government. And it may also help so as to develop formal, universally acceptable and

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<sup>40</sup>United Nations General Assembly Resolution No 47/135 of 18 December 1992. Even though the resolution does not have binding effect up on member states it shows the commitment of state parties.

<sup>41</sup> Thornberry, (n4)

internationally binding human rights treaty on minority issue. As mentioned above, Article 27 of International Convention on Civil and Political Rights to a certain extent recognizes and protects the rights of minorities indirectly which relate to the enjoyment by members of minority societal groups of their own culture, to profess and practice their own religion, or to use their own language and these rights are also reiterated and augmented in article 2 (1) of Minorities Declaration irrespective of its legal status.<sup>42</sup>

Moreover, the European Commission for Democracy through Law, an advisory body of the Council of Europe, has also suggested a universal definition of the word ‘minority’ as part of a proposal for a European Convention for the Protection of Minorities. Hence Article 2 of the aforementioned European convention for democracy through law reads as follows:

For the purpose of this Convention, the term “minority” shall mean a group which is smaller in number than the rest of the population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language. Any group coming within the terms of this definition shall be treated as an ethnic, religious or linguistic minority. To belong to a national minority shall be a matter of individual choice and no disadvantage may arise from the exercise of such choice.<sup>43</sup>

However, neither the international nor the European documents that are relevant for minority protection allow the inference that minorities can also be defined as a sub-state level. The Human Rights Committee did adopt this restrictive stance in its views in *Ballantyne et al v. Canada* as it argues that the English speaking persons in the French speaking province cannot be considered a minority because they constitute the majority nationwide. Therefore, according to this Committee article 27 of ICCPR would only apply to minorities at the national level.<sup>44</sup> The African Charter on Human and Peoples Rights of 1981 also clearly stipulates that “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

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<sup>42</sup> Ibid

<sup>43</sup> Henrard, (n 3) 249

<sup>44</sup> Communication Nos. 359/1989 and 385/1989, UN Doc. CCPR / C / 47 / D359 / 1989 / Rev.13st March 1993.

policy they have freely chosen.”<sup>45</sup>As mentioned above even though the African Charter on human and peoples right did not differentiate minorities in general and ethno national minorities in particular from majority social groups, the phrase ‘all peoples’ includes the rights of ethno national minorities and they can use this provision so as to claim their fundamental human rights including controlling political power in their own territory and achieve their final goal irrespective of the problem of interpretation of this provision.

As mentioned above although the African Charter on Human and Peoples’ Rights does not have any definition and clearly expressed provision about the concept of minority, it generally addresses the rights of minorities as it clearly asserts in its provision that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without discrimination of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.<sup>46</sup>

Therefore, from the aforestated international declarations and treaty based legal documents of regional human rights instruments we can safely conclude that although there is no universally acceptable definition of the term minority and binding international human rights legal document about the treatment and protection of the fundamental rights and freedoms of minorities, they can, however, strongly claim their basic rights of existence, equitable representation and self-government among others by invoking the aforementioned international and continental human rights instruments and national laws relevant to them.

This legal and political situation of the international community and state parties also leads to the protection and promotion of human rights, constructive coexistence and conflict prevention, and even serves as a means of countering the manipulation of ethnic identities for political purposes.<sup>47</sup> Thus, the recognition and guaranteeing of the very existence of minority rights does not guarantee the realization of their fundamental rights; and hence in addition to legal recognition and protection they need the necessary financial, material and institutional support in order to correct the past injustices as well as strengthen present treatment of their

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<sup>45</sup> Article 20 (1) of African Charter on Human and Peoples Right, 1981.

<sup>46</sup> Ibid, Article 2.

<sup>47</sup> Slimane, (n 33) 1

fundamental rights and freedoms. Although as repeatedly mentioned above, we conclude that there is no universally agreed definition of minorities and binding content of its nature, such kind of assistance or special treatment of minorities is commonly known as affirmative action.

However, such special treatment of minorities should not be considered as a privilege to minorities but a means to ensure substantive equality with that of the majority others. In other words, the legal principles of nondiscrimination and formal equality until recent time do not bring substantive equality and the state cannot discharge its obligations toward minority by simply observing these international human rights principles. Hence it is argued that:

Minority rights imply more than non-discrimination. It is insufficient to say that the government does not make distinctions based on race, religion, language, or ethnicity. Minority rights begin with non-discrimination, but they must extend to protect activities and promotional activities. [A] Full-blown minority rights ideals include affirmative action programs and similar devices to advantage minorities. This is a hard lesson, but it seems to be part of the future course of minority rights development.<sup>48</sup>

## **2.4. Ethnic Minorities**

In order to place the question of ethnic minorities or claims of the same societal groups in an adequate analytical framework, it is necessary attempting to have some clarity on conceptual and terminological confusion of the term ethnic minority itself, which accompanies or highly associates the concepts of ethnic groups or ethnic minority and similar, sometimes interchangeable terms such as people, nation, nationality, community and tribe.<sup>49</sup> Because of its complex nature, until now, neither social sciences nor legal philosophies as well as popular usage, have achieved a consensus regarding the term ethnic group. Furthermore, the terminology used by different scholars frequently reflects regional or national intellectual traditions and the dominant social and political ideologies of the society.<sup>50</sup>

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<sup>48</sup>Atul Kohli, 'Federalism and Accommodation of Ethnic Nationalism', in Ugo M. Amoretti and Nancy Bermeo (eds), *Federalism and Territorial Cleavages* (The Johns Hopkins University Press 2004) 94-95

<sup>49</sup>Merera Gudina, *Ethiopia Competing Ethnic Nationalisms and the Quest for Democracy, 1960-2000* (Chamber Printing House 2002) 30.

<sup>50</sup> Ibid.

Nevertheless, earlier historians, including the writers of the Old Testament, had noted that ethnic minority groups might be found in a society as a result of the gradual migration of either the whole population or of segments, such as religious refugees, traders, craftsmen, or manual laborers.<sup>51</sup> Moreover, the existence of distinct ethnic and cultural groups within a given societies is wide spread and ancient as well as occurs at most levels of culture, ranging from the Bushmen of the Kalahari, who live within the framework of Tswana society, to modern America.<sup>52</sup>

Hence the crossing of ethnic borders and encounters with those of different ethnic background is one of the most significant experiences in the formation of our identities.<sup>53</sup> Concerning the term ethnicity or ethnic communities there are also basically two widely accepted approaches in explaining and defining their socio-political situation. The first approach is known as a primordialist approach. Primordialism approach explains the transformation of an ethnic identity to political identity as a natural (biological or genetic) phenomenon.<sup>54</sup>

Definitions of primordialism can therefore range from simply the force and strength of traditions and cultural ties to ideas of genetically inherited features and characteristics. At the most biologically determined end of the spectrum, in this regard sociobiologists have argued that there is a biological aspect to the formation of ethnic bonds. As a result, they strongly believe that social behavior is guided by evolutionary strategies and motivated towards securing long-term survival of the group.<sup>55</sup>

Because of this, the primordialists maintain that people naturally identify with, and emotionally attach themselves to, the community to which they biologically relate with. They do so not rationally, but they are forced by 'socio-psychological forces internal to [them] and related to primordial human needs for security and, more importantly, survival'.<sup>56</sup> The other line of approach is known as the instrumentalist (also called circumstantialist) approach. For

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<sup>51</sup> H.S.Morris, 'Ethnic Minorities', *International Encyclopedia of the Social Sciences* V (1972) 167

<sup>52</sup> Ibid.

<sup>53</sup> Stephen Spencer, *Race and Ethnicity: Culture, Identity and Representation* (Routledge 2006) 45

<sup>54</sup> Yash Ghai, 'Ethnicity and autonomy: A framework for analysis' in Ghai Y (ed), *Autonomy and ethnicity: Negotiating competing claims in multi-ethnic states*, (Cambridge University Press 2000) I 4

<sup>55</sup> Spencer, (n 3) 76

<sup>56</sup> Harvey F P, 'Primordialism, evolutionary theory and ethnic violence in the Balkans: Opportunities and constraints for theory and policy' (2000), 33 *Canadian Journal of Political Science* 40,

the instrumentalists, ethnic groups or communities themselves are ‘rational associations of self-interested actors’ not, as the primordialists claim, ‘irrational...groupings governed by emotional attachments.’<sup>57</sup> In other words, instrumentalism in which ethnicity indicates that there is some intentional or conscious strategies behind identity formation a type of political resource for competing interest groups. Ethnic groups and ties are strategically employed for attaining individual or collective goals.<sup>58</sup>

Ethnicity for an instrumentalist is therefore ‘artificial’ not natural by itself, and changing its main characteristics through time and political orientation as well as it is not static rather remains dynamic. The transformation of ethnic distinction to political identity has, therefore, little to do with nature. The transformation is rather ‘rational’, ‘situational’ or ‘instrumental’.<sup>59</sup> However, the criticisms of instrumentalist views of ethnicity are, first, that such views are unable to cope with ethnic ‘durability’; second, they ignore mass passions evoked by ethnic ties and cultural symbols; and, third, they assume the ethnic nature of organizations.

According to Fenton, ethnic identity undoubtedly is formed around real shared social space, commonalities of socialization, and communities of language and culture.<sup>60</sup> Simultaneously these identities have a public presence; they are socially defined in a series of presentations (public statements, assertions, images) by ethnic group members and non-members alike.<sup>61</sup> By citing the works of Nagel (1994) and Yonatan Tesfaye (2008) Zemelak Ayele explains that:

Several scholars are of the view that neither primordialism nor instrumentalism in itself fully explains the transformation of an ethnic identity to a political identity. Because according to them ethnic identity is not unchanging as the primordialists claim, since the aforementioned objective cultural markers are not the only drivers for the transformation of ethnic identity to political identity. Ethnic identity has also subjective elements.<sup>62</sup>

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<sup>57</sup>Gil-White, ‘How thick is blood? The plot thickens. If ethnic actors are primordialists, what remains of the circumstantialist/primordialist controversy?’ (1999), 22 *Ethnic and Racial Studies* 789 792

<sup>58</sup> Spencer, (n 533) 78

<sup>59</sup>Henders S J, *Territoriality, asymmetry, and autonomy: Catalonia* (Palgrave Macmillan 2010) 33 and see Joane Nagel, ‘Constructing Ethnicity: Creating and Recreating Ethnic Identity and Culture’ (1994) 4 *Social Problems* 152, 152.

<sup>60</sup>Spencer, (n 533) 79

<sup>61</sup>Ibid

<sup>62</sup>Zemelak Aytenew Ayele, ‘Decentralization, Development and Accommodation of Ethnic Minorities: The case of Ethiopia’ (PhD Dissertation, University of the Western Cape 2012) 176

According to Asnake Kefale, from the competing approaches to ethnicity, primordialism seems to have greatly influenced both popular perceptions and political discourses in Ethiopia. At the popular level, descent appears to play a major role in defining the ethnic identity of individuals. Primordial elements of ethnicity have also been used in political discourses of national self-determination.<sup>63</sup> In this respect Asnake further explains that in popular conceptions of ethnic identity, primordial elements play a major role.

For instance, according to him descendants of the 19th century northern settlers in the southern Ethiopia are identified as 'Amhara' even if some of them to a certain extent share the cultures and languages of the local populations.<sup>64</sup> Similarly, as mentioned above in Ethiopia political discourses of national self-determination have used primordial elements. The popularity of the Stalinist doctrine of self-determination in Ethiopia, although it is arguable as Stalin used it for political purpose, since the beginning of the 1970s appeared to reinforce primordial elements of identity.<sup>65</sup>

However, in the current Ethiopian socio-political and legal system, the instrumentalist approach could also correctly explain the growing importance of ethnicity in both academic and political discourses. In this regard almost all ethno-nationalist movements of Ethiopia such as the TPLF and the OLF sought to instrumentalise the primordial elements of their ethnic constituencies for political mobilization.<sup>66</sup> Nevertheless, the implementation of ethnic based federalism and system of governance since mid-1991 induced the primordial identity for political mobilization in the country. This has been the case even in the Amhara nation.

The dominant ethnic group of not only in its home region but also in the country, was not as such sensitive to be organized and mobilized along its ethno-linguistic line and social cohesion before 1994. However the people of Amharanation become more sensitive and aware of such concept organizing along ethno-linguistic line after the institutionalization of ethnic federalism in the country. Having said these general introductory remarks about the terminology of ethnic groups and its natural association with it, now it is time to define the term ethnic group in the following

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<sup>63</sup> Asnake Kefale, 'Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benshangul-Gumuz Regions' ( PhD Dissertation, Leiden University 2009) 38

<sup>64</sup> Ibid

<sup>65</sup> Ibid.

<sup>66</sup> Ibid, p. 39



statements using different scholarly works and some international and continental conventions. Accordingly, an ethnic group is defined as a distinct category of the population in a larger society whose culture is different from the rest of the society in a given country. Because of this, the members of such specific ethnic group feel themselves or are thought to be bound together by common ties of race or nationality or culture.<sup>67</sup>

Moreover according to some scholars an ethnic group is a community which has been living in a relatively homogenous area of settlement for generations, that exists on the territory of the state alongside a majority of different ethnicity, and whose members express their will to preserve their own culture and distinct identity.<sup>68</sup> However, according to H.S. Morris the nature of an ethnic group's relationships with the society as a whole, with other groups in it, constitutes one of the main problems in describing and analyzing such societies.<sup>69</sup>

Politically speaking, ethnic minorities can be defined (or define themselves) by their political objectives. They are content to be called minorities if their aspirations do not extend beyond special linguistic, educational or religious facilities. Farther they proclaim their ethnicity if their goal is some form of autonomy.<sup>70</sup> According to Yash Ghai, a renowned constitutional lawyer, ethnicity should also be considered as a broad concept, covering a variety of factors which distinguish as one group of people from others.

Therefore, to him the important contemporary distinguishing features of ethnic community are language, race, religion and color.<sup>71</sup> He further explains the concepts and characteristics of ethnicity as it is dependent on some social or political situations of a given country. In this regard the aforementioned scholar strongly argues that when those distinguishing identity markers cease to be mere means of social distinctions, and become the basis of political identity and claims to a specific role in the political process or demanding administrative and political power, ethnic distinctions are therefore transferred into ethnicity.<sup>72</sup> Besides, as cited by Asnake Kefale, A.D.

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<sup>67</sup> Morris, (n 51) 162

<sup>68</sup> Gabriel N. Toggenburg and Gunther Rautz, *The Protection of Minorities in Europe* (Press center Autonomous Region Trentino Sudtirol 2012) 221

<sup>69</sup> Morris, (n 51) 167

<sup>70</sup> Yash Ghai, *Autonomy and Ethnicity, Negotiating Competing Claims in Multi-ethnic States*, (Cambridge University Press 2000) 7

<sup>71</sup> Ibid, p. 4.

<sup>72</sup> Ibid.

Smith for instance, defined an ethnic community as ‘a named human population with myths of common ancestry, shared historical memories, one or more elements of a common culture, a link with a homeland and a sense of solidarity among at least some of its members’.<sup>73</sup> On the other hand, Yonatan Tesfaye put forward his observation on the same issue as follows:

A look at few definitions would reveal that the term ethnic group is definitionally chameleonic. In some cases, the term is used to refer to a small community with archaic characteristics. For others, myths of common ancestry are the defining feature of an ethnic group. Collectivities that share a myth of origin are also commonly referred as ethnic groups. The sharing of culture, and especially language, is also common to many definitions. Others emphasize the importance of historical memories.<sup>74</sup>

Because of this different outlooks of scholars concerning the concept and meaning of the term ethnic minority, some incomparable definitions are developed by various writers working on the same issue. For instance, as cited by the works of Yonatan Tesfaye, Phandis and Ganquly’s book entitled, *Ethnicity and Nation building in South East Asia*, define an ethnic group as “either a large or small group of people, in either backward or advanced societies, who are united by a common inherited culture (including language, music, food, dress, customs and practices), racial similarity, common religion, and belief in common history and ancestry who exhibit a strong psychological sentiment of belonging to the group.”<sup>75</sup>

Strictly and thoroughly observing the works of the aforementioned writers, however, Yonatan Tesfaye also came up with his strong and powerful conclusion that explains the short comings of the concept and meaning of ethnic group. In other words, according to Yonatan Tesfaye the aforementioned writers have their own drawbacks and weaknesses in defining and consolidating the concept of the term ethnic group and strongly stipulates that:

By explicitly stating that the term ethnic group includes both small and large group of people, the authors are rejecting the American conception of ethnic group. They reject the view that the term ethnic group can be used to refer to minority groups only and not to the group that is

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<sup>73</sup>Asnake, (n 633) 37

<sup>74</sup>Yonatan Tesfaye Fisseha, *Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia*(PhD Dissertation, University of the Western Cape 2008) 19

<sup>75</sup> Ibid p. 19-20

dominant within the larger state. They have as well declined to accept the usual tendency of associating ethnic groups with backward societies. Ethnic group accordingly is not a phenomenon of backward societies but also industrialized societies.<sup>76</sup>

Therefore, the term ethnicity is a state of mind emanating from a feeling of separate identity, which in turn is based on shared identity markers, such as culture, language, religion etc., but more importantly on the myth of common descent society.<sup>77</sup> To this writer the concept ethnicity by itself, to some extent, differs from national society as it has its own unique feature that distinguishes it from national minority groups. Because an ethnic group is regarded generally as a collective social group whose members share objective characteristics such as language, core-territory, ancestral myths, culture, religion and, they also have some subjective elements, such as social consciousness or perception of common descent or identity.

In this regard Assefa Fiseha also rightly explains by emphasizing that it is important to point out that the myth of common descent is an essential characteristic of an ethnic group but not of national groups that share a common language, religion custom, history and tradition but not necessarily a common descent.<sup>78</sup> That means, according to Assefa common descent is the most important requirement to identify members of ethnic groups from other social or cultural groups including national minorities whether they belong to different languages and customs, whereas to other societies of national minority groups' language, culture, etc. that are objective and common to ethnic or national minority are crucial element to describe the same ethno national communities although it might not be always true.

On the other hand in his classical work entitled *Multicultural Citizenship* (1995), Will Kymlicka draws an analytic distinction between national minorities and ethnic groups. The point of this distinction is to justify his hierarchy of cultural rights: while national minorities merit rights to special representation and devolved self-government, ethnic groups deserve only rights to help them integrate on terms that are fair. Therefore, the term ethnic minorities are treated in this dissertation as socially constructed categories which refer to social

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<sup>76</sup> Ibid p. 20

<sup>77</sup> Assefa Fisseha, *Federalism and Accommodation of Diversities in Ethiopia: A Comparative Study* (rev edn, Artistic Printing Enterprise 2007) 84

<sup>78</sup> Ibid.

groupings with a shared sense of peoplehood based on national identity, language, religion, physical characteristics or a combination of these attributes. An ethnic group may wish to preserve its own identity markers which may be cultural, language, historical and common decent or biological origin and hence language can be one of such important elements of distinction.

Nevertheless, the term ethnicity sometimes is confused with 'race' and sometimes interchangeably used. However, under article 27 of the International Convention on Civil and Political Rights (ICCPR), it is ethnic minority rather than race that is legally more protected than race. This does not mean that racial discrimination is permitted, but most of the time minority and majority relationship occurs within the same racial group.<sup>79</sup> Generally the existence of minorities in a given society, whether they are ethnic or national unless they are treated properly by the government of the same, offers a constant stimulus and a continuous irritant political situation that for several reasons provoke social change.

In addition to this aspiring social change, apart from their cultural differences, minorities, whether they are lebled ethnic or national, become sources of social dissatisfaction, and political unrest, which are strong conditions for irreversible social change.<sup>80</sup> Because of this reason, recognizing the existence of minorities in general and their fundamental rights including existence, representation and self-government as well as the overall roles of ethno national minorities in the larger community in particular is an important condition to multiethnic societies.

Besides, constitutionally guaranteeing the very existence, equitable representation and the rights of self-government of same including protecting their basic rights in the present day political set up, is a crucial precondition to install durable peace, stable political condition, and system of democratic governance as well as sustainable socio-economic development of societal relationship in a given nation. Therefore, the most common terms scholars use for the concept minority is national, ethnic, religious and mostly they are often used these common identity markers to define the term minority or to explain its characteristics. Besides, ethno

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<sup>79</sup>Stephen May, Tariq Modood, and Judith Squires, *Ethnicity, nationalism, and minority rights: charting the disciplinary debates*, (Cambridge University Press 2004) 4-5

<sup>80</sup>Rose, (n 31) 369

national minority may also be described by using additional adjectives such as linguistic, old, new, cultural, or historical minorities.

Although the definition of nations, nationalities and peoples of Ethiopia provided under Article 39 (5) of the FDRE constitution of 1995 and has also substantially influenced the minority perception of regional state government officials, this constitutional definition treated equally all nations, nationalities and peoples of Ethiopia alike without providing special emphasis on one of the terms nations, nationalities and peoples of the country.

## **2.5. Justifications for Recognition and Protection of Minorities**

Minority groups are composed of individual human beings who need legal protection and political recognition to be treated humanely as a group as well as individually. Their human and democratic rights should be also recognized, respected and protected as the aim of political recognition and legal protection 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 contingencies.<sup>81</sup>

Because of this, minority rights are also part and parcel of 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.<sup>82</sup> One of the first and the most important justifications for recognition and protection of the rights of minorities is therefore demanding legal and political protection from discrimination based on their distinctive identity markers and differential treatment which makes them more vulnerable than others. In this regard Will Kymlicka stipulates that “Communitarians view minority rights as an appropriate way of protecting communities from the eroding effects of individual autonomy, and of affirming the value of community.”<sup>83</sup> Ethno cultural minorities in particular are worthy of such protection, partly because they are most at risk, but also because they still have a communal way of life to

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<sup>81</sup>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* (Abo Akademi University 1999) 5-6

<sup>82</sup>Gaetano Pentassugila, *Minorities in International Law: an introductory study* (Council of Europe 2002) 48

<sup>83</sup>Will Kymlicka, *Politics in the Vernacular Nationalism, Multiculturalism, and Citizenship* (2001) 19

be protected. Unlike the majority societies, ethno cultural minorities have not yet succumbed to liberal individualism, and so have maintained a coherent collective way of life.”<sup>84</sup> Kristin Henrad on her part also strongly justifies the legal and political gap of international law and the view of international community towards the rights of minorities, whether they are ethnic or national groups. According to her statement after WW II there is a change towards minorities that:

A reminder of the historical shift in approach to the minority issue immediately after the World War II is in order at the beginning of a chapter dealing with minority rights. The characteristic point of departure of the United Nations was that the Universal Declaration would solve all minority problems. However, almost immediately it was acknowledged that minorities do need special attention. This was underscored by establishment in 1946 of the UN sub commission with its double function to prevent discrimination and protect minorities. The protection of minorities (*sensu stricto*) was thus identified as a domain of concern not completely covered by the prohibition of discrimination.<sup>85</sup>

Following this international concern of the recognition and protection of minority rights especially ethnic and national minorities have become more assertive of their claim as well as states and dominant social and political groups have also become more willing to accept these minority claims than the previous times.<sup>86</sup> In relation to the aforementioned conclusive statement Will Kymlicka also identifies some three major factors for the assertiveness of minority social groups on their long standing claims and political struggles of fundamental rights and freedoms of their own.

According to him the first factor why minorities become more assertive in these days towards their claims of fundamental rights and freedoms is their demographic status. In the past, many governments hoped for or expected that ethnic minorities would simply disappear, dying out through assimilation or complete intermarriage. However, it is now clear that this situation is not going to happen.<sup>87</sup> The second important point pertaining to minority status that Kymlicka strongly raised is the fast growing of the human rights revolution and the resulting

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<sup>84</sup>Ibid.

<sup>85</sup>Henrad, (n 3) 159

<sup>86</sup>Kymlicka, (n 835) 19

<sup>87</sup> Ibid.

development of a 'right consensus'. According to Will Kymlicka since 1948, at least we have an international order that is premised on the idea of the inherent equality of human beings, both as individuals and as peoples.<sup>88</sup> Because this international order has decisively repudiated older ideas of a racial or ethnic hierarchy according to which certain peoples or social groups were superior to others, and thereby had the right to rule over them.

Nevertheless, members of historically subordinated groups today demanded equality, and demand it as a right. They further believe that they are entitled to equality and entitled it now, not in some indefinite or millenarian future.<sup>89</sup> The third key factor which is identified by Will Kymlicka is the presence of democracy. To him at simplest level, the consolidation of the principles of democracy limits the ability of elites to crush ethno national minority political movements. As a result members of minorities in general and ethno national groups in particular are increasingly unafraid to speak out about their fundamental rights, interests and existence.<sup>90</sup>

Another important condition raised by Kymlicka is the incorporation of the fundamental rights and freedoms of minorities in international human rights instruments. Among these international human rights instruments, Article 27 of ICCPR of 1966 clearly states that 'Persons Belonging to a Minority shall not be denied the right in the 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.'<sup>91</sup>

Therefore, this provision gives not only the members of such minority groups the right to exercise their ethnic, national, religious or linguistic rights in the whole community with other members of their own group, but also it indirectly recognizes their collective rights of same since they are guaranteed to enjoy their identity markers including their language, culture, religion etc. to exercise collectively. According to Stephen May et al the emergence of ethnicity and minority rights on the political theory mainstream agenda can be traced back to Rawls' writing on pluralism and consensus as the essence of liberal democratic thinking (see,

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<sup>88</sup> Ibid, p.37.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid, p.38.

<sup>91</sup> Article 27 of International Covenant on Civil and Political Rights (ICCPR), UNGA Resolution 2200 A(XXI) 1966,

especially, 1971 edition). This work generated a huge literature, much of which focused subsequently on what has come to be termed the liberal-communitarian divide. Political theorists thus have consequently focused their reflections on the kinds of demands made by minority cultures on the state.<sup>92</sup>

To these writers the demands of minorities have been categorized into three broad types. First, there are rights to do with government, including special representation rights, devolution and national self-determination. Second, there are rights that seek to accommodate a variety of distinct cultural practices within larger states. These include both exemption rights and cultural rights, which give special assistance to a disadvantaged minority, such as affirmative action programs. Third, there is a category of demands that are not rights claims, but pertain to the issue of collective esteem.<sup>93</sup>

Because of lack of legal protection minorities even in the contemporary world there are so many conflicts and civil unrests which are the manifestation of the mismanagements of minority groups' interests. Of which many of the conflicts and social problems negatively affect minority groups could be avoided or resolved if more concerned states are only committed to properly understand the main question of such minorities and to consider the issues of same through applying human rights principle, particularly the principles of non-discrimination and equal treatment of minority groups. But it does not mean that this is the only claim rather it shows the critical political problems of minorities in the present day legal system. In this regard Fernand de varennes clearly stipulates his idea that:

Instead of being guarantors of ethnic peace, democratic political systems may run the risk of fanning conflicts. There must be recognition that the majority be subjected to the restraint of fundamental human rights or the desire to arrive at a political compromise that recognizes minority interests. In both cases, a balance must be attained between the interests of the state, normally representing those of majorities, and the rights, interests and duties of individuals who differ because of their language.<sup>94</sup>

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<sup>92</sup>Stephen May et al, (n 799) 4

<sup>93</sup> Ibid

<sup>94</sup>Fernand de Varennes, 'The Protection of Linguistic Minorities in Europe and Human Rights; Possible Solutions to Ethnic Conflicts' (1996)*Columbia Journal of European Law*



Therefore, the aforementioned different factors raised by the most concerned international scholars and other important considerations of the existence of ethno national minorities strongly justify that the rights of minorities in general and ethno national minorities in particular should and must be recognized and considered as part and parcel of fundamental human rights and freedoms of all human beings which has been guaranteed by international human rights instruments, contemporary national constitutions and other subsequent international and domestic legal instruments.

That is why, although legally speaking it is not binding for state parties, the Vienna Declaration of 1993 unambiguously states that “all human rights are universal, indivisible, interdependent and interrelated.” And it further asserts that the international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.<sup>95</sup> This international consensus clearly shows political commitment of state parties at least to recognize and respect the fundamental rights and freedoms of ethnic minorities.

Because of this reality, the questions of minorities in general and ethno national minorities arise in countries having ethno-linguistic or cultural diversities in a more pressing manner. Hence, it is recognized that the present discriminatory legal and political situation is the result of past injustices where one powerful ethno national group voluntarily or involuntarily incorporated other ethnic, religious or linguistic groups when those dominated social groups start resistance against the hegemony of the dominant ethno national group, and then minority problem emerges as a subject that cannot be simply disregarded.<sup>96</sup>

In other words, minority groups, whether they are ethnic, national, religious or linguistic, are part and parcel of the entire community of a given country and they need legal protection and political recognition as well as practical response to their fundamental claims from the state as a social group with their own distinctive markers. They also demand the genuine recognition of their very existence, the right to actual self-government for their specific interest as well as fair and equitable representation at all levels of government institutions in order to be heard and so as to exercise their shared rule for their common purposes of the nation at large.

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<sup>95</sup>The Vienna Declaration and Programme of Action on Human Rights, part I, Article 5, 1993.

<sup>96</sup>Abera, (n 7).43

Furthermore, they are in need of preserving and developing their own distinct identity markers such as language, culture, way of life, psychological make up and useful traditional practices as well as protect their cultural values that are important to them, profess and practice their own religion, exercise their rights to self-expression and use their own language not only in school but also for administrative (in public) as well as media purposes.

In other words, minorities in general and ethno national minority groups in particular demand now to exercise the right to self-government of their internal affairs and equitable representation at all levels of government institutions for common affairs of the larger community and their separate existence with their own distinct identity markers such as culture, language, religion, psychological makeup and other important cultural and historical expressions associating with their entire live.

Based on the above strong and justifiable arguments, we can safely conclude that the fundamental rights and freedoms of minorities in general and the rights of ethno national minorities in particular are part and parcel of the aforementioned fundamental rights and freedoms of all kinds of human beings guaranteed by international human rights treaties and declarations of the UN General assembly respectively.

Therefore, the recognition and protection of the need for minority rights in itself strongly implies that the mere abstention from forced assimilation or gross violation of their right would not be sufficient for states to fulfill their international obligations regarding minority recognition and protection. Hence active state intervention would be required to make these rights effective for the people concerned.<sup>97</sup> In other words, the rights and freedoms of ethno national minorities first must be recognized by state parties and next it should be considered as an important precondition to maintain durable peace and strong social cohesion in the population of not only a given country but also among international communities.

## **2.6. Conclusion**

As we have seen in the previous sections generally the issue of minorities in general and ethnic minorities in particular was considered as part of domestic matters until recent times and the problem of minorities could not be taken as the immediate concerns of the United Nations human rights regime. As a result, within the United Nations legal regime minority

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<sup>97</sup> Henrad, (n 3) 221

protection was basically subsumed as a facet of the general United Nations human rights protection system.

Because of this the United Nations Declaration on Human Rights (UDHR) of 1948 did not contain a single provision with regard to the definition of the term minorities and their fundamental rights nor did the subsequent international human rights instruments with the exception of the covenant on civil and political rights of 1966. Due to this reason until around the last decade of the 20<sup>th</sup> century minorities concerns were not seriously taken and thereby did not reemerge as an important item within the United Nations human rights legal regime.

However, the committee on human rights later formed a working group in 1978 to study and prepare a draft minority's declaration within Article 27 of international covenant on civil and political rights framework. Following this positive attitude and administrative measure there was a modest reawakening of interest in minorities concerns within the United Nations human rights system after the adoption of Capotorti's report on minorities in 1979. Besides, as majorities can tend to suppress minorities in general and ethnic minorities in particular it is therefore necessary to have a clear definition about the term minority and extend legal and political recognition to the very existence of minorities and grant them fundamental human rights.

Nevertheless, the main problem to establish strong mechanisms of minority protection considering their existence is the absence of universally accepted definition of the term minority and thereby legally binding treaty although many efforts have been made by different legal scholars to provide alternative definitions. Despite the fact that the existing definitional problem of the term minority, recognizing the very existence of minorities in general and ethnic national minorities in particular, respecting and protecting their rights and freedoms as well as implementing the basic principles of international laws are formally perceived not as a threat rather as a 'constructive alternative to the extreme dangerous drift of secession of minorities.

## **CHAPTER THREE**

### **The Rights of Minorities under International Human Rights Law**

#### **3.1. Introduction**

This chapter mainly discusses with the status of rights of minorities under international human rights law in general and the rights of ethno national minority groups in particular. Hence the researcher tries to focus on the most important aspects of minority rights which are legally recognized and guaranteed by international human rights instruments in general and the limitations that should be considered as a gap in particular. The focus of the chapter therefore is on discussing the rights to preserve and develop one's own identity, the right to equality, non-discrimination, the right to self-determination including the right to representation.

The writer of this dissertation gives more emphasis to the rights of existence and equitable representation of ethno national minorities in the Ethiopian federal political system particularly at sub national level, discussing on related issues that are recognized by international human rights regime and identifying the basic issues and very important concerns. Hence section two of this chapter deals with the general remarks why the rights of ethno national minorities should be recognized and protected by the concerned government institutions of state party and section three focusses on substances of the rights of ethno national minorities under international human rights law.

In this section the right to preserve and develop one's own identity, the right to equality and non discrimination of ethno national minorities, the right to self-determination of the same and the right to equitable representation at all levels of government institutions in general and in legislative and executive branches of the concerned governments in particular. Finally, short conclusion is drawn based on the discussions of the above sections.

#### **3.2. General Remarks about International Human Rights Instruments**

The United Nations Charter in its very Article declares the importance of culture and at the same time the Constitution of UNESCO also refers to the 'fruitful diversity of cultures'. Following this positive wave towards human rights in 1948 the Universal Declaration of

Human Rights provided for the first time for the respect of cultural rights as Article 22 of the same document clearly stated that everyone is entitled to the realization of cultural rights indispensable for dignity and the free development of personality. However, Professor Tove H. Malloy on her part strongly argues that minority rights in international human rights law have a long pedigree evolving from freedom guarantees afforded to religious minorities in the late middle Ages to a human rights protection paradigm in the late twentieth century.<sup>1</sup>

And yet, according to her scholarly view international human rights law's approach to minority rights remains anchored in the paternalistic human rights view of protection, based on the assumption that ethno national minorities are not able to evidence group agency in terms of collective action, self-empowerment and self-protection.<sup>2</sup> In the face of extensive human rights violations proceeding partially from the denial of minority rights, it was apparent within the United Nations by 1989 that general human rights protection did not warrant for the rights of minorities and the focus of protecting individuals on the basis of their group affiliation intensified.<sup>3</sup>

In terms of standard setting, minorities concerns did not achieve prominent position in the 'International Bill of Rights', which marked the first wave of human rights standard-setting within the United Nations.<sup>4</sup> Nevertheless, the day after the United Nations Declaration on Human Rights (UDHR) was unanimously adopted on 10 December 1948 through the General Assembly's decision of Resolution 217 c(111), expressing United Nations' policy towards minorities a sort of consolation prize and the commitment of state parties to it.

This strong assertion and political position briefly addressed the fate of minorities' to which the United Nations could not 'remain indifferent'.<sup>5</sup> Following this positive political trend and other strong social pressures imposed by the concerned minority socio-political groups as well as their strong supporters from different directions of the international community, discrete

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<sup>1</sup>Tove H. Malloy, 'Towards a New Paradigm of Minority Law-Making: A Rejoinder to Palermo and Woelk's Law of Diversity' *European Yearbook of Minority Issues*, Volume 4, (Martnus Nijhoff 2004/5) 5

<sup>2</sup> Ibid, p. 6

<sup>3</sup>Thio Li-ann, 'Resurgent Nationalism and the Minorities Problem: the United Nations and Post Cold War Developments' (2000), *Journal of National University of Singapore* 300 and Article 27 of ICCPR.

<sup>4</sup>UDHR: GARes217A (111); UNDoc A/810(1948); the ICCPR: 999 UNTS 171 and the International Covenant on Economic, Social and Cultural Rights: 993 UNTS 3. see ch11, CHR Report, 2<sup>nd</sup> Sess UN Doc E/600(1997).

<sup>5</sup>L-ian, (n 3) 300

minority provisions were incorporated into various specific conventions, such as Article 30 of the 1989 Convention on the Rights of the Child,<sup>6</sup> and non-citizens like that of migrant workers and members of their families, have limited right to cultural identity and to maintain links with their country of origin.<sup>7</sup> Moreover, group oriented provisions are also contained in International Labor Organization (ILO) convention No.169 of 1989, endorsing the use of special measures to protect indigenous peoples. Later with the adoption of Minorities Declaration in 1992, a sense of ‘norm saturation’ shifted efforts towards seeking practical solutions, informed by the Declaration’s standard.<sup>8</sup>

The 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities extended these rights to also include the rights of persons belonging to minorities to effectively participate in cultural, religious, social, economic and public life, as well as in the decision-making process to which they belong. These rights include to establish and monitor their own associations; to maintain, without any discrimination, free and peaceful contacts with other members of their group or other citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.<sup>9</sup>

Furthermore, the importance of the rights of ethno national minorities has also been recognized by other international organizations. In this regard the Conference on Security and Co-operation in Europe (CSCE) in 1991, for example, adopted a declaration on the Rights of National Minorities. The Council of Europe has also been very concerned with these issues. Besides, in 1992 CSCE adopted the European Charter for Regional or Minority Languages, and in 1994, the Framework Convention for the Protection of National Minorities.

Hence, although as mentioned above the Conference on Security and Co-operation in Europe (CSCE) has developed and implemented international human rights instruments at regional level, we can safely conclude that the 1992 Minorities Declaration has become the primary legal framework of reference for addressing the issues of minorities concerns within the United Nations system supplemented by Declaration on the Rights of Indigenous Peoples.

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<sup>6</sup>Article 30 reiterate Article 27, ICCPR, adding ‘persons of indigenous origin’ GA res 44125.annex.44 UN GAOR Supp (No 49) at 167, UNDoc A/44/49(1989) entered into force September 2, 1990.

<sup>7</sup>GA Res 45/158,(1990).

<sup>8</sup>Ibid.

<sup>9</sup>UNESCO, ‘Management of Social Transformation’, 1995 Annex I.

However, as mentioned in the previous chapter the human rights instruments of the United Nations do not provide a universally acceptable and binding definition of minorities and strong means of implementation mechanisms with having an international treaty document.

Therefore, within the United Nations' human rights system, the chief relevant human rights provision concerning the rights of minorities is Article 27 of the International Convention on Civil and Political Rights of 1966 although some scholars strongly argue that it is not relevant to the recognition and protection of minority rights. And the Article 27 of International Convention on Civil and Political Rights, which relate to the enjoyment by members of minority groups, are reiterated and augmented in Article 2 (1) of Minorities Declaration.<sup>10</sup>

Moreover, Article 1 of the Declaration can be considered as an improvement provision over the negative formulation of Article 27 of ICCPR in providing that states 'shall recognize and protect' minorities' existence and identity. While it is not an exhaustive enumeration of minority standards, the Declaration is nevertheless the focus of minority rights within the United Nations Programme of action to promote minority protection.<sup>11</sup> Given its adoption by consensus and efforts to build on the existing international human rights law, it might spur future efforts at codifying treaty based international minority rights standards and also encourage the development of Customary International Law.<sup>12</sup>

Nevertheless, according to Will Kymlicka the prospects for the development of new international norms regarding the rights and freedoms of ethno national minorities are not good. As he reminded that there has only been one attempt in the history at the United Nations to develop such norms, and that was tried by Liechtenstein Stillborn. In 1994, Liechtenstein Stillborn circulated in the General Assembly's Social, Cultural and Humanitarian Affairs Committee a draft convention on Self-Determination through Self-Administration, which recognized a right of internal autonomy for all peoples, where peoples were explicitly defined to include not only indigenous peoples but also homeland ethno national minorities. However, this draft was never debated seriously by the committee members and quickly disappeared

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<sup>10</sup>Li-an, (n 3) 300

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

even from view.<sup>13</sup>Based on the aforementioned strong justifications, we can righteously conclude that in the present day legal and socio-political system of the world community the acceptance of the claims of minority rights is increasing as well as the attitudes of both the minorities themselves and members of the dominant social group is becoming positive towards the rights of minorities not only at international level but also at continental, national and regional state level unlike the existing international and national legal norms.

To add up this very section let us look into Kay Hailbronner's statement that the idea of collectivity in the international community, however, was not totally rejected, since Article 27 of ICCPR recognizes the rights mentioned above may be enjoyed "in community with the other members of the group." Nevertheless, the concept of group rights including ethno national minorities, as such, met with considerable opposition by many states.<sup>14</sup> In the following section we will discuss in detail manner the substances and legal protections of the rights of ethno national minorities under international human rights regime. In other words, the main section of this chapter having some four sub sections thoroughly discusses the very important aspect of minority rights.

### **3.3. Substances of the Rights of Minorities under International Law**

#### **3.3.1. The Right to Existence and Preserve one's own Identity**

Protection of minorities in general and ethno national minorities in particular is not primarily a question of assuring the minority a living standard comparable to that of the majority population crucial for the recognition and preservation of a minority in the protection of its culture. The ethno national minorities must get necessary means to maintain and transfer to new generations their own culture and other important values. It is not enough that the members of an ethno national minority as individuals are given a fair living standard from an economic point of view. If their unique culture is extinguished they will cease to exist as a

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<sup>13</sup>Sujit Choudhry, *Constitutional Design for Divided Societies: Integration or Accommodation The Internationalization of Minority Rights*, Vol. 1 (Oxford University Press 2009) 129

<sup>14</sup>Kay Hailbronner, 'The Legal Status of Population Groups in a Multinational State under Public International Law' in Yoram Dinstein and Mala Tobory(eds), *The Protection of Minority Rights and Human Rights*(Martinis Nijhoff 1992) 123



distinct people.<sup>15</sup> From the aforementioned comparative statement one can easily understand that fulfilling other types of socio-economic interests, although they are basic to improve their living standard, and even protecting their civil and political rights are not sufficient to preserve one's distinct identity. As mentioned in the previous chapter the commonly known identity markers are ethnicity, language, culture and religion.

Therefore, cultural survival of certain minority groups is one of the most important preconditions in order to keep the very existence of such social group as an independent distinct community within the larger population of a given state and claim the right to self-government as well as equitable representation to exercise their fundamental rights. Although, according to Chaim Gans, the rights of cultural preservation are auxiliary rights and other means for protecting the ability of the group as well as its members to shape their culture independently and enjoy their lives within it, it is also crucial to maintain the very existence of identity of those social groups within the larger community or majority of the population.<sup>16</sup>

In this regard Abera Dagafa on his part clearly stipulates that the right to existence is considered as a supreme right in the hierarchy of fundamental rights of human beings.<sup>17</sup> Hence the achievement of cultural survival, despite the tensions caused by rapidly changing external circumstances and conditions, helps to reinforce basic rights and freedoms among individuals, which in turn reconfirms and strengthens collective rights as the legal foundation on which community survival is based.<sup>18</sup>

The rights to be different, referring to the use both language and culture as a means of expressing distinct autonomous-identity, is invariably actualized in this ongoing process which aims at a reaffirmation of cultural survival.<sup>19</sup> With that in mind, we can appropriately conclude that cultural survival for national and ethnic minorities cannot be deemed as an end by itself rather it is more of a question and sign of perpetual activity as well as demand having

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<sup>15</sup>Tom G. Svenson, 'Right to Self-Determination: A Basic Human Right Concerning Cultural Survival. The Case of the Sami and the Scandinavian State' in Abdulahi Ahmed (ed), *Human Rights in Cross-cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press 1995) 336-7

<sup>16</sup>Chaim Gans, *The limits of Nationalism* (Cambridge University Press 2003) 84

<sup>17</sup>Abera Dagafa, 'The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia' (2008) Vol. 1, *Ethiopian Constitutional Law Series*, Addis Ababa University 54.

<sup>18</sup>Svenson, (n 15) 336

<sup>19</sup> *Ibid.*, p.336-337

the most positive impact on cultural revitalization of their future conditions of such minority groups. According to Tom G.Svensson aiming toward cultural survival is a political action and a legal matter with certain definite cultural constituents. He further argues that cultural survival is closely connected to rights of self-determination, that is, political rights; and the crucial question is the quality of that right.<sup>20</sup> In the following sub section we will also discuss the details of the right to equality among different societal groups and the principles of non discrimination.

### **3.3.2. The Right to Equality and Non-Discrimination**

In the modern world all human beings are considered equal before the law and every human person, individually or collectively, need to have equal legal protection and opportunity in all socio-economic development and political situation of a certain nation. In other words, individuals belonging to all types of social groups want to be equally treated as well as protected not only by government institutions of a certain nation but also by its officials, members of any communal, other types of non-governmental organizations and even individual citizens among others.<sup>21</sup> This right includes the right to non-discrimination and equal treatment in any political, social as well as economic affairs of a given country and it also acquires universal consensus.

That is why the international covenant on civil and political rights of 1966 provided the following comprehensive and strong principle to make the field plain as well as accessible to all human beings including minority social groups throughout the world. Hence ICCPR unambiguously states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>22</sup> The aforementioned fundamental human rights principle is also incorporated in the FDRE constitution of 1995 without any significant modification.

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<sup>20</sup> Ibid, p.337.

<sup>21</sup> For instance Article 9(2) of FDRE constitution of 1995 clearly stipulates that all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.

<sup>22</sup> Article 26 of International Covenant on Civil and Political Rights (ICCPR), 1966.

Therefore people belonging to minority groups are entitled this right to enjoy individually as a human being as well as collectively as a social group without any discrimination based on being members of minorities and distinct community with their own special identity markers. Moreover, these ethnic minorities need special protection to exercise their right guaranteed by both international and domestic laws. According to Kristine Henrad minority protection is inherently geared toward substantive equality whereas non-discrimination is generally recognized to be a necessary but insufficient condition for an adequate system of minority protection.<sup>23</sup>

Therefore, the principle of equality involves many things that include equal participation with majority others, equal legal protection as well as fair and equitable representation in the government political and administrative institutions among others. In this regard the aforementioned writer further argues that several dimensions of the equality principle can be distinguished, including equality before the law and equal protection by the law, but the most well-known ones are the prohibition of unequal treatment and providing affirmative action (or implementing positive discrimination).<sup>24</sup> Hence, citizens belonging to minorities in general and ethno national minorities in particular by their nature or social condition need to have the feeling that the cultural value of their minority is considered equal to other majority or minority values.<sup>25</sup>

Moreover, recognizing the right to equality, particularly in the diverse society is an essential precondition to maintain harmony of such diverse societal groups within one and strong socio-economic community as well as political system. Otherwise excluded diversities in a given society may disintegrate such diverse society and regard themselves as discriminated and permanent losers even within the majoritarian democracy. As a result culture, tradition; language and religion are an integral part of the human personality. Because of this politics cannot ignore this reality and choose only these dimensions that they consider important.<sup>26</sup>

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<sup>23</sup>Kirstin Henrad, 'Equality considerations of relevance for minority protection, state constitutions and federalism' in G. Allan tarr, Robert F. Williams and Josef Morka (eds), *Federalism, Sub national Constitutions, and Minority Rights* (Greenwood Publishing Group, Inc. 2004) 29

<sup>24</sup> Ibid, p.25.

<sup>25</sup> Akhtar Majeed and et al, 'Building on and Accommodating Diversities' in Ronald Watts and Rupak Chatopadhyay (eds), *Unity in Diversity, Learning from Each other* Vol.1 (Vova Books 2008) 6

<sup>26</sup> Ibid, p.5.

Concerning this idea Rupak Chatopadhyay strongly argues that as the political systems of various diverse societies, like Belgian and Indian, show that it is possible to have both equality and distinct identity as well as there is no reason to trade off one's identity for constitutional equality.<sup>27</sup> Therefore, the right to equality and non-discrimination is one of the most important rights of minorities which are guaranteed by international and continental human rights instruments, national and sub-national laws as well as policy documents.

In other words, international human rights instruments, regional human rights systems and national constitutions including sub national legal frameworks must recognize and guarantee the right to equality and the principles of non-discrimination as well as if there is a need facilitate affirmative action (positive discrimination) for the past legal and political injustices.

### **3.3.3. The Right to Self- Determination**

The origin of the principle of self-determination can be traced back to the American Declaration of Independence (1776) and French Revolution (1789), which marked the demise of the notion that individuals and peoples, as subjects of the King, were subjects to be transformed, alienated, ceded, or protected in accordance with the interests of the monarch. Hence the core principle of exercising self-determination lies in the American and French insistence that the government be responsible directly to the people.<sup>28</sup> According to Antonio Cassese's definition and interpretation of the term self-determination can be divided into two: politically, it is a concept which is, at one and the same time, both boldly radical and deeply subversive.

This legal and political situation captures some of the deep ambivalence of states towards the international legal order. Jurisprudentially, self-determination is a powerful expression of the underlying tensions and contradictions of international legal theory: it perfectly reflects the cyclical oscillation between positivism and natural law, between an emphasis on consent, that is, voluntarism, and an emphasis on building 'objective' legal principles, between a 'statist' and a communitarian vision of world order.<sup>29</sup> Moreover, he also classifies the term self-

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<sup>27</sup> Ibid, p.4.

<sup>28</sup> Antonio Cassese, *Self -Determination of Peoples: A Legal Reappraisal*, (Cambridge University press 1996) 11

<sup>29</sup> Ibid, p.1.

determination as external to become free from colonial domination and internal considering as a criterion for democratic legitimation of a state. Of course the right to self-determination largely remain either self-government by the whole people of the concerned society (internal) or the right to be free from colonial rule. In other words, the exercise of the right to self-determination could be used and has been used as a vehicle for enfranchisement, forever expanding circles of citizens against all manner of ancient regimes.<sup>30</sup>

On top of that, according to James Summers self-determination might be attractive to divide it into more manageable pieces which can be more readily defined. Therefore, it could be on the nature of its rights. Article 1 of the Human Rights Conventions of 1966 suggests a four-fold division: political, economic, social and cultural. It could be also on the basis of philosophical or political roots. Besides, it could also be according to subjects, such as colonial peoples, peoples under foreign occupation, states' people's minorities. However the most popular sub division of self-determination seems to be according to purported dimensions to the right: its internal and external aspects.<sup>31</sup>

Because of the aforementioned basic concept of self-determination, many ethno national minority groups interpret their fundamental right to self-determination as a right independent statehood, which they in turn interpret as a right to a state of their own, a state which 'belongs' to their people.<sup>32</sup> Nevertheless, as Chaim Gans strongly asserted that the right of ethno-national minority groups to self-determination should be conceived of as a package of privileges to which each ethno national group is entitled in its main geographic location normally within the state that coincides with its homeland.

This package of self-determination rights should mainly contain powers and liberties to practice their culture independently and to administer sub national parts of their lives within this culture, and rights to guarantee their fair share in the government and the symbol of the state.<sup>33</sup> According to Gans, ethno national minority groups and small national societies that

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<sup>30</sup> Ibid, p.5.

<sup>31</sup> James Summers, 'The Internal and External Aspects of Self-Determination Reconsidered, Statehood and Self-Determination' in Duncal French (ed), *Reconciling Tradition and Modernity in International Law* (Cambridge University Press 2013) 229

<sup>32</sup> Gans, (n 16) 67

<sup>33</sup> Ibid, p.68.

are not exclusive inhabitants in territories large enough to form states cannot realistically maintain themselves as an independent state or sub state. Therefore, to Gans the best way to these social groups to serve their interest in self-determination is granting them minority rights.<sup>34</sup> Generally having the underlying concept about self-determination within a state helps to establish common understanding and heritage among the same ethno national minority groups. Concerning this issue Chaim Gans also clearly stipulates that self-determination guarantees the memory of their ancestor's endeavors.

To some extent, it contributes to their own sense of personal safety, particularly if they belong to ethno national group with a history of persecution, and may provide a source of pride as well as honor because their identity is linked with it.<sup>35</sup> Furthermore, one of the principles developed by Soviet politicians is granted ethno national minority groups the right to decide their destiny freely. According to them all ethno national minority groups not only just those who are living under colonial rule have the right to choose whether to secede from the power to which they were attached or, alternatively, to demand autonomy while remaining part of the larger structure.<sup>36</sup>

Following this ideological formula the 1918 Soviet Union constitution explicitly granted a right to self-determination and recognized the union republics' right to secede although practically they were reluctant to adhere with it and implement this constitutional principle as well as practically allow the right to secede for ethno national minorities. Because of this, even they did not exercise this constitutional provision before and during their balkanization process. Concerning the concept of secession clause, Allen Buchanan on his part has sufficiently explained the justification why and how secession clause is important to avert the previously unjust legal and political imposition up on certain ethno national minorities.

According to this renowned scholar generally there are at least three broad theories of secession, namely remedial, primary right, unconditional and political contract. To him remedial Right Only Theories clearly assert that a group has a general right to secede if and only if it has suffered certain injustices, for which secession is the appropriate remedy of last

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<sup>34</sup> Ibid, p. 76.

<sup>35</sup> Ibid, p.86.

<sup>36</sup> Majeed and et al, (n 25) 16

resort. These theories also further allow that there can be special rights to secede if (a) the state grants a right to secede, or if (b) the constitution of the state includes a right to secede or perhaps if (c) the agreement by which the state was initially created out of previously independent political units included the implicit or explicit assumption that secession at a later point was permissible.<sup>37</sup> Primary Right Theories, in contrast, strongly assert that certain ethno national groups can have a (general) right to secede in the absence of any injustice. They do not limit legitimate secession to being a means of remedying an injustice.

According to this version, a group has a right to secede only if: (a) the physical survival of its members is threatened by actions of the state or it suffers violations of other basic human rights, or (b) its previously sovereign territory was unjustly taken by the state.<sup>38</sup> Therefore, as mentioned above the right to self-determination including and up to secession can be external or internal in its nature, and internal self-determination is best explained as a manifestation of the totality of rights embodied in the covenant for instance Article 1 of ICCPR includes the right to have a representative and democratic government.

This principle also recognizes the rights of ethno national minority groups as well as linguistic minorities living in federated states.<sup>39</sup> However, it is not an absolute right to be exercised at any time without any kind of limitation rather it can be restricted and derogated during state of emergency by the virtue of Article 4 of the aforementioned international human rights covenant. However, an examination limited to the texts of the covenants may well lead to the conclusion that ethno national minorities are entitled to more than the rights incorporated in Article 27 of international covenant on civil and political rights of 1966.

Concerning this controversial principle common Article 1 of the two International Human Rights Covenants of 1966 (both ICCPR and ICESCR) provides that “all people have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>40</sup> In addition to these basic international human rights instruments, the Declaration on Principles of International Law

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<sup>37</sup> Allen Buchanan, ‘Theories of Secession’ (1997) Vol. 26 *Journal of Philosophy and Public Affairs*

<sup>38</sup> Ibid,

<sup>39</sup> Majeed and et al, (n 25), p102.

<sup>40</sup> Article 1(1) of ICCPR and ICESCR, 1966.

clearly stated that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of principles of equal rights and self-determination of peoples, as well as a denial of fundamental human rights, and is contrary to the charter of the United Nations.<sup>41</sup> The aforesaid statement further explained by the Declaration was also confirmed by the African Charter on Human and Peoples' Rights, which considered the right of self-determination as the right to free [colonized or oppressed peoples] from the bonds of domination.<sup>42</sup> Moreover, the right to self-determination is a right which reflects the value given to communities.<sup>43</sup>

Hence the purpose of the protection of this right is to enable the ethno national groups as a distinct communities to prosper and transmit their culture as well as to participate fully in the political, economic and social activities to have this character reflected in the institutions of government where they live.<sup>44</sup> When we come to its application, the right to self-determination applies to all peoples whether they are under colonial domination or within the state but deprived of their fundamental human rights and freedoms although there is less consensus whether the right to self-determination including and up to secession, can be fully or equally applied to non-colonial independent states or internal political situations.

However, in its General Comment on Article 1 of the ICCPR, recently the Human Rights Committee in its clarification underlines that the obligations [under Article1] exist irrespective of whether a people entitled to self-determination depends on a state party to the covenant. It follows that all state parties to the covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination.<sup>45</sup> Therefore, from the above general comment's strong explanation we can understand that state parties to ICCPR are duty bound not only to recognize and respect the right to self-determination considering it as an important aspects of peoples' right but also they are expected to protect the same. Besides, principle VIII (2) of the Helnsinki Final Act of 1979, provides that it is the dimentions the

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<sup>41</sup>The Declaration on Principles of International Law concerning friendly relations and cooperation among states in accordance with the charter of UN,annex to GA Res.2625(xxv),adopted without vote on 24 oct.1970.

<sup>42</sup> Article 20 (2) of the African Charter on Human and Peoples' Right, 1990.

<sup>43</sup>Robert McCorguodale, 'Self-Determination:A Human Rights Approach' (1994)Vol.43 *International and Comparative Law Quarterly* 859.

<sup>44</sup> Ibid.

<sup>45</sup> General Comment 12 (2) on Paragraph 6of ICCPR 1966, A/39/40(1984)143



people which determine the content of the right: by virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference. In addition to the aforementioned international human rights instruments although it is not a binding treaty document for state parties in its nature, Article 4 of the 2007 Declaration on the Rights of Indigenous Peoples also refers to the rights of internal affairs of indigenous peoples.

According to this international human rights document indigenous peoples, in exercising their right to self-determination, have the right to autonomy of self-government in matters relating to their internal financing their autonomous functions. The right to self-determination could be also based on self-government to take part in political affairs of a given state to have democratic government. Furthermore, it could also claim self-rule right for the specific interest of certain territory, or total secession to establish statehood.

Secession might be final remedial, however, remedial secession is a legal myth. Of course, secession is not a remedy recognized in international law, for violations committed by a state.<sup>46</sup> As Katherine Del Mar stated that remedial secession's purpose is uncertain in so far as it purports to 'remedy' gross human rights violations through the separation of part of an existing state's territory and the population located thereon from the remainder of the state's territory and population. Rather than providing a 'remedy', remedial secession constitutes an acknowledgement of the inability the international community to prevent extreme ethnic violence, and its invocation as a 'last resort' amounts to a renunciation of the utility of human rights and other international legal rules in such situations.<sup>47</sup>

### **3.3.4. The Right to Representation**

The right to representation in political and public affairs is one of the fundamental human rights principles and encompasses multidimensional aspects of human life. General comment

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<sup>46</sup> International Law Commission, Responsibility for States of Internationally Wrongful Acts (2001) YBILC, VOL. II (Part Two).

<sup>47</sup> Katherine Del Mar, 'The Myth of Remedial Secession, Statehood and Self-Determination' in Duncal French(ed), *Reconciling Tradition and Modernity in International Law* (Cambridge University Press 2013) 80.

<sup>47</sup> UN Committee on Human Rights, General Comment No.25, 1996.

No. 25 of 1996 which explains and sufficiently elaborates international covenant on civil and political rights that the right to representation and participation relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers that all aspects of public administration and formulation as well as implementation of policy at international, national, regional and local levels.<sup>48</sup> That means the right to representation and participation is somehow a broad concept which stands for comprehensive protection and recognition of human rights in general and ethno national minorities in particular.

In other words, “participation in decision-making” actually is mostly concerned with issues of ‘representation’, as it addresses equitable representation in parliament, government, courts, and in civil service, election systems more broadly and the establishment of advisory bodies and other consultation mechanisms.<sup>49</sup> In the end, the right to fair and equitable representation as well as active political participation of any people in general and ethno national minority groups in particular would enable individuals belonging to a minority to have their legitimate share in the enjoyment of political power i.e. in legislative activities, administrative decisions as well as policy making and formulation processes.

In this regard Article 25 of international covenant on civil and political rights (ICCPR) clearly states that every citizen has the right and the opportunity to “(a) make part in the conduct of public affairs, directly or through freely chosen representatives, (b) vote and to be elected at genuine periodic elections which shall be by secret ballot, guaranteeing the free expression of the will of the electors and (c) have access on general terms of equality, to public service in his country, without any of the distinctions mentioned in article 2 and without unreasonable restrictions.”<sup>50</sup>

Moreover, Article 15 of the framework convention for protection of national minorities of European Union states that create favorable conditions necessary for the effective participation of individuals belonging to national minorities in cultural, social and economic life, and in public affairs, in particular those affecting them is very important. Kristin Henrad

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<sup>48</sup> UN Committee on Human Rights, General Comment No.25, 1996.

<sup>49</sup>Kristin Henrad, ‘Participation’, ‘Representation’ and ‘Autonomy’ in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions’ (2005)IJGR 134

<sup>50</sup>Article 25 of ICCPR,UNGA Resolution 2200 A(XXI) of December 1966,

on her part, by examining the European experience, strongly states that the effective participation and representation of national minorities in the governance of States emerged in the 1990s as a recurrent theme for the OSCE High Commissioner on National Minorities. In an effort to obtain more clarity about the content of minority rights and other relevant standards pertaining to this theme a group of international experts was also commissioned to draft a set of Recommendations, the result of which were the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life.<sup>51</sup>

The aforementioned international and continental human rights principles as well as experiences in which we can understand that state parties to the above stated convention and recommendation are under duty bound not only to respect the rights of representation and participation of minorities in public life but also to facilitate the plain field in order to exercise their political rights and socio-economic interests through using these fundamental rights.

Moreover, a government of state party to such international and regional organizations is expected to refrain from imposing unnecessary restrictions on the rights of equitable representation and political participation in the name of public interest as well as other unacceptable reasons. However, there are different political and administrative situations which can be considered as detrimental to exercise such internationally and regionally recognized and guaranteed rights. To substantiate this reality by some concrete examples, the following politico-legal situations are worth mentioning.

Various obstacles which prevent the effective representation and active political participation of minority groups in public affairs include: exclusion of minorities from the political process through denial of citizenship, obstacles to the exercise of the right to vote, under-representation of minorities in political and public life, and the exclusion of citizens who are members of minorities from holding public office.<sup>52</sup> Therefore, minorities need to have effective and genuine representation and active political participation in order to exercise their full rights in public affairs and protect their basic interest from unreasonable restriction. Besides, negative political and administrative influence of a majority social group and government of same up on minorities which is susceptible to be ignorant of even the very

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<sup>51</sup>Henrad, (n 23) 133

<sup>52</sup>De Varnnes, *Towards Effective Political Participation and Representation of Minorities* (1998) 3

existence of minorities in general and ethno-national minorities in particular should be corrected through their active and genuine participation of the same. That is why Duchacek in his classical work clearly underlines that a mere existence of international human rights documents and constitutional guarantee of human rights alone cannot be sufficient to ethno national minorities unless they have “effective share in the political fate and the government of the country”.<sup>53</sup> Hence in order to guarantee this effective representation and active political participation of minorities in public life, different mechanisms other than the existing international human rights regime and the normal legal procedure should be designed and strictly implemented in all levels of government institutions.

In other words, there must be a system that allows encouraging the active political participation of members of ethno national minority groups and facilitating the fair and equitable representation as well as active political participation of minorities in general and ethno national minority groups in particular. Concerning this concept a renowned constitutional lawyer rightly stipulates that “it is necessary that especial procedures, institutions and arrangements be established through which members of minorities are able to make decisions, exercise legislative and administrative powers and develop their culture”.<sup>54</sup>

That means the existing legal system in general and the human rights legal regime in particular, whether international, continental or domestic, is not as such sufficient to fully guarantee and properly entertain the equitable representation and active political participation rights of ethno national minorities and to make them important parts of the present day overall system of governance of a given nation. Because of this and other relevant considerations, there should and must be a special as well as appropriate legal and political mechanism which can properly accommodate the real interests and equitable representation rights of ethno national minorities.

### **3.4 Conclusion**

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<sup>53</sup>Ivo Duchacek, *Comparative Federalism: The Territorial Dimensions of Politics*(Holt, Rinehart and Winston Inc. 1970) 101

<sup>54</sup>Yash Ghai, ‘Public Participation and Minorities’, Minority Rights Group International (London 2001)

As the researcher has discussed in the above respective sections the rights of minorities in general and ethno national minority groups under international human rights legal regime in particular are not as such comprehensively recognized and thereby legally protected in a sufficient manner although some national and continental human rights instruments attempted, to a certain extent, recognize and guarantee the protection of fundamental rights and freedoms of minorities directly or indirectly. Of course as Professor Tove H. Malloy appropriately pointed out in her classical work on minority issues international human rights law have a long pedigree evolving from freedom guarantees afforded to religious minorities in the Middle Ages to a human rights protection.

Thus, until 1992 the rights of minorities in general and the ethno national minorities in particular were not as such fully recognized by the international human rights legal regime. The main reason for this political and legal situation and the existing human rights regime of the world order was, according to the concepts and understandings of the international community, individual rights were the important concerns of the same. As a result, minority concerns in general and ethno national minority rights in particular did not draw serious attentions of the international community and the political leaders of the most powerful and influential countries and thereby did not achieve prominent position in the International Bill of Rights, which marked the first wave of human rights standards setting within the United Nations human rights regime.

Considering this politico-legal situation later on discrete minority provisions that starts to recognize the very existence of minorities were incorporated into various conventions, such as convention on the rights of the child and the ILO convention of 1989. Besides, although strictly speaking it is not a treaty document that binds state parties to the United Nations, in a 1992 minority declaration was also adopted by General Assembly of this international organization and clearly shows at least the interest and political commitments of the leaders of government of member states of the same institution.

However, as mentioned above several times the existing international human rights instruments do not provide a universally accepted definition and legally binding treaty document as well as strong implementation mechanisms within the United Nations human rights regime. In other words, until now the international human rights legal regime does not come up with strong, comprehensive and binding treaty document which clearly defines, politically recognizes and legally protects the rights of minorities including ethno national

minorities even though some people argue that Article 27 of international convention on civil and political rights and the 1992 Minorities Declaration can be considered as important human rights instruments to the recognition and protection of minority rights.

## **CHAPTER FOUR**

### **Federalism and the Rights of Ethno-national Minorities**

#### **4.1 Introduction**

This chapter mainly deals with the general concepts of federalism including the definition of the term and the accommodation of diversities in general and the group rights of ethno national minorities in particular. The researcher also attempts to focus on the most important aspects of federalism that tends to accommodate ethno national minorities. Therefore, this chapter basically focuses on the general characteristics of the concepts of federalism that recognize shared rule and the right to self-government of ethno national minority groups including the right to existence and equitable representation minorities among others.

In the following section the researcher intends to explain the fundamental principles of federalism and its drawbacks as well as the relationship between federalism and democracy using relevant literatures and empirical data that are important to the present discussion. The purpose of this chapter is therefore to examine the very substances of federalism in general and the fundamental principles of accommodating ethno national minorities to have proper understanding whether federalism accommodates ethno national minority groups.

To properly understand the basic concepts of federalism and its fundamental principles in relation to the Ethiopian federal political system at sub national level discussing on the same issue is very important concern. Based on this approach section two of this chapter deals with the general remarks of federalism starting from the definition of the term itself and its principles, section three focusses on the relationship between federalism and democracy particularly concerning the rights of ethno national minorities and section four talks about federalism and sub national units in terms of accommodating ethno national minorities. The final section concludes the chapter by reviewing the basic features of federalism.

## 4.2. General Remarks about Federalism

The term ‘federalism’ comes from the Latin word ‘foedus’ which means ‘treaty’, ‘compact’ or ‘covenant’ and implies the existence of more than one set of autonomy.<sup>1</sup> Furthermore, federalism is seen as a tendency towards enlargement, i. e., the building up of separate political entities into integrated whole, in response to external and internal socio-economic and political pressures. As for internal pressures, mutual fears in a plural society, combined with a desire for enlargement, although it works only for coming together types of federations, are said to be the main forces which caused local leaders to compromise on a federal link.<sup>2</sup>

Especially if the type of such federal system is multinational, it will have a wider opportunity to accommodate different ethno national groups. In this regard multinational federations accord better protection to ethno national minorities that are geographically concentrated and territorially grouped. In most nations of the world there are linguistic, cultural, religious, or other types of minorities even if distinguishing between these groups is easier said than done. It is therefore very likely that such ethno national groups happen to be territorially concentrated since speaking a common language, or practicing a common culture and religion tends to cluster people together.<sup>3</sup>

According to Ronald Watts, the term federalism refers to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule. It is based on the presumed value and validity of combining unity and diversity, i.e., of accommodating, preserving and promoting distinct identities within a larger political union.<sup>4</sup> He further explains the nature of federalism that it is not by any means formless, nor it is an abstract ideological model; rather, it is a process of bringing people together through practical arrangements intended to meet both common and diverse preferences of people.<sup>5</sup> Of course according to Edmond J. Keller federal systems vary in form but, at a very fundamental level,

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<sup>1</sup>G. Welhengama, *Minorities Claims: From Autonomy to Secession: International Law and State Practice* (2000) 112

<sup>2</sup>Lucretia L. Ilsley, ‘Toward Unity in Africa: A Study of Federalism in British Africa’ (1961) Vol. 23 *The Journal of Politics* 170

<sup>3</sup>Yared Legesse Mengistu, ‘Protection of National Minorities in Multinational Federations: A Comparative Analysis’ (PhD Dissertation, Central European University 2010) 23-24

<sup>4</sup>Ronald L. Watts, *Comparing Federal Systems* (3<sup>rd</sup> edn, 2008) 8

<sup>5</sup>Ronald L. Watts, “‘Contemporary Views on Federalism’,” in De Villiers B (ed), *Evaluating Federal Systems* (Dordrecht: Juta & Co. 1995) 7



federal principles involve a combination of self-rule and shared rule. Sub-national units are accorded rights to govern their own affairs, at least in particularly prescribed policy areas.<sup>6</sup> Because of this, federalism certainly has special relevance for ethnically heterogeneous society since it minimizes the majority's chance to dominate, marginalize as well as exclude ethno national minorities from the ambit of political, socio- economic and cultural spaces of a given country.

In doing so, it reduces the unnecessary socio-economic domination and political hegemony of the majority since federalism encourages ethno national minority political participation and thereby influences the decision of the majority group using their representatives. From the legal standpoint of view, federalism could be conceptualized as a form of government which institutionalizes vertical distribution of power between national and sub national tiers of government, each is competent or authorized to exercise defined government powers within the framework of a written and formally adopted constitutional text.<sup>7</sup>

On the other hand, when interpreted more as a political concept, which is actually the case within the Anglo-American tradition, federalism is defined as the mode of political organization that unites separate polities within an overarching political systems by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both.<sup>8</sup> In other words, federalism is a system of governmental organization that grants subunits of polity definitive mandates and autonomy against the central government.

It also allows these subunits to maintain different norms, or policies, from those of the central government. Thus it differs from decentralization, which is a strategy that the central government adopts in order to carry out its norms or policies more effectively.<sup>9</sup> That means in federal political system neither the federal government nor the regional states have the power to take any legal and political action contrary to the fundamental principles of federal

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<sup>6</sup>Edmond J. Keller, 'Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia' (2002) Vol 7 *African Journal of Political Science* 24

<sup>7</sup>Edoba Brgh Omoregie, 'The Subsidiarity Principle and Federalism Fissures in Nigeria' (2014) *Ethiopian Journal of Federal Studies* 198

<sup>8</sup>Lidija R. Basta and Thomas Fleiner, *Federalism and Multiethnic States, The case of Switzerland* (1996) 2

<sup>9</sup>Edward L. Rubin, *Puppy Federalism and the Blessings of America* (AAPSS 2001) 574, 574 37

constitution which is adopted by mutual agreements of both national and sub national levels of governments through their legislatures or other special body assigned for the purpose of adopting the constitution or conducting popular referendum. Because of this federal political systems of government in every corner of the world often involve at least two orders of government institutions: called national and sub national units.

The concept of autonomous sub state government is therefore alien to the design of most other non-federal ሥልጣን systems. Sub state government or rather administration is basically viewed as a genuine competence of sub national governments in federal political systems. In the last few decades, however, the value of sub national government as an institution of democracy and development is gaining more recognition. As a result, many states, both federal and unitary, have started to embrace some form of local decentralization, a process that has been associated with the transfer of power to democratically elected authorities.<sup>10</sup>

The autonomous powers of sub state government vary from federation to federation. In some federations, sub state governments have constitutionally entrenched political authority; in some others, they are creations of regional states and subordinate to their authority in many or most areas, for instance in Ethiopia although the federal constitution indirectly indicates as well as encourages the existence of sub state governments, they are the creation of regional states through their written constitution or other sub constitutional laws.

Because of this, it is believed that having constitutional origin and sanctity amounts to continued and guaranteed existence of sub state governments.<sup>11</sup> Although federalism is not a panacea for all problems of the existing system of governance and challenges of ethno national diversity, the continuity of ethno national diversity can be asserted through the entrenchment of self-rule that would encourage those diverse societies to live together under the umbrella of federal government applying the principle of shared-rule which helps to strengthen the unity of peoples living in a given country recognizing and fulfilling the interests of such diverse societies.

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<sup>10</sup>Zemelak Ayele and Yonatan Tesfaye Fesseha, 'The Constitutional Status of Local Government in Federal Systems: The case of Ethiopia' (2012)58 (4)*Africa today* 89

<sup>11</sup>Sisay Mengistie Addisu, 'Autonomy of City/Town Administrations in Ethiopia: The Case of Amhara Region' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (2015)

To put this statement in other way, for most ethno national minorities that are territorially grouped, federalism best provides a reliable political recognition and legal protection to their right of self-rule and facilitates to have fair and equitable representation not only at regional and sub-regional level but also at different branches of central (national) and regional governments. Concerning this important issue by refereeing works of different authors, Asayehgn Desta consolidated the following important and very informative statement:

Federalism involves a territorial division of power between constituent units – sometimes called provinces, cantons, regions, possibly cities and states, and the central government (Watts, 1998). Stated differently, federalism is defined as a form of governmental and institutional structure designed by the will of the stakeholders to maintain unity while also preserving diversity through shared rule (Odion, 2011). According to Elazar (1987), Federalism is a mode of political organization which unites separate polities within an overarching political system so that it induces each polity to maintain its political integrity.<sup>12</sup>

This kind of government structure and political situation also helps to consolidate and maintain smooth relationship between or among ethno national groups and thereby unity of peoples of a given country by recognizing the autonomous existence of special interest of ethno national minorities. For instance, as the researcher will discuss the details in a separate chapter, when we see the federal system of Switzerland, the federal structure of the state, the decentralization of administration and local autonomy are generally considered to be indispensable instruments for the effective protection of ethnic/linguistic population groups.<sup>13</sup>

In other words, it is the responsibility of every canton-within the framework of its autonomy to care for the proper recognition and protection of the different ethno-linguistic groups including religious minorities, if necessary by providing for schooling in the native language and other supportive measures.<sup>14</sup> As G.Welhengama strongly argues, federalism could effectively address issues related to ethno national minority groups and promote their rights

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<sup>12</sup>Asayehgn Desta, 'Beyond the Usual: Re-thinking Ethiopia's Ethnic Federalism for the 21st Century' (2015) [aigaforum.com/article1/Re-thinking-Ethiopia-Ethnic-Federalism.docx](http://aigaforum.com/article1/Re-thinking-Ethiopia-Ethnic-Federalism.docx), 4, Accessed on 09-05-15

<sup>13</sup>Kay Hailbronner, 'The Legal Status of Population Groups in a Multinational State under Public International Law' in Yoram Dinstein and Mala Tobory (eds), *The Protection of Minority Rights and Human Rights*, (Martinus Nijhoff 1992) 131

<sup>14</sup> Ibid.

by granting a certain degree of legislative, judicial and financial autonomy.<sup>15</sup> Therefore, instead of pursuing the goals of national integration and political legitimacy without introducing democratic system of governance that could exacerbate ethnic conflict, multinational types of states tend to adopt a federal system of government to empower different ethno national groups and avoid political instability. In short, federalism best accommodates the interests of different ethno national groups, enhances liberty of them, and promotes active citizenship if properly and genuinely implemented the principles of democracy.<sup>16</sup>

In other words, federalism has proved to be effective and necessary means in giving substantial solutions to protection of minorities in general and ethno national minority groups in particular. Besides, it opens a room for sufficient opportunity for self-rule to ethno national minorities which might otherwise be overlooked in multicultural societies. This might happen either by granting the right to establish their own sub national units with autonomous political powers or through guaranteeing their right in the basic law/constitution of the federation whether they are territorially concentrated or not.

However, only securing the rights of self-government to ethno national minority groups is not necessarily a panacea to the holistic demands of ethno national minorities. Hence the right to self-government should also be strongly accompanied by a comprehensive shared-rule or installing legal and practical mechanisms of providing genuine participation and representation rights of such ethno national minorities in decision-making processes of not only at sub national level but also at different institutions of state and federal governments of a given nation.

Eventhough today there is unclear consensus universally towards defining the term federalism, its political function, as system of government is to devolve state power /sovereignty between the center and constituent units. It may be installed based on territorial or ethno-linguistic lines. However, ethno-linguistic based or multination federalism is more preferred to territorial or unitary form of government in order to accommodate diverse

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<sup>15</sup>Welhengama, (n 1) 114

<sup>16</sup> Asayehgn, (n 12) 5

interests of ethno national minority groups living in a given country. In other words, a workable federal system should consider the context and historical facts of a given nation in order to properly address the fundamental questions and basic rights of ethno national minorities of the same.

### **4.3. Federalism and Democracy**

According to some scholars federalism would be a seedbed of democracy, as it would allow for more participation and establishes accountability, stimulate civil society, add access channels for political representation, broaden sources of legitimacy, limit the ‘tyranny of the majority’, broaden citizenship by institutionalizing multi-ethnicity and provide for sub-national competition, thus stimulating local self-governance, innovation and efficiency.<sup>17</sup> Given the aforementioned argument, the only option that we have is a democratic system of autonomous self-rule federalism or consociationalism (i.e., a plural society with overlapping ethnic/cultural /linguistic groups).

Because in consociational democracy ethno national groups are properly recognized by the state and given all the necessary conditions, such as separate communities, language rights, schools and mass media, to preserve their separate existence and identity.<sup>18</sup> For those like Arend Lijphart (1977) who advocate consociational forms of power sharing, democracy is, in the first instance, about inclusion. Accordingly, the initial task is to devise a proportional electoral system that returns a legislature that is highly representative of society as a whole; in short, moderates, extremists and others in society should be included in the democratic process.<sup>19</sup>

Federalism is also the most genuine option for a democratic and stable form of management because it promises harmonious relationships among ethnic, religious, or linguistic factions. Democratic self-rule federalism or consociational democracy divides the federated state into equally autonomous units. The autonomous federal units are therefore managed with recognition and accommodation among the elites of each of its major social groups so that the

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<sup>17</sup>Andreas Heinemann-Grüder, ‘Federal discourses, minority rights, and conflict transformation’ in Cameron Ross and Adrian Campbell (eds), *Federalism and Local Politics in Russia*, (2009) 72-73

<sup>18</sup>Sammy Smooha and Priit Jarve, *The Model of Ethnic Democracy, The Fate of Ethnic Democracy in Post-Communist Europe Vol.3* (EcNI Book Series 2005) 13

<sup>19</sup>Ian O’Flynn and David Russell, *Power Sharing: New Challenges for Divided Societies* (Pluto Press 2005) 24

created federal state remains stable rather than being fragmented on the basis of ethnicity and religious factors.<sup>20</sup> Because of this, we can strongly assert that federal democratic political system accommodates the diverse interests of different nation-nationalities and peoples in a given country, if it genuinely applies the principles and best practices of federalism itself, by recognizing their very existence and protecting the rights of such minorities in general and ethnonational minorities in particular. Concerning this concept by examining practical experiences of different federal political systems Ronald Watts strongly stipulates that:

As in Canada, so in India, Pakistan, Malaysia, Nigeria...and Switzerland, linguistic, racial and religious minorities that feared discrimination at the hands of numerical majorities but were unable alone to support effectively a genuine separate independence, have sought provincial autonomy within a federal political system as a way of preserving their own distinct identity and way of life. In each of these countries the multilingual and multicultural character of the society has frequently been cited by politicians as the crucial characteristic making a federal political system necessary.<sup>21</sup>

Moreover, in light of modern experience federalism might be added to democracy. In this regard there are several multicultural federations that have achieved solid as well as sustainable peace and order between ethno national groups. Whether federalism contributes to the harmonious and fruitful combination of a given population depends, however, on how well the federation's institutions and processes actually accommodate social realities of the concerned country.<sup>22</sup> However, there is also a counter argument that explains federalism would be considered as an instrument which undermines democracy.

According to this view federalism institutionalizes regional overrepresentation and undemocratic veto positions, preserves sub national authoritarianism, promotes ethnocratic instead of democratic rule, exacerbates regional disparities, undermines the rule of law and facilitates the rise of demagogues rather than encouraging democracy.<sup>23</sup> Nevertheless, if one looks at the empirical evidence in diverse political settings, there is no inevitable link between

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<sup>20</sup> Asayehgn, (n 12) 7

<sup>21</sup> Yonatan Tesfaye, *Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia*, (University of the Western Cape 2008) 84

<sup>22</sup> Arnold Koller and et al, *Principles of Federalism, Guidelines for Good Federal Practices – a Swiss Contribution* (Dike Zurich 2012)

<sup>23</sup> William H. Riker, *Federalism: Origin, Operation, Significance*, (Boston, MA: Little Brown 1964) 111

democracy, federalism and the degree of sub-national autonomy. Especially in emerging and multi-ethnic federations, the integration of sub national units or groups often took precedence over democracy.<sup>24</sup> As mentioned above even though federalism is not always the best alternative or the last option to all countries and peoples alike, it is suited to democracies with very large population or territories or high diverse societies that are regionally concentrated.<sup>25</sup>

Furthermore, most multiethnic federal political systems that are known by exercising system of democratic governance and adopts fundamental principles of international human rights instruments recognize minority rights as it is basically established through constitutional means in most cases by securing the agreement of almost all constituent units and their respective people as well as it is also applying the basic principles of democratic governance, rule of law and constitutionalism. In this regard Lidiya R. Basta strongly stipulates that:

Federalism and democracy can also be taken as constitutive principles of power control for a given political community, which have different values in the background, those of diversity and equality, respectively. Consequently, their relationship within a given political order implies much more than compromising the effects of inequality of individual citizens as voters with principle of equality of federal units. One can indeed speak of democratic control of a federalized power, and federalist control of democracy.<sup>26</sup>

Of course, federal democracies and the genuine implementation of same from the very beginning requires certain cultural changes and other important characteristics, including respect for the rule of law, concepts of decentralization and minority rights as well as an element of shared identity.<sup>27</sup> In other words, respecting rule of law and protecting minority rights in general and recognizing the independent existence of ethno national minorities in particular is, in most cases, taking as an essential precondition for genuine federal political system as well as democratic system of governance. That means federalism at least allows the right to self-government to minority ethno national social groups through exercising the principles of democracy and by recognizing the fundamental rights of individual citizens whether one belongs to majority or minority ethno national groups.

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<sup>24</sup>Grüders, (n 17) 73

<sup>25</sup>George Anderson, *Federalism: An Introduction* (Oxford University Press 2008) 12.

<sup>26</sup>Lidiya Basta, *Minority and Legitimacy of a Federal State: An Outsider Perception of the Swiss Model* (1996) 60

<sup>27</sup> Ibid, p.13.

#### 4.4. Federalism and the Rights of Minorities under Sub-National Units

As noted above, federalism by its nature allows the constituent units of a federal system to determine a significant extent of government power the ends that they will pursue and the means by which they will accomplish those ends. This is because an implicit expectation in this system is that the retention of such choices by the constituent units' governments will produce diversity; that given the opportunity, these multiple governments will order their affairs in diverse ways. Because of this, federalism can claim to serve the ends of both pluralism and self-government.<sup>28</sup>

The traditional understanding of federalism depicts the central government as the protector of the rights of citizens and ethno national minorities from the potential abuses by sub-national governments.<sup>29</sup> According to this perspective, sub national units, as compared to the national government, have a greater tendency to ignore rights of ethno national minorities within their borders or territorial administrations. However, federal political systems, with their traditions of shared-rule and self-government, have generally found it easier to respond to claims for collective rights than have unitary systems.

In fact, ethno national minorities seeking recognition of their claims have also frequently called for devolution of political power or, in short, for some kind of federalism.<sup>30</sup> Nevertheless, from the very beginning federalism is established in a country to give local units autonomy, 'not to deny individual rights rather to protect individual liberties against abuse of power by a strong national government'.<sup>31</sup> Probably federalism only makes a strong sense that sub-national units would provide additional rights for their citizens against the federal government. In particular for countries having multi-ethno national groups, where the federal arrangement is organized in such line, each sub-national unit will consist of a majority from one ethno national group and small minorities from other ethno national group or with no single majority at all in those multiethnic sub national units. While in some cases the federal

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<sup>28</sup>Ellis Katz & Alan Tarr, *Federalism and Rights* (Rowman & Littlefield Pub. Inc. 1997) 42

<sup>29</sup>See Daniel J. Elazar, *Federalism, Diversity and Rights*, in Katz & Tarr eds. 1-11

<sup>30</sup><sup>30</sup>For further understanding see also Gary J. Jacobsohn, Contemporary Constitutional Theory, Federalism and the Protection of Rights, in Katz & Tarr eds. 29-56 and Will Kymlicka, Emerging Western Models of Multination Federalism: Are They Relevant for Africa?, in *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, (David Turton, eds) (James Currey, Ohio & Addis Ababa Univ. Press 2006) 32-64

<sup>31</sup>For further understanding see Michael P. Zuskert, Toward Corrective Federalism: The United States Constitution, Federalism and Rights, in Katz & Tarr eds., 75-100



government may be more inclined to protect the rights of ethno national minorities within such units, the latter themselves are much more likely to protect the rights of majorities within their borders, which are generally minorities in the country.

Hence, the rise of sub-national constitution and constitutionalism had contributed a great deal of ideas on the development of the long enduring query of federalism and ethno national minority rights protection in many federations. In this regard, G. Alan Tarr strongly asserts that “in fact, it may be that sub national units...more often underutilize their constitution-making competency, given the fact that the legally available constitutional space, than over utilize it.”<sup>32</sup>

This underutilization of competence, owing to the different face of it, shows in federations, has also its own important implications. For one thing, the development or reawakening of political awareness and regional identity among previously politically powerless and unorganized peoples in various countries has increased the urgency of finding mechanisms for the right to self-government. In addition to that, the underutilized space offers the opportunities for opening up participation in the decision-making process for ethno national and linguistic minorities to be greater at the sub-national than the national constitutional level.<sup>33</sup>

Thus, granting extensive constitutional space to sub-national units, including rights protection sphere, may also be crucial for ethno national minorities who might get easier to gain recognition of their rights. Of course critics sometimes fear that self-government for ethno national minorities may violate the basic principles of liberal democracy, such as the principle of equal citizenship, or the protection of individual civil and political rights. However, in reality, virtually all existing forms of minority self-government in the West are firmly subject to constitutional guarantees of the rule of law, individual rights, and democratic procedures. Indeed, proponents of multination federalism strongly argue that it can actually enhance the freedom and equality of citizens, by putting minority and majority on a more equal

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<sup>32</sup>Alan G. Tarr, ‘Sub-national Constitutional Space: An Agenda for Research’, paper prepared for delivery at the World Congress of International Association of Constitutional Law, (Athens 2007) 18

<sup>33</sup>Ibid, pp 19-20.

footing.<sup>34</sup> Because of this, one can safely conclude that sub-national units, by deriving legislative and executive federalism, are the primary tools in the areas of fundamental rights protection within their bounds. Nevertheless, this should not be interpreted to mean they are exercising their competence without any legal and political limits. Hence according to scholars someone can raise here at least two important sets of limitations on their competence.

These are: the supremacy clause of the federal constitution, which requires conformity to its standards, and the minimum standard set under the international human rights law, which mostly falls on the federal government as part of treaty-making power and foreign relations affairs, as one can observe in many federations.<sup>35</sup> Therefore, sub-national units are expected to live up to such commitments in enforcing human rights of ethno national minorities within their legal and political bounds. As we have seen, this in turn invites, for the application of adequate protection and complementariness in the territory of the units rather than being reluctant in exercising their political powers.

In short, failure to observe and comply with the duty to enforce those constitutional recognized fundamental rights by sub-national governments would open an avenue for the federal government to intervene legally in the business of the units seeking national uniformity. In federal political system, as clearly stated above legislative and executive power is divided between federal government and constituent units of the same.

Concerning this issue George Anderson on his part clearly states that all federations have provisions in their constitution dealing with the allocation of powers between the central and constituent unit governments although there is a significant difference among constitutions which devote to establish federal political system.<sup>36</sup> That means the principles of shared-rule on common interests and the right to self-government on specific matters of constituent units of the federation can be fully applicable in such kinds of genuine federal political system. In this regard one renowned writer also stipulates that “federalism may be said to be the best kind of government for peoples among whom there is a considerable amount of diversity in

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<sup>34</sup>Will Kymlicka, ‘Justice and security in the accommodation of minority nationalism’ in Stephen May, Tariq Modood, and Judith Squires (eds), *Ethnicity, Nationalism, and Minority Rights* (2004) 148.

<sup>35</sup>See Martin Flaherty, ‘Are We Be a Nation? Federal Power vs. States Right’ (1999) 70(4) *University of Colorado Law Review* 1278-1316

<sup>36</sup> Ibid, p.23.

respect of language, religion and culture...and varying geographical and economic characteristics.”<sup>37</sup> On top of that some other scholar strongly argues that it is our contention that some federally desirable homogeneity is an imperative in every federal system.

However, federalism also provides that sub national units can and should be separate in other ways, including the protection of their identities. Sub national governments in the federation therefore must be sensitive to the local particularities of various areas. Hence according to this scholar federalism operates best in a democratic setting that enables the people to determine who leads and in what direction.<sup>38</sup>

To substantiate the aforementioned statement a renowned professor rightly stipulates that in view of the argument that federalism of a multi-ethno-national federalism is a reliable method of safeguarding stability in ethnically diverse countries, provided it is established voluntarily and is not imposed by interest groups or the government, a number of unified sovereign nations have created their own autonomous ethno national or region- based federal states.<sup>39</sup>

As stated in the previous sections in principle federalism is by its nature inclusive of diverse interests of the peoples of a given country. It also has certain important elements of democracy, in federal political system the fundamental rights and freedoms of ethno national minorities can be politically recognized, legally protected and secured. In this regard George Anderson also further argues that:

Whatever their party systems, federations differ in their approaches to accommodation of regional and ethnic minorities within central decision-making institutions. Inclusion can reflect the power of minorities in a coalition building, it can be a matter of political culture or established practice, or it can be prescribed in the constitution. Giving minorities a real voice in central institutions can be important in promoting social harmony and political stability.<sup>40</sup>

In addition to this explanation concerning the general concepts of federalism and its nature Daniel Elazar also strongly states that federalism in this context is more than simply

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<sup>37</sup> Olunwu Indowu Odumosu, *The Nigerian Constitution; History and Development* (1963) 232.

<sup>38</sup> J. Isawa Elaigwu, ‘Nigeria: The Decentralization Debate in Nigeria’s Federalism’ in Thomas J. Courchene et al (eds), *The Federal Idea Essays in Honour of Ronald L. Watts*, (McGill-Queen’s University Press 2011) 434

<sup>39</sup> Asayehgn, (n 12) 5

<sup>40</sup> Anderson, (n 25) 52

intergovernmental relations. It is even more than the thinking of constituent entities in larger wholes to maintain both self-rule and shared-rule.<sup>41</sup> That means genuine federal political system goes beyond the simple recognition of self-rule and shared rule rights of ethno national groups and it also highly accommodates other fundamental rights and freedoms of the people concerned as well as empowers sub national units established within the system.

According to some writers modern accounts of federalism have gone well beyond Madison to broaden substantially the range of considerations accepted as justifications for the creation of a federal structure of governance. One of the most prominent of these justifications holds that federalism is desirable because of its capacity to permit some degree of self-determination to ethnoculturally distinctive subgroups when they are geographically concentrated.<sup>42</sup> Based on this, we can safely conclude that federal political system provides the best possible form of government for a nation characterized by ethno national and regional disparities.

A centralized federated state however may not encourage local participation. Its viability to become an effectively managed and unified sovereign state may not be possible because it could limit the ability of the ethno national majority of the region to impose its will on ethno national minorities.<sup>43</sup> Therefore, protection of ethno national identity markers, preserving their specific culture and values that differs from the majority others and empowering sub national units can be guaranteed by federal political system if such federal political system is quite genuine. Generally, federal political system is the one among different types of systems of governance that tries to accommodate the rights and freedoms of not only nations, nationalities and peoples living in a given country that adopted it through their constitutional means but also other diverse interests of the same. In other words, this political system can have an opportunity to avoid unnecessary ethno national, religious or cultural domination or imposition of a certain majority group against minorities based on its unlimited egoistic nature and selfish political interest of the same ethnic group although as mentioned above some

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<sup>41</sup>Daniel J. Elazar, 'Federalism, Diversity, and Rights' in Ellis Katz and G. Allan Tarr (eds), *Federalism and Rights* (Rowman & Littlefield Publishers INC. 1996) 2

<sup>42</sup>See, Generally Thomas Dye, 'American Federalism' in G. Alan Tarr, Robert F. Williams, and Josef Marko (eds.), *Federalism, Sub-national Constitutions, and Minority Rights* (Praeger 2004)

<sup>43</sup>Obydenkova, A., *The Role of Asymmetrical Federalism in Ethnic-territorial Conflicts in the Era of Democratization: The RF as a case Study* (Florence 2004)

scholars strongly argue that it promotes politics of difference and local tyranny. According to these commentators “those who seek popular support must strive to be the most authentic and ‘ethno national’ of the candidates or parties, and the most resolute in asserting the ethno national genuine interest as against the ‘others’.”<sup>44</sup>

However, because of its accommodative feature, genuine federal political system also helps to strengthen smooth relationship between different nations, nationalities and peoples who agree to live together by installing federal and democratic political system in the country they are living in order to secure their socio-economic interests and distinct identity markers within one system of governance by promoting a single but strong socio-economic and political community under democratic and prosperous federal political system. Because according to Feeley the main characteristics of genuine federal political system include among others:

Political power that is structurally dispersed among centers of authority to encourage both self and shared rule; Subordinate units prescribed by areas of jurisdiction that cannot be invaded by the central authority; Leaders of subordinate units who draw their power heavily from local sources independent of the central authority; Governmental institutions of the sub-units that have democratic rights to choose their own officials and their own policies within their areas of jurisdiction; Leaders and representatives of each sub-unit who possess a legally protected base from which they can voice their opposition to the central authority; and Governors of each constituent unit chosen not by the ruling political party but who are elected by local residents.<sup>45</sup>

That is why Assefa Fiseha on his Article rightly stipulates that “Federalism or devolved forms of governments often have space for both identities and these political systems do not insist that one should eliminate the other. On the contrary, both identities are preconditions that manifest themselves in the form of *unity in diversity*. Unity is our loyalty to the overarching state, our positive identification with the institutions, common citizenship and symbols of the state while diversity is manifestation of sub state identity that people enjoy at state or local

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<sup>44</sup>Yonatan Tesfaye Fisseha, ‘*Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia*’ (PhD Dissertation, University of the Western Cape 2008) 87

<sup>45</sup>Edward L. Rubin and Malcolm Feeley, ‘Federalism: Some Notes on a National Neurosis’ (1994) Vol 11 *UCLAL Rev.* 903’ 12.

government level.”<sup>46</sup>In Africa, Ethiopia (1995), South Africa (1996), and Nigeria (1999), are countries that are endeavoring to experiment federalism by establishing predominantly multiethnic types of federal political system.

However, the formation of federalism in this handful of African countries doesn’t seem to amount to the formation of genuine federal democratic nations. Rather, the type of federalism that has been experimented within the above mentioned three African states seems to be construed as favorable ways to accommodate ethno national and linguistic diversity within a single centralized political party.<sup>47</sup> Nonetheless, for the government of Ethiopian, "democratization" under federal political system does mean "ethno national representation" and working through ethno national elites, but not necessarily autonomous grass-roots decision-making.<sup>48</sup>

It is also to be noted that the Constitution drafters of the country (consciously or unconsciously) have made an effort to link it with principles outlined in the African Charter of Human and People's Rights, adopted in 1983. This legal situation underlines community rights (second and third generation rights) next to the individual human rights which were seen by many Africans as based too closely on liberal Western ideas.<sup>49</sup>To sum up this section by referring different scholarly works on federalism and minority rights Getachew Assefa Woldemariam summarizes the link between federalism and protection of ethno national minority rights in the following paragraph.

Federalism’s dual system of rights protection; its capacity to grant autonomy to sub-national historical regions or ethnic groups; its flexibility to allow states to be laboratories of rights innovation; and its empowerment of states to be dispensers of justice with finality, in relation to their citizens are some of the arguments used to underscore the protective capacity of

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<sup>46</sup>Assefa Fiseha, ‘Intra Unit Minorities in the Context of Ethno-National Federation in Ethiopia’ (2016) Vol. 3 Ethiopian Journal of Federal Studies 48

<sup>47</sup>Rubin and Malcolm Feeley, (n 45) 2-3

<sup>48</sup>Jon Abbink, ‘Ethnicity and Constitutionalism in Contemporary Ethiopia’ (1997) Vol. 41 *Journal of African Law* 162

<sup>49</sup> Ibid, p. 166

federalism.<sup>50</sup> In other words, federalism is hailed as an institutional mechanism for the protection of fundamental rights and freedoms of the people concerned in general as well as those of ethno national and/or regional minorities in particular.<sup>51</sup>

#### **4.5. Conclusion**

As the researcher has tried to show the relationship between federalism, political recognition and legal protection of ethno national minority rights in the aforestated respective sections, ethno national minority rights have faced both critical challenges and some promises in the international concerns of the past many decades. In particular, efforts to recognize and protect the rights of ethno national minority groups in multicultural societies could be taken as experiences of mixed stories of either positive or negative consequences in many respects.

Thus, along with the trends under the international level, especially through different international and some regional human rights instruments, certain countries in the world such as Switzerland, India and Belgium, including Ethiopia, have devised special schemes and taken political and administrative measures in responding issues of ethno national or cultural minorities through adopting federal political system.

Of course the responses vary significantly from country to country depending on particular contexts distinct to them which take account of historical, political, social, economic or cultural factors of the respective countries. Because of this, the scope of the recognition and protection of ethno national minority rights largely remained in terms of asserting the right to equality and prohibition of discrimination as the mainstream concern of human rights based approaches. It is also quite significant to note the disparity one finds between those who pursue the 'nation-state' principles and those who accept diversity seriously as an important value. Hence the latter were trying to recognize the challenges of multiculturalism and positively respond to the question of ethno national minorities through implementing the fundamental principles of federal political system.

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<sup>50</sup>Getachew Assefa Woldemariam, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality' (PhD Dissertation, Melborn Law School 2014) 51

<sup>51</sup>Brendan O'Leary, 'An Iron Law of Nationalism and Federation? A (neo-Diceyan) theory of the Necessity of a Federal Staatsvolk, and of Consociational Rescue' in Brendan O'Leary (eds), *Federalism* (Sage 2001) 29 see also John Kincaid, 'Values and Value Tradoffs in Federalism' 25(2)

As federalism by its nature allows the constituent units of a federal political system to determine a significant extent of government power the ends that they will pursue and the means by which they will accomplish those ends. This is because an implicit expectation in this system is that the retention of such choices by the constituent units' governments will produce diversity; that given the opportunity, these multiple governments will order their affairs in diverse ways.

Thus, federalism can claim to serve the ends of both pluralism and self-government. This in turn invites, for the application of adequate political recognition, legal protection and complementariness in the territory of the units rather than being reluctant in exercising their political powers. Besides, it also considers equitable representation of ethno national minority groups for the proper implementation of shared rule at national level.



## CHAPTER FIVE

### Ethno national Minority Rights in Some Federations

#### 5.1. Introduction

This chapter basically intends to discuss about some selected multicultural federations, namely Nigeria from western Africa, India from south East Asia and Switzerland from Western Europe respectively. These multicultural federations are different from nation-state federations as they have the ultimate objective of national integration through applying mechanisms that accommodates the rights of ethno national minorities. In other words, to use Assefa Fiseha's strong statement, the main concern of these federations is the accommodation of ethno-linguistic, religious and regional diversities either because they have politically mobilized ethno national minorities or because they are inhabited by different national minorities, none of them constituting a majority.<sup>1</sup>

This political reality also works on the current Ethiopian federal political system as it is a country of ethno national minorities and taking into consideration this diversity to reorganize government structures since mid-1991. After securing power the government of Ethiopia led by EPRDF tries to accommodate those ethno national minorities by establishing comprehensive and, to a certain extent, inclusive constitutional and legal framework that formally acknowledge the introduction of democratic federal political system in the country.

As the researcher focuses on the rights of existence, shared rule in terms of equitable representation and self-government of ethno national minorities at national and sub national government levels in the federal political system of Ethiopia, the chapter begins with a brief introduction that sets some important general remarks about the aforesaid multicultural federations. In this regard, Ivo Duchacek in his classical work entitled *Antagonistic Cooperation: Territorial and Ethnic Communities' concerning the number and composition of ethno national groups of the world's community and the present tensions* stated that:

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<sup>1</sup>Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: Comparative study* (rev edn. Artistic Printing Enterprise 2007) 165

While there are something like 190 or so sovereign states, the number of ethno-linguistic groups far exceed the number of existing states. There is lack of coincidence between ethnic groups and the internal boundary of existing states. This political situation brings into tension the idea of global interdependence and ethnic protest. 'Ethnic protest is in some sense modern as it represents a form of protest against the in personal and monster state. A reassertion of ethnic identity in the contemporary search for identity and security presents a useful group therapy of sorts but it is also obsolete since neither seems to offer an appropriate framework and perspective for handling global problems.'<sup>2</sup>

Assefa Fiseha further explains that in multicultural federations in general, regionally or territorially grouped diversities in particular, are the fundamental facts of a federation because it is based on the existence of regional differences or a sense of locality, the belief that the area in which one lives is different from other states and because of the duality inherent in federalism, it is also implied that federations accommodate such diversity but within a single political union.<sup>3</sup>

Therefore, the following sections deal with the three selected multicultural federations taken from different parts of the world that are relevant to Ethiopian federal political system in relation to the accommodation of minorities in general and legal and practical responses to the existence, representation and self-rulerights of ethno national minorities at sub national level in particular. In other words, it is important to see the legal frameworks of those multicultural federations and practical applications of their governments in a comparative approach so as to get important lessons from their well established legal and political systems as well as long lived practical experiences.

## **5.2. The Nigerian Federal System and the Protection of Ethno-National Minorities**

The ethno national composition of many African countries is generally complex and the question of minority status, especially in terms of the non-dominance of particular ethno national groups, is complicated by the way in which political elites have exploited ethnic or religious differences for political ends. In practice, some numerically smaller ethno national groups, through alliances with other social groups, may exert political dominance. This is the case, for example, in Nigeria where historically dominant ethno national minorities

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<sup>2</sup> Ibid, quoted from foot note number 1 of the same page.

<sup>3</sup> Ibid, P.163

such as the Efik or the Ijaw find themselves now politically marginalized ethno national groups.<sup>4</sup> However, changes in the political fortunes and legal systems of these alliances may change the political situation of an ethno national group from a position in which they have access to power to that of a non-dominant socio-political status. Concerning this reality according to Samia Slimane there are some examples in Africa, where numerically large ethno national groups for instance the Hutu in Rwanda during the colonial era or the Oromo nation in Ethiopia mainly before 1991 have been largely excluded for a long period of time from political and socio-economic power of their own country respectively.<sup>5</sup>

Furthermore, many African states are of the view that the the sources of ethno national minority 'problem' is essentially European colonialists and are reluctant to admit that Africa is not immune to ethno national group concerns. At the same time, many indigenous minorities, ethno national groups, communities, peoples of certain societal groups living in Africa are suffering from the lack of accommodative system of democratic governance and proper treatment of their fundamental rights and therefore their ultimate concerns.<sup>6</sup>

As noted above Nigeria is one of the African countries and it shares the important features of the statements incorporated in the above paragraphs as well as the current African socio-political situation regarding the political status of ethno national minorities. Nigeria is highly heterogeneous nation with over 400 ethno national groups spread across the country. It also boasts of a population of about 144 million people, the largest on the African continent.<sup>7</sup>

Although three major ethno national groups (Ibo, Hausa, and Yoruba) constitute over 40 percent of the total population of the country, there are also numerous sub ethno national tertiary groups that complement more than 250 ethno-lingual distinctions in the country.<sup>8</sup> In other words, the dominant ethno national groups, those with population spreading across five or more states, are the Hausa/Fulani, Ibo and Yuroba. Other ethno national groups such as Tive, Ijaw, Knuri and Gbagi; are considered as minorities yet they have population that spread

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<sup>4</sup>Samia Slimane, *Recognizing Minorities in Africa*, minority rights group international (2003) 2

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup>Nigerian Statistical Authority Report of 2006.

<sup>8</sup>Kalu N. Kalu, *State Power, Autarchy, and Political Conquest in Nigerian Federalism*(2008) 33

across more than one state and/or constitute a majority in at least one state.<sup>9</sup> According to J. Shola Omotola it adequately falls into the category of societies classified as a deeply segmented. These characteristics of the country are also known to peoples fundamental problems of political legal and accommodation as well as nation building wherever they are found.<sup>10</sup>

Moreover, Nigeria's political history clearly shows that from 1900 onwards it was a formal British colony, ruled as three distinct political units: the Northern Protectorate, the Southern Protectorate and Lagos Colony. Because of this political situation, modern Nigeria has been greatly influenced by its colonial history under the British in the nineteenth and twentieth centuries. During the nineteenth century, the British gained influence over a vast territory in West Africa that included several kingdoms and domains. In 1903, the Protectorate of Northern Nigeria was established and the colonial rule over the territory known as Nigeria began.<sup>11</sup>

In 1906 the Lagos Colony and Southern Protectorate were merged. After almost eight years stay in 1914 the three units were amalgamated into one nation: the 'Colony and Protectorate of Nigeria'. Partly in recognition to the major ethno-linguistic differences between Igbo and Yoruba in the south, the Southern Protectorate was split in 1939 into Eastern and Western Provinces.<sup>12</sup>

This was given constitutional backing when in 1947 Nigeria was divided into Northern, Eastern and Western regions, and a move which gave prominence to the three dominant ethno national groups i.e. Hausa-Fulani in the north, Igbo in the east and Yoruba in the west. Each of the former three regions had minorities who formed themselves into movements agitating for constitutional safeguards against opposition from the larger ethno national group that dominated the affairs of the region. Because of this, the minority 'problem' in general and the ethno national group issue of recognition as a distinct ethno national group became major

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<sup>9</sup>J. Isawa Elaigwu, 'Nigeria: The Decentralization Debate in Nigeria's Federalism' in Thomas J. Courchene et al (eds), *The Federal Idea: Essays in Honour of Ronald L. Watts* (McGill-Queen's University Press 2011). P.430

<sup>10</sup>J. Shola Omotola, 'The Nigerian State and Multiple Minorities' in Michael U. and Chimba J. Korieh (eds), *Minorities and the States in Africa* (Cambira Press 2010) 267

<sup>11</sup>Rita Izsak, Report of the Special Rapporteur on Minority issues, Mission to Nigeria (2014) 6

<sup>12</sup>Omotola, (n 10) 267

political questions when it was clear that Nigeria would adopt a federal system of governance. In this regard F. Ade Ajayi argues that the ethno national minority question represents one of the core issues in the national question in Nigeria. The national question in Nigeria according to F. Ade Ajayi, is therefore “the perennial debate as to how to order the relations between the different ethno national, linguistic, and cultural groupings so that they have same rights and privileges, access to power and an equitable share of national resources.”<sup>13</sup>

Although some writers also argue that Nigeria’s federalism is genuinely established in 1999, for many others it was formally adopted federal political system at the termination of the colonial period in 1954. This was preceded by a period of quasi federalism in which more powers and responsibilities were devolved to sub-national governments. Since each region was dominated politically by one ethno national group, ethno national minorities began to aspire recognition and thereby to have a separate existence.

This ethno national question was also so important in the 1954 federal debate and in the 1957 constitutional conference held in the country. However, the north and the east refused fragmentation, while the west supported the creation of a mid-western state if others did the same. Because of this, palliative measures were taken including setting up of the Niger Delta Development Board and the inclusion of fundamental human rights in the federal constitution to respect and protect the rights of minorities. In this regard Rita Izsak clearly stipulates that:

In 1957, the British Government appointed the Commission on Minority Groups in Nigeria (known after its Chairman as the “Willink Commission”) with the mandate “(1) to ascertain the facts about the fears of minorities in any part of Nigeria and to propose means of allaying those fears, whether well- or ill-founded; (2) to advise what safeguards should be included for this purpose in the Constitution of Nigeria; and (3) if, but only if, no other solution seems to the Commission to meet the case, then, as a last resort to make detailed recommendations for the creation of one or more new States.”<sup>14</sup>

Minorities in general, particularly ethno national minorities in Nigeria therefore have been largely placated with a sense of belonging in Nigerian federal project and this is more so with the democratization process, which has allowed ethno national minority voices to be heard

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<sup>13</sup>F. Ade Ajayi, ‘The National Question in Historical Perspective’, *The Guardian* (November 5/1992) 4-6

<sup>14</sup> Izsak, (n 11) 6

through representative institutions, particularly the legislature at the state and federal levels.<sup>15</sup> Nevertheless, this is not to suggest that the problem of minorities in general and ethno national minority groups in particular has been permanently laid down in restricted manner. In deed the minority landscape shortly has been expanding and increasing pressure on the state in the struggle for greater accommodation.<sup>16</sup>

At independence in 1960, Nigeria was also formed a full-fledged federation with three powerful regions. However, the structure of the federation changed over the years as a reflection of the dynamism of federalism although it was not as such democratic in its nature and substance. In other words, in 1960, Nigeria attained its independence and, in the following years, significant territorial changes took place aimed at providing ethno national minority groups with more political autonomy. In 1963, a fourth region (Mid-Western region) was created; in 1967, the four regions were broken into 12 states and, by 1976, the number of states within the Federation had reached nineteen.<sup>17</sup>

Because of this continuous break down of certain states at present time, the country comprises 36 states, in addition to the Federal Capital Territory, where the capital city Abuja is located, and six geopolitical zones. As mentioned above in the beginning of federalization process of the country, Nigerian federation consists of three main dominant ethno national groups-Hausa, Igbo and Yuroba- with numerous ethno national minorities. As a result, ethno national minorities face marginalization and strongly claimed autonomous state for their own political and administrative territory. In this regard J. Shola strongly stipulates that:

The politics of marginalization and exclusion of these minorities, real or imagined, by the majority groups began to crystallize with the minorities agitating for a separate state of their own. This led to the setting-up of the Henry Willinks commission in 1957 to deal with the minority question in Nigeria. Specifically, the commission was set up to examine the genuinesness or otherwise of the minority agitations and suggest the possible way forward.

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<sup>15</sup>Omotola, (n 10) 272

<sup>16</sup> Ibid,

<sup>17</sup>For further understanding see Final Draft paper of the Conference Report, available from <https://media.premiumtimesng.com/national-conference/wp-content/uploads/National-Conference>, 280

Despite the fact that the commission considered the fears of the minorities to be well founded, it failed to recommend state creation as demanded by the minorities.<sup>18</sup>

In other words, the 1958 report of the Commission did not recommend the creation of new States as an important solution, on the grounds that they would soon lead to new minority groups with similar claims, and instead encouraged a balance of power between the different ethno national groups under a united Nigerian State. The Commission therefore suggested broad measures, including the establishment of councils in each “minority area” that would “foster the well-being, cultural advancement and economic and social development of the minority area and to bring to the notice of the regional government any discrimination against the area”.<sup>19</sup>

As mentioned above the earlier Nigeria’s federal political system was more suitable to the majority rule than ethno national minority’s recognition, protection and oppressed the minority groups of the Nigerian society in general and ethno national minorities in particular. Hence according to statements of the aforementioned writer the majoritarian character of the Nigerian politics seems to have conferred an advantage to majorities, particularly to the three largest ethnic groups. That is why the majority people’s concept in the country has become equated with dominance in Nigeria’s political equation.<sup>20</sup>

Concerning the then political situation of Nigeria Samuel Lewis has also strongly justified that deliberate discrimination by dominant ethno national groups is more important as a source of “minorities disadvantages and grievances” than the cultural differences between minorities and majorities.<sup>21</sup> In other words, the configuration of the minority landscape in Nigeria is unique and particularly complex as well as troubling. This is specially so because of the ethno national composition, which not only naturally creates limited majorities and multiple minorities but also makes ethno national boundaries almost coterminous with religious inclinations.<sup>22</sup> Following this critical political and legal situations of the country Ibibio-Efik

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<sup>18</sup>Omotola, (n 10) 268

<sup>19</sup>Izsak, (n 10) 6

<sup>20</sup>Omotola, (n 10) 268

<sup>21</sup>R.T. Akinyele, ‘The State and Minorities Agitation in Nigeria’ in Michael U. Mbanaso and Chima J. Korieh (eds), *Minorities and the States in Africa* (Cambria Press 2010) 297-298

<sup>22</sup>Omotola, (n 10) 268

and other smaller ethno national minority groups proposed creation of a new region between the Niger Delta and Calabar in order to end Igbo domination there, but proved unsuccessful for the time being. However, in 1963 Edo and Western Igbo were granted a separate Midwestern region, reducing both Yoruba and Igbo dominance in that part of the country.

According to Joshua the most historic in terms of protecting minority rights and creating balanced states for the federation was the state creation of 1967. The triregional structure that preceded produced a wide spread minority dissatisfaction, cries of northern dominance, western desires for autonomy, and an eastern threat of secession.<sup>23</sup> Because of this reality, General Yakubu “Jack” Dan-Yumma Gowon, who was president of the federal military government of the country from 1966 to 1975 wanted to isolate the Igbos in anticipation of the secessionist war; rather he wanted to create balanced states and to end the northern political dominance.

Because of this political situation General Gowon further wanted to settle the growing demands from the ethno national minorities for autonomy. Accordingly he split the northern region into six states, the western region into two, the eastern into three and retained the mid-west and thus in his reign Nigeria became a federation of twelve states.<sup>24</sup> In 1976 the Nigerian government further divided Nigeria, increasing the number of states from 12 to 19. For some ethno national minorities this political and administrative response proved pleasant, while other ethno national groups resented the loss of territory under their majority control.

For example, the Ibibio-Efik were granted two majority states: Adwa-Ibom with a majority of Ibibio population, and Cross River state, with an Efik majority. However, according to Rotimi Suberu in Nigeria, political developments since the beginning of the aborted programme of transition to the Third Republic in 1986 have highlighted the precarious and contentious state of the country’s multiethnic federal system. In particular, there has been a growing wave of mobilization and opposition by ethno national minority groups against their perceived marginalization, exploitation and subjugation in the Nigerian federation.<sup>25</sup> Because of this, the creation of Plateau State in the middle belt of Nigeria led to resentment by the Hausa and

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<sup>23</sup> Ibid,

<sup>24</sup> Assefa, (n 1) 172

<sup>25</sup> Rotimi T. Suberu, *Ethnic Minority Conflicts and Governance in Nigeria*, (OpenEdition Books 2013) 21-41



Fulani, who had previously controlled the area. Beginning in colonial times, there have been varying attempts to manage or exploit Nigeria's ethno national, religious and linguistic diversity through various forms of federalism. As a result, since 1996, the country has been divided into 36 states and 774 Local Government Areas although it does not go hand in hand with the implementation of the principles of federal system and democratization process.<sup>26</sup>

In other words, the Nigerian solution for the resentments of ethno national minorities by re-organizing the states was not as such democratic, genuine and participatory rather the respective leaders (mostly higher and senior military officers) of the country decided on the basis of their political and administrative interest in order to defuse the resentment of the ethno national minorities of the country. For instance Rivers State is one of the states in the federation where pressures for new governmental units have been particularly persistent and strident. Indeed, much of the impetus for the creation of new states in Rivers derives from the determination of the non-Ijaws to escape what they consider to be political oppression and economic domination by the Ijaw nationality.<sup>27</sup>

Even though pressures for new states in Rivers state have failed to sway the federal authorities, ostensibly because of the relatively small in size and population of the state, the intense disagreements among its component groups regarding the modalities for subdividing the state creates an obstacle to reach a consensus between component groups. Following violent agitations by various ethno national groups in Rivers state over the Federal Government's failure to subdivide the state during the September 1987 and August 1991 state-creation exercises the Babangida Administration in September 1991 approved the creation of a total of ten new local government areas in Rivers state only.<sup>28</sup>

In addition to recognizing self-government rights of ethno national minority groups, concerning the rights of representation of such ethno national minorities in government branches, the Nigerian revised constitution provides for state and local balance in the appointment of government officials by proscribing predominance of persons from any few

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid

<sup>28</sup> Suberu, (n 25) 21-41

states or any few ethno national or other sectoral groups in the society.<sup>29</sup> Because the 1999 revised constitution of Nigeria introduces federal character principle in its content which aims to ensure that public appointment should reflect an equal representation of all ethno national groups at the federal Government level by affirming that the composition of the Government of the Federation or any of its agencies.

Besides, the conduct of its affairs shall also be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few states or from a few ethno national or other sectional groups in that Government or in any of its agencies.<sup>30</sup> Article 14, paragraph 4 of the same revised constitution further guarantees the participation of the different ethno national groups of the country at the state and local government levels.

According to the aforementioned provision “the composition of the government of a state, a local government council, or any of the agencies of such government or council, and the conduct of the affairs of the government or council or such agencies, shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all peoples of the Federation.” Moreover, the Nigerian federal character commission developed a scheme to ensure such power sharing among different societal groups of the country.

In this regard Rotimi Suberu wrote: “Indeed, the federal character principle has spawned a vast repertoire of more or less informal consociational practices that are designed to distribute, balance and rotate key political offices among the country’s states, ethnicities, religious groups, regions and other cultural or geographical constituencies, including the six quasi-official geo-political zones (northwest, northeast, and middle-belt in north, and southwest, southeast and Niger delta or south-south in the south).”<sup>31</sup> According to Rita Izsak despite these constitutional provisions and mechanisms developed by federal character commission, several interviewees asked by the same person clearly stated that the federal character principle was not properly implemented in practice,

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<sup>29</sup>Article 14 sub 3 and 4 of the revised constitution of Nigerian, 1999.

<sup>30</sup> Ibid

<sup>31</sup>Rutimi Suberu, ‘The Nigerian Federal System: Performance Problems and Prospects’ (2010) Vol. 28 (4) *Journal of Contemporary African Studies* 459 and 465.

because the political arrangement of the federal government only reflected the political representation of states at the federal level without applying other criteria, such as ethno national affiliation, in order to guarantee that all ethno national groups are adequately represented at the different government levels (local, state and federal).

However, the revised constitution of Nigeria does not recognize and allow ethno national group based regional state structure and political party organization although individuals who belong to any one of ethno national groups are allowed to actively participate in political activities and recognized, respected and protected by the same constitution. In this regard section 42 (1) of the Nigerian revised constitution of 1999 clearly stipulates that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that s/he is such a person be:

(a) Subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or (b) Accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

Therefore, we can safely conclude that Nigeria's Constitution somehow guarantees the right to equality and non-discrimination and contains provisions conducive to fostering the equitable representation of diverse ethno national minority groups at the different governmental levels, in the application of the federal character principle. Nevertheless, the practical distinction between those considered as native inhabitants of a territory and those who are not leads in many cases to discriminatory treatment of citizens in fields such as access to land and resources, public positions.<sup>32</sup> In this regard Rotimi Suberu strongly suggests that indeed, in the words of Osaghae (1986:165), "the Nigerian federation remains the majorities' paradise... as the numerical minorities continue to be dominated, even oppressed." According to Seberu to avoid this the Political Bureau of Nigeria recommended the immediate enactment of a national legal instrument on human, minority and socio-economic rights, the

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<sup>32</sup> Izsak, (n 11) 6

protection of minority languages through explicit legislations in the states, and the establishment of inter-governmental advisory boards on minority problems<sup>33</sup>

In other words, both constitutional framework and practical application of a federal government including the federal character commission of Nigeria concerning the issue of diverse ethno national groups should consider the fundamental interest and historic ethno national questions of the same. In this regard Edoba Bright suggests that the adoption of the subsidiary principle as the template on which to erect Nigeria's federal system and resolve the lingering question of which tier should possess and exercise what power.<sup>34</sup>

In conclusion Nigeria is a multi-ethnic and linguistically diverse society, where the great diversity of the population constitutes a valuable asset and rich cultural heritage. Nevertheless, the management of such a diverse population poses important challenges that have not been fully addressed and that require all inclusive system of governance and the full implementation of ethno national minority rights guaranteed by legal means of the country.<sup>35</sup>

### **5.3. The Indian Federation and the Rights of Ethno National Minorities**

Quoting A.R. Desui, Harihar Bhattacharyya wrote a strong self-explanatory statement with regard to the true nature of Indian heterogeneity which clearly shows the Indian multiethnic/multicultural composition and the inspiration of such multiethno national groups to be free from any kinds of domination. According to him, "The movements of those nationalities were inspired by the urge for self-determination, by their will to live and develop their life freely as distinct nationalities."<sup>36</sup> During the first half of the century of India's independence, concerning the formation and reorganization of states there were two opposing views among Indian politicians. One, held by the union, was that states should be economically viable, politically capable enough and administratively convenient. The other, held by emerging groups, was that there was a sense of community, or consciousness of a separate identity, and then if feasible, that community should form a separate state for its

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<sup>33</sup>Suberu, (n 25) 21-41

<sup>34</sup>Edoba Bright Omoregie, *The Subsidiarity Principle and Federalism Fissures in Nigeria*(2014) 198

<sup>35</sup>Izsak, (n 11) 6

<sup>36</sup>Harihar Bhattacharyya, 'Federalism and Competing Nations in India' in Michael Burgess and John Pinder (eds), *Multinational Federations*, (Routledge 2007) 51

own.<sup>37</sup> Arguments in favor of the formation or re-organization of states, among other things, have been geographical proximity, a common language, similar usage and customs, comparable socio-economic and political stages of development, common historical traditions and experiences a common way of living, administrative expediency and more than anything else, a widely prevalent sentiment of “togetherness” that is, a sense of identity.<sup>38</sup>

The basic reason why a federation was adopted in Indian political system was therefore to accommodate the country’s manifold diversity- linguistic, regional, tribal and traditional situations. The reorganization the Indian territories on the basis of language after independence was a pledge of the Indian national congress, the main party of India’s independence. Formally speaking, the Indian federation is not designated as either “multinational” or “multiethnic”, but the underlying objective seems to be the one to accommodate various ethno-national identities through the institutional provisions for statehood, and other non-territorial measures for symbolic recognition of identity.<sup>39</sup>

Formed over many thousands of years as a country of immigrants who brought their own cultures and traditions from their original place, India’s linguistic diversity is also proverbial. According to estimation of Harihar Bhattacharyya in the previous times there were some 1, 632 languages spoken in India. So far 18 languages have been “officially recognized” and placed under the eighth schedule of the Indian constitution. Today, the speakers of these 18 languages constitute about 91 per cent of the population of the country.<sup>40</sup> Although India is known by possessing multicultural elements since an early stage of its federation, the Constitution of the country favors the majoritarian rule unlike its diversities. Concerning this issue Alem Habtu rightly pointed out that:

From 1956 onward, the states in India were reorganized along ethno linguistic lines, despite Nehru's fear of the potential consequences for national unity of such a restructuring.' In fact, such fear led to a constitutional amendment in 1963 "to prevent the fissiparous, secessionist

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<sup>37</sup> Ibid

<sup>38</sup> Ahtar Majeed, “‘Shared-Rule and Self-Rule’ in the Working of Indian Federalism’ *Federalism*’ in Thomas J. Courchene et al (eds), *The Federal Idea: Essays in Honor of Ronald L. Watts*’ (McGill-Queen’s University Press 2011) 467

<sup>39</sup> Harihar Bhattacharyya, *Federalism and Regionalism in India Institutional Strategies and Political Accommodation of Identity*, Working Paper No. 27(2005) 58

<sup>40</sup> Ibid, p.59

tendency.'" Indian federalism has a strong bias in favor of central authority. "The Constitution gives general supremacy to the Union Parliament and Executive in all matters vis-ai-vis the states (vide: Article 365), especially in the making of laws on items included in the State List, in the appointment and dismissal of Governors, in the dismissal of State Ministry, in the appointment of Judges to the States' High Courts..."<sup>41</sup>

Because of this, segmental autonomy existed but there is a qualitative difference between the acceptance of personal laws and consociational recognition in political decision-making institutions in the form of special representation and self-governing rights. The desire to avoid conceding self-governing rights was the reason behind Nehru's reluctant concession of ethno linguistic reorganization. Both language and religion were therefore equally threatening to Nehru's integrationist strategy, but only ethno linguistic groups had a large enough effective number of societal groups to warrant accommodation in decision-making institutions. The fact that ethno linguistic identities were eventually given self-governing rights was, however, a major factor in explaining federal stability in India, contrary to Nehru's fears.<sup>42</sup>

In this regard the very first Article of Indian constitution describes the Union that "India, that is, Bharat, shall be a Union of states" although states were not independent sovereign constituent units and the constitution itself is not the result of the negotiated agreement made between or among such sovereign states. The preamble of Indian constitution also begins with the word "we, the people of India". This introductory remark but formal expression of the constitution clearly shows that the constituent units (states) of the Indian federation did not create the federation itself. Rather the states are, on the contrary the result of the federation created by the constitution. Although the growing federalization process contributed a lot in establishing a relatively stable democratic state structure, it is very centralized federation since independence. However, due to strong ethno-linguistic pressures from below and as a result of the political reorganization of ethno national identity based administrative structure, the federalization process itself has witnessed the growing number of states added to the

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<sup>41</sup>Alem Habtu, 'Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution' (2005) Vol. 35 *Publius* 316

<sup>42</sup>Kathsrine Adene, *Federalism and Ethnic Conflict Regulation in India and Pakistan*(2007) 98

federation. Hence, federalism in India rather than defeating national self-determination, has thus served to promote internal self-determination of many ethno national groups.<sup>43</sup>

For the architects of the Indian Constitution therefore federalism was a device to engage this diversity into the nation-building project. The reorganization of the states and redrawing process of their borders along linguistic lines in the 1960s was also one aspect of giving institutional reflection to such huge societal diversity.<sup>44</sup> But unlike the cases of Nigeria the provinces as well as the princely states had some experience of decentralized administrative practices even before the adoption of the federation at independence.

Because on the one hand, the emerging federation had to take into account regional diversity and hence reorganize the territory of the old provinces; on the other hand the federation must ensure that it remained a single political union.<sup>45</sup> It is the parliament that under Article 3 of the Indian constitution can form new states or adjust already existing ones. The term state in India is therefore, as designating the units of the union does not connote the same higher constitutional status as is enjoyed by states in other federations.<sup>46</sup>

In the course of these processes of state reorganization on Indian federation, the central government established some important principles. The first rule makes it clear that secession would not be entertained and that any explicitly secessionist movement would be suppressed by whatever force was required, so regional demands must stop short of secession. Secondly, no demand for the creation of a state based on the principles of dominance by a single religious community would be accepted, although regional demands based on language and culture will be accommodated. Thirdly, demands for reorganization of mainly based on multilingual, multi-cultural provinces would not be accepted unless all major groups were in agreement on its desirability. The demand of reorganization must have secured also some support from different ethno linguistic groups. And lastly, no reorganization of states would be carried out on the basis of a demand, which lacked demonstrable popular support even if

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<sup>43</sup> Ibid, p. 65

<sup>44</sup> Assefa, (n 1) 179

<sup>45</sup> Ibid, 180

<sup>46</sup> Ibid, 185

the language group spoken for was clearly a distinct and separate language from others in a multi-lingual province.<sup>47</sup>

Therefore, if one makes a comparison with the constitutional approach adopted in the Ethiopian federal system, it is possible to see the contrast. State re-organization in Ethiopia is, at least in theory, straightforward and grants the nation-nationalities and peoples of the country even if not all have made demands to that effect. On the Indian side some conditions are attached for state reorganization to be effected. Thus we see in the Ethiopian federal system some of the constituent units notable so far to emerge as viable constituent states.<sup>48</sup>

Assefa Fiseha further explains the positive effect of the reorganization process of Indian federation by saying that it is true that the Indian federation has done a lot in containing ethno-linguistic tensions by reorganizing the states to reflect language diversity, yet such reorganization has still left minorities within the state boundaries at the mercy of the states.<sup>49</sup> The same is true in the Ethiopian federal political system as the FDRE constitution empowers regional states to reorganize sub state administrative units.

Because of this, federations to be successful in accommodating diversities and genuinely respond the questions of such diverse societies their constitution and practical application of the governments must broadly reflect the existing ethnic configuration of their constituent populations. They must also mirror the sense of community that exists in the lived experience of their own citizens. Federations, therefore are logical systems of government for diverse societies, such as India and Ethiopia, however, it is hard to gainsay the point that India had done well in containing ethno national regionalism although the history of Indian federation contains important lessons to other federations. However, there is a tendency to overlook these lessons owing to the frequent religious clashes between the Hindu and Muslims, poverty, and the big size. Those who judge the Indian constitution by reference to conditions prevailing in contemporary Western society are therefore making a serious mistake. The efficacy of the Indian constitution must be also judged in terms of the challenges posed by the

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<sup>47</sup> Ibid

<sup>48</sup> Asefa, (n 1) 188

<sup>49</sup> Ibid, p. 189



Indian political, social and economic situation. In the views of some scholars including Suri Ramapala, no constitution of the western democracy has been subjected to harsher tests.

The Indian experience therefore suggests that the success of federations depends on the extent to which the federal arrangement gives expression to the natural or self-organized pattern of human communities. It follows that federations which deny substantial autonomy to ethnically self-conscious regions are inherently unstable.<sup>50</sup> According to Ahtar Majeed in India, the unit of “self-rule” may be:

i) a full-fledged state; ii) an autonomous region or regional councils with adequate legislative and executive powers within the existing states in which they are included; iii) a district development council with adequate authority over local planning for the people located in “ethnic enclaves” of an otherwise composite state; and iv) result from a granting of Union Territory States to city regions, strategically important region or sub region and to those areas which are extremely backward.<sup>51</sup>

Considering this the Indian constitution empowers the parliament so as to admit states in to the Union or can establish new states on terms and conditions of the constitution itself as well as when it thinks fit. In addition the Indian parliament may by law form new states by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state.<sup>52</sup>

Article 29 (1) of the same constitution also asserts that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. And all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.<sup>53</sup> In other words, the federal constitution of India contains a number of special provisions from schedule five to schedule seven for the self-governance of various tribal groups living in various parts of the country. These measures are also designed to accommodate sub regionalism within a broader

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<sup>50</sup>Majeed, (n 38) 466

<sup>51</sup>Ibid

<sup>52</sup> Article 2 and 3 (a) of the Indian constitution of 1950,

<sup>53</sup> Ibid, Article 30(1),

region, whether based on tribal identity, or linguistic identity.<sup>54</sup> When we come to the representation rights of ethno national minorities of Indian federation, the constitution of the country recognized their special condition and guarantees their political representation in the Union parliament.

Because of this the constitution clearly stipulates that seats shall be reserved in the house of the people for a) the scheduled castes; b) the scheduled tribes except the scheduled tribes in the autonomous districts of Asam; and c) the scheduled tribes in the autonomous districts of Asam.<sup>55</sup> Besides, Article 331 of the Indian federal constitution further incorporates an additional idea for some specific ethno national group and strongly states that notwithstanding anything in Article 81, the president may, if he is of the opinion that the Anglo-Indian community is not adequately represented in the house of people, nominate not more than two members of that community to the house of the people.

Therefore, a successful working of India's federation would not only genuinely implement constitutional provisions that are talking about equitable representation of ethno national minorities but also involve administrative sub division of larger states on the principles of regional autonomy and regional identity.<sup>56</sup> Generally we can safely conclude that India's federal structures have been successful in accommodating language, but less flexible when ethno linguistic identities have coincided with religious cleavages.

And hence the Indian federation has managed its non-Hindu-majority areas in a different manner than it has its Hindu ones. This was initially seen in Jawaharlal Nehru's reluctance to concede a Punjabi-speaking state or to create new states in the Northeast. Subsequently, it has been seen in the Indian federation member state's disproportionate use of force in the non-Hindu-majority states. Differences in the type of accommodation for religious and ethno linguistic communities were to be expected because of the insecurity of Indian secularism and its weak religious multiculturalism. Hence the center has been concerned with the loyalty of its non-Hindu citizens

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<sup>54</sup> Bhattacharyya, (n 39) 9-10

<sup>55</sup> Article 330(1), Indian Constitution of 1950,

<sup>56</sup> Majee, (n 38) 468

but has not acted to consolidate that loyalty, especially when these communities are territorially concentrated in border regions.<sup>57</sup>

### **The Case of Jammu and Kashmir**

As mentioned above although the term minority has not been defined in the Indian federal constitution, the issue of minority rights has been dealt in the same constitution. Hence the constitutional protection mechanisms of India provides for linguistic and religious minorities to preserve their language and distinct culture. Because of this the Indian federal constitution generally identifies five distinct communities which are considered as minorities on the basis of their language and religious practices.

These societal groups are mainly Muslim, Parsi, Buddhist, Sikh and recently Jain community is included in this identification. Besides the constitution of India grants special status to the State of Jammu and Kashmir among Indian member states, and it is also the only state in India to have a separate written constitution. Accordingly Article 370 of the Constitution of India clearly states that Parliament of India and the Union Government jurisdiction extends over limited matters with respect to State of Jammu and Kashmir, and in all other matters not specifically vested in Federal government's actions have to be supported by state legislature.<sup>58</sup>

Because of this constitutional provision of the Indian federation, the State of Jammu and Kashmir enjoys much autonomy than other member states of the Union of India. The important question one may ask here is why Jammu and Kashmir become more autonomous than other states of Indian federation? And how this particular autonomous state accommodates the rights of different kinds of minorities in the region through inserting legal provisions in the state constitution and practical implementation of the same?

Concerning this special constitutional recognition of Jammu and Kashmir State Ashutosh Kumar has his own justification. According to Ashutosh, Article 370 of Indian constitution accorded special constitutional status to state of Jammu and Kashmir. Such special constitutional recognition was also indifference to the historical specificity of this fragile state. At the time of independence the state of Jammu and Kashmir was the only state negotiated

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<sup>57</sup>Adene, (n 42) 165

<sup>58</sup>Inside 'Indian held Kashmir', The Express Tribune 25 February 2015. Retrieved 7 May 2015

with the union of Indian government on the terms of its accession. After negotiation the state signed the instrument of Accession that was limited to the area of defense, external affairs and communication.<sup>59</sup>

That is why the preamble of the constitution of Jammu and Kashmir State commences its introduction that we, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of accession of this State to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves. Hence the Constitution of the state of Jammu and Kashmir is the legal document which is supported by the Union constitution and establishes the framework of government at state level in Indian state of Jammu and Kashmir.

The present constitution was therefore first adopted on 17 November 1956, and came into effect on 26 January 1957. As of 2002, 29 amendments have been affected to the Constitution. Moreover, to many Indian scholars Article 370 of Indian constitution has been at the core of the constitutional relationship between Indian Union government and state of Jammu and Kashmir which clearly says that the Indian state acknowledged the distinctiveness of the state of Jammu and Kashmir in terms of its religion and cultural diversity and historical and political specificity, thereby allowing an asymmetrical relationship within the Indian federal structure.<sup>60</sup>

With regard to the protection of minority rights the state constitution of Jammu and Kashmir extends its recognition and guaranteed the right to representation and development of culture and languages of ethnic groups found in the region. Because of this the State Constitution of Jammu and Kashmir clearly indicates that there shall be one general electoral roll for every territorial constituency for election to either House of the Legislature and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.<sup>61</sup> Besides,

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<sup>59</sup> Ashutosh Kumar, 'The constitutional and Legal Ruts: The Politics of Autonomy' in Ranabir Samaddor (ed), Indian Experience, (SAGE 2005) 97

<sup>60</sup> Ibid,

<sup>61</sup> Section 139 of Act, 2002 of Jammu and Kashmir state constitution, India,

section 146 of the state constitution of Jammu and Kashmir recognizes all languages spoken in the state and this section authorizes the head of the government of the state of Jammu and Kashmir.

This very section clearly stipulates that the Governor shall, as soon as may be, after the commencement of the Constitution, establish an Academy of Art, Culture and Languages where opportunities will be afforded for the development of Art and Culture of the State and for the development of Hindi, Urdu and other regional languages of the State of Jammu and Kashmir specified in the Sixth Schedule of the Indian constitution.

Therefore, although the state constitution of Jammu and Kashmir does not have a specific provision concerning the right to self-rule and detail provisions about the protection of ethno national minority rights, as mentioned above it recognizes at least their very existence as well as constitutionally authorizes the governor to take proper actions towards the development of culture and languages of different cultural and linguistic groups of the same region..

#### **5.4. The Swiss Confederation and the Rights of Ethno National Minorities**

Switzerland is one of the federal countries in the world governed by federal constitution since the end of the civil war in 1847. According to Thomas Fleiner “Switzerland’s federal constitution is adopted in 1848 after a civil war and it was a compromise that sought to accommodate both the liberals (mainly Protestants) promoting a unitary state and the conservatives (mainly Roman Catholics) defending the former Confederation. In addition to this the federal constitution had to accommodate the linguistic diversity among the four official language groups of the country.

Because of this, the Swiss constitution gave recognition for cultural diversity which combines different citizens having different cultures and religion. Following the adoption of federal constitution in 1848 the Swiss system of governance became a constitutional republic with a federal political structure. Hence legislative authority of the federation resides in a bicameral parliament of the country (Federal Assembly), consisting of the Council of States and the National Council. The parliament also chooses the executive leadership (the Federal Council), which mostly consisted of a coalition of different political parties of the country. According to

Professor Thomas, the leading constitutional lawyer on the Swiss confederation, the identity of the peoples of Swiss is basically associated with their respective Cantons.

Thomas Fleiner further describes the natural association of the identity of the Swiss population with their respective Cantons in the following strong statement that here asserts the recognition and protection of identity markers in Swiss confederation by stipulating that “Each of the Cantonal democratic communities could thus live and develop according to its own culture, history language and religion. Each Canton acknowledges the legal culture of its neighbors but established its own perception of the state, law, democracy, and even state-church relations. They retained their own perception of a Cantonal nationhood and state-legitimacy.”<sup>62</sup>

The Swiss federal constitution also recognizes the right to equality of all human beings and clearly stipulates that “everyone shall be equal before the law. No one may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability.”<sup>63</sup> Moreover, the Swiss constitution further guarantees the autonomous rights of independent communities living in their respective Cantons.

In other words, Article 50 (1) of the same constitution put a strong statement and direction concerning the rights of communes by stipulating that “The autonomy of the communes shall be guaranteed in accordance with Cantonal law.” Of course the 1999 Swiss constitution guaranteed all the four languages as national languages of Switzerland. Article 4 of the constitution clearly stated that “The National Languages are German, French, Italian, and Romansh. Besides, Article 70 (1) of the Swiss constitution also clearly states that the official languages of the Confederation are German, French and Italian.

Romansh is considered as an official language of the Confederation when communicating with persons who speak Romansh. Article 70 (2) of the same constitution further stated that “The Cantons shall decide on their official languages. In order to preserve harmony between linguistic communities, the Cantons shall respect the traditional territorial distribution of languages and take account of indigenous linguistic minorities.” Moreover, in Switzerland, in

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<sup>62</sup>Thomas Fleiner, ‘Recent Developments of Swiss Federation’ (2002) Vol. 32 (2) *Publius: The Journal of Federalism* 99

<sup>63</sup> Article 8 of Swiss Federal Constitution of 1999.

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 process.<sup>64</sup>

Concerning this issue Lidija R. Basta on her part clearly stipulates that Switzerland relies upon strong cantonal identity and democratic integration by maintaining the given linguistic and religious diversities and decentralized, communal and cantonal loyalty.<sup>65</sup> Although out of Switzerland's 7.9 million people sixty-three percent constitute German speaking Swiss, twenty percent French speaking Swiss, seven percent Italian speaking Swiss, 0.6 percent Romansh, and one million foreigner workers and refugees, indicating considerable numerical disparity.<sup>66</sup>

Swiss's Con-federal political system therefore accommodates all language differences by giving equal national status in terms of using each language. Although the federal constitution stated that the federal government has a responsibility to preserve minority languages at cantonal level as Article 70 (4) of the same constitution clearly says that "The Confederation shall support measures by the Cantons of Graubünden and Ticino to preserve and promote the Romansh and the Italian languages", there is still difficult situation in this country however for persons belonging to the Italian and the Romansh speaking minorities with regard to the use of their language in the federal administration.

Moreover, there is also a practical problem in accommodating immigrants. According to Linder Many minorities - the non- Christian religions, or the foreigners- which account for 20 percent of the Swiss population - were never protected by Swiss federalism, because they were not able to constitute a political majority in one of the cantons.<sup>67</sup> This legal and political situation of the country not only violates the provisions of Swiss constitution mentioned above but also the European Charter for Regional or Minority Languages of 1992 as this Charter is particularly designed to protect and promote regional or minority languages as a threatened aspect of Europe's cultural heritage. For this reason it not only contains a non-discrimination

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<sup>64</sup> Ibid, Art.16 &12

<sup>65</sup> Lidija R. Basta, *Minority and Legitimacy of a Federal State: An Outsider Perception of the Swiss Model* (1996) 61

<sup>66</sup> Asefa, (n 1) 205

<sup>67</sup> Wolf Linder, 'Federalism: The case of Switzerland', Paper Prepared for the International conference with them of "Federalism in a Pluralistic Developing Societies, Learning from the Experience of Europe" held at the University of Karachi (2012) 13

clause concerning the use of these languages but also provides for measures offering active support for them.

The aim of this charter is therefore to ensure, as far as reasonably possible, the use of regional or minority languages in education and the media and to permit their use in judicial and administrative settings, economic and social life and cultural activities. The charter also sets out to protect and promote regional or minority languages as well as it is applicable to all kinds of minority rights including the rights of representation at all levels of government institutions.

Representation of all major national groups including ethnic minorities proportionally within the institutions of federal government has been effective in the Swiss federation. This relates to not simply to representation of the federal executive as already noted above, but to the composition of the federal public services, agencies, commissions, and the courts.<sup>68</sup> As clearly indicated in the introductory remark of this section, Switzerland is a federal state composed of 26 Cantons, constitutionally defined as an “alliance” of its member units. Under the new constitution of Swiss confederation; the Cantons hold all powers not specifically delegated to the confederation.

Therefore, the federal constitution lays down the principle of Cantonal sovereignty. This principle is reflected particularly in the fields of education and culture where the Cantons have very wide powers. Switzerland is also multination and pluralist community, where is hard to identify minorities in a traditional manner. Language is the most readily perceptible identifying criterion of Swiss community, the second being religion. Hence Canton boundaries do not correspond with either the ethno linguistic nor religious borders.<sup>69</sup>

As indicated above Switzerland has four constitutionally recognized national languages: namely French, German, Italian and Raeto-Romanic. French, German and Italian are the official languages of the confederation, while Raeto-Romanic is an official language for official relations with its speakers. The Swiss principle of the territoriality of languages means

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<sup>68</sup>Ronald L. Watts, ‘*Multinational Federations in Comparative Perspective*’ in Michael Burgess and John Pinder (eds), *Multinational Federations* (2007) 241.

<sup>69</sup>MIDAS, ‘Minority Dailies Association’, in Tony Ebner and Gunther Rautz (eds), *European Association of Daily Newspapers in Minority and Regional Languages* (2001-2005) 10



that a particular Canton can determine its official languages. In this regard the Swiss constitution clearly underlines that the Cantons shall decide on their official languages.

However, in order to preserve harmony between ethno linguistic communities of the peoples of Switzerland, the Cantons shall respect the traditional territorial distribution of languages and take account of indigenous ethno linguistic minorities.<sup>70</sup> Nevertheless, the confederation is obliged to support the multilingual Cantons in the fulfillment of their tasks. Switzerland has also additionally obliged itself to support two of its national languages, Italian and Raeto-Romanic giving them preferential status in accordance with the European charter for regional or minority languages that the country ratified.<sup>71</sup>

Moreover, ethno national minorities' protection in Switzerland is additionally open to those belonging to the Jewish community and to Travelers (whom the very great majority consider themselves to be of Yenish descent, although some belong to the Sinti or Roma).<sup>72</sup> However, the Roma European Rights Center reported that representatives of the several thousand Romans who continued to pursue an itinerant lifestyle had urged the government to carry out its promises to create new campsites and parking areas for them in recent years.

According to the Roma European Rights Center a lack of proper camping facilities and transit areas reportedly forced many Jenisch to occupy land illegally. Because of this the federal government allocated 750,000 Swiss francs (\$800,000) for measures and projects between 2007 and 2011 to improve living conditions of the Jenisch population.<sup>73</sup> According to the aforementioned source the Italian language that is spoken by the majority of the population in the Canton of Ticino is the official language of that Canton. Whereas, the Cantons of Geneva, Vaud, Jura and Neuchatel are officially French speaking. And in the Cantons of Valais/Wallis, Fribourg and Berne, both French and German have the status of official languages. German, Italian and Raeto-Romanic on the other hand are the official languages of the Canton of Graubunden. Moreover, there are also four French-speaking Cantons and seventeen where

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<sup>70</sup> Article 70 (2) of the Swiss Constitution.

<sup>71</sup> MIDAS, Minority Dailies Association, (n 69)

<sup>72</sup> Ibid

<sup>73</sup> US Department of State, 'Human Rights Report on Switzerland', April 2011, Page 19, <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154454.htm> accessed on 5/10/2015

German is the official language. French-speaking Switzerland follows the centralist linguistic policy and culture of France.

The Raeto-Romanic language is used in official communication of the state with individuals speaking this language as mother tongue. Yenish, the language of travelling people in Switzerland, and Yiddish, the language of Swiss Jews are both recognized as traditional non-territorial languages.<sup>74</sup> Generally, according to Assefa Fiseha Switzerland is cited among the older federations with its unique self-conscious, diversified inhabitants, strong cantonal unity, and linguistic, religious, racial, and national diversity but accommodative political system. To aforementioned writer 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 also ensured by giving equal powers to Cantons irrespective of population size and geographical coverage. They, however, overcome the deadlock through qualified majority vote.<sup>75</sup> Nevertheless, due to the communal character of the Swiss polity, democracy cannot be merely identified with the principles of majority rule, and political equality of individual voting rights. Communal civism has therefore embraced participatory democracy as a federalist element to protect “inherent minority interests.”<sup>76</sup>

On the other hand, the federalist principle of ethno national minority protection has been democratized through popular initiative. The popular initiative also accommodates a chance for minorities to bring new ideas in the political debate of the country.<sup>77</sup> However, when we examine the legal and political powers of communes or ethno national minorities of the country, it is dependent on the will of Cantonal governments. Because of this, Cantonal legislative distributes jurisdiction, power and competences between the Cantonal government, the district authorities and the municipalities. Thus Cantons differ from one another especially with regard to their internal government structure. That is why unlike other Cantons Graubunden is particularly structured from top to bottom and gives essential autonomy to its

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<sup>74</sup> MIDAS, Minority Dailies Association, (n 64)

<sup>75</sup> Assefa, (n 1) 197, 203, 207 & 211

<sup>76</sup> Basta, (n 65) 61

<sup>77</sup> Ibid, p. 62.

large municipalities.<sup>78</sup> In other words, at Cantonal level the cultural and language rights of minorities are legally and politically protected.

That is why Linder clearly stipulates that an element of political power sharing, federalism protected regional and linguistic minorities, the cultural heritage and diversity of the Cantons helped to integrate the different segments of Swiss society.<sup>79</sup> Generally the Swiss confederation extends its protection to the fundamental rights of sub Cantonal minorities constitutionally and practically through providing different kinds of protective mechanisms. Accordingly, both at federal and Cantonal level these minorities can be legally protected through exercising autonomy, special rights for representation in state organs, support of and respect for cultural identity among others.<sup>80</sup>

According to Professor Thomas Fleiner historically the cantons did try to solve their minority problems by territorial solutions: Splitting up their districts and municipalities as well as giving autonomy for culture, police and education. Because of this, in Switzerland there is no as such majority minority tension not only among political parties but also among the multicultural societies of the country.

### **The Case of the Canton of Bern**

History tells us that the Canton of Bern joined the Swiss Confederation in 1353 and it was also between 1803 and 1814 one of the six directorial Cantons of the Napoleonic Swiss Confederation. With the Restoration of 1815, the Canton of Bern acquired the Bernese Jura with Biel/Bienne from the bishopric of Basel, while the Canton of Léman became the Canton of Vaud and remained separate from Bern. In the same year with decision of the Congress of Vienna, the Jura region became part of the canton of Bern and this act caused dissention among the people of Jura region. Because the people of Jura region were mainly French-speaking and Roman Catholic, whereas the canton of Bern was mostly dominated by the people of German-speaking and Protestant. Because of this at the end of World War II, a

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<sup>78</sup>Thomas Fleiner, *Switzerland: Constitution of the Federal State and the Cantons*(1996) 77-78

<sup>79</sup>Linder, (n 67) 1

<sup>80</sup> Fleiner, (n 62) 92-93

separatist movement of Jura region seriously campaigned for a secession of Jura from the Canton of Bern.<sup>81</sup>

Because of this and other socio-economic and political reasons after a long and partly militant struggle, which included some arson attacks by a youth organization named Les Béliers, a constitution was accepted in 1977. Following this decision in 1978 the split was made official when the Swiss people voted in favor, and in 1979 the Canton of Jura joined the Swiss Confederation as a full member.<sup>82</sup> In this regard a writer also states that:

Although four major languages characterize Switzerland, a national identity seems to be entrenched across various citizens countrywide, there are significant degrees of cultural differences between the two involved cantons. The Jura region is considered a predominantly French-speaking, Roman Catholic region, while Bern is a German-Protestant canton. Language and religious matters were at the heart of the initial conflict, and called nation identity into question. The Jurassians essentially felt that their interests were not represented, left with the impression of economic and cultural ostracism.<sup>83</sup>

Currently Bern is the second largest Canton from the 26 Cantons of Swiss confederation in terms of both surface area and population size. It is also mainly bilingual as the 2014 census of the country clearly indicates that the percentage of German native speakers increased to 85.1%, French speakers increased to 10.4%. Because of this, the cantonal government and administration make both German and French official languages of equal standing in the Canton. Although the Italian speakers increased to 3.1%, however its number and status does not make the language as important as German and French languages in the government and administrative activities of the Canton of Bern.<sup>84</sup>

According to the 1993 constitution of the Canton of Bern the needs of linguistic, cultural and regionally minorities must be taken into account and to this end, such minorities may be accorded special powers.<sup>85</sup> In this regard the Grand Council of Bern is the parliament of the

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<sup>81</sup> Matthew Bienz, Jura Libre: 'A Case for Quebec Separatism' (2013) *The Political Bouillon*

<sup>82</sup> Ibid.

<sup>83</sup> Ibid,

<sup>84</sup> Swiss Federal Statistical Office, 'Regional Comparison of selected indicators of Cantons', Retrieved 8 February 2016.

<sup>85</sup> Article 4 of the 1993 constitution of the Canton of Bern.

canton of Bern and it consists of 160 representatives elected by proportional representation for four-year terms of office. Hence the French-speaking part of the canton, the Bernese Jura, has 12 seats guaranteed and 3 seats are guaranteed for the French-speaking minority of the bilingual district of Biel/Bienne.

The Executive Council of the Canton of Bern is also the government of the canton of Bern and has seven-member collegial body elected by the people of Bern for a period of four years. However, the 1993 cantonal constitution reserves one seat in the Executive Council for a French-speaking citizen from the Bernese Jura. Because according to the constitution of the Canton of Bern the Bernese Jura, comprising the districts of Courtelary, Moutier and La Neuveville, is accorded special status. This is intended to enable it to preserve its identity, to maintain its linguistic and cultural character, and to take an active part in cantonal politics.<sup>86</sup>

In terms of accommodation of religion, the Canton of Bern features substantial Roman Catholic and Christian Catholic minorities. These churches also have state church status, and the small Jewish community is similarly recognized by law. In this regard Article 121 (1) of the constitution of the Canton of Bern clearly states that the Evangelical Reformed church, the Roman Catholic Church and the Christian Catholic Church are churches officially recognized by the Canton. In Canton of Bern there are also other significant religious communities of immigrants, including Sikhs (who have a prominent Gurdwara, or temple, in Langenthal), The Church of Jesus Christ of Latter-day Saints (who have built the Bern Switzerland Temple) and Muslims.

However, most Bernese are Protestant and most Protestants belong to the Swiss Reformed Church, which is officially recognised as a state church (German: Landeskirche), although it is autonomous in its governance and is organized along democratic principles. The canton is also home to a great number of small Evangelical Christian denominations unaffiliated with the state church. Bernese evangelical groups are mostly found in the Emmental and Berner Oberland, where they have a long tradition; several contemporary American religious groups, such as the Amish and Mennonites, were founded or co-founded by Bernese emigrants to the

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<sup>86</sup> Ibid, Art. 5 (1).

United States. Because of this two small Evangelical political parties are represented in the Bernese cantonal parliament.

This political representation is also guaranteed by the 1993 Cantonal constitution of Bern as it clearly stipulates that the Bernese Jura is guaranteed one seat. Any French-speaking person who is eligible to vote and who is resident in one of the three districts of Courtelary, Moutier or La Neuveville is eligible for election to that seat. Therefore, as clearly shown above the constitutional framework and practical application of the Canton of Bern recognizes the existence of minorities in general and accommodates the right to ethno national minorities.

### **3.5. Comparative Analysis**

Of course Nigeria, India and Switzerland do not seem to be comparable in different situations of their political, cultural, social and economic levels of development. Because Nigeria is by far number one populous country in Africa with relatively lower level of socio-economic development and democratization process as well as unpredictable political and system of governance which until 1999 was dominated by military junta of the country. Whereas, India is the second most populous country in Asian continent next to China even in the world having over a billion people with its so diverse cultural society and developing post-colonial state.

Switzerland, by contrast, is a very small country found in central Europe, with relatively less populous but economically welldeveloped, legally inclusive and politically more democratic and accommodative federation. As we have seen in the aforementioned sub sections, Nigeria and India's democracy and federal political system is relatively young as their origin begins in 1950s after more than a half century and two centuries of British colonial rule respectively.

Switzerland's democracy and federal political system and administrative arrangement, by contrast, is the oldest in the world and its confederal experience was more than 600 years old even before it was transformed into a complete and modern type of federation in 1848. However, these countries are comparable to a certain extent in certain issues of federal character and nature of multiplicity as they all have, to some degree, similar features of federal political system. Because they are naturally multination countries and follow federal

state structure as well as established administrative arrangements in order to accommodate mainly their ethno national and other kinds of diversities. As Nigeria, India and Switzerland are multilingual and multi-religious countries in which the combination of either or both of them with regional states/cantons cut across each other in ways that have made the countries' diversity baffling.

Nevertheless, India's diversity clearly shows more multidimensional, i.e. multilingual, multi-religious, multi-communal, multiracial and even multi-tribal country in which the various ethno national identity markers in combination with regions give it a complex character than other countries mentioned above. Moreover, unlike Nigeria and Ethiopia in both India and Switzerland federalism backed by genuine democratic values and has thus limited the nation state ethnically speaking.

Since the founding of the Swiss modern federation in 1848, the country has maintained remarkable ethnic peace except for the internal secession of the Canton of Jura, French-speaking and Catholic area, which separated itself from predominantly protestant and German-speaking Canton of Berne in 1978, and formed the twenty-six Canton of the Swiss federation. In India, such type of internal secession in order to right size the territory for establishing the correspondence between the ethno national and political boundary has marked the federation's most challenging and difficult task. Indeed; as recently as 2000 three new states, as constituent units of the federation, were added to the list of 25 states of India.

Besides, some multi-ethnic federations of the world go beyond self-rule to protect intra-sub state ethno national minorities. In these multi-ethnic federations, the position of intra-sub state ethno national minorities is enhanced by a system that allows them to be equitably represented in the sub national decision-making bodies. In Switzerland, for example, all cantons have a high degree of proportional representation. Because of this, no political party enjoys absolute power in any canton and neglects the equitable representation rights of sub-state minorities. Hence the collegial cantonal governments provide adequate representation for minorities. For instance in Valais, one of the Cantons of Switzerland, the cantonal constitution provides that members of the cantonal government be elected in a manner ensuring that the three regions of the canton are taken into account. This political and legal situation of the country suggests that

the electoral system as well as other democratic institutions and political processes can be used to ensure the equitable representation of intra-sub state minorities in the decision making bodies of the sub national units of the country. However, the Nigerian federation, unlike the Indian federal system but to some extent similar to Switzerland's confederal administrative arrangement claims to have based itself on a territorial basis.

The system of governance in this country is, in principle, not designed to empower ethno-linguistic groups by granting their own home states. As mentioned above by 1996, Nigerian military leaders established thirty-six states, in part so that ethno national groups and states would not correspond. Thus, in sharp contrast to Ethiopia's federal system, Nigerian federalism is not ethnic based in administrative structure and political objective.<sup>87</sup> Therefore, the genesis of Ethiopia's decision to pursue a federal system of governance contrasts sharply with the decision taken by Nigeria's leaders in the days leading up to independence in the 1950s Nigeria had been ruled as a large, culturally diverse colony of the British.

At the time of drafting an independence constitution, it was decided by all interested parties, the colonialists and major ethnically based parties, that Nigeria should remain one but on the basis of a federal constitution.<sup>88</sup> In other words, in the beginning states in Nigerian federation were created on the basis of equality, and ethnic elites engaged in a contingent compromise, deciding to come together by creating a federation comprised of three large, ethnically based states.

Unlike other federations, in Nigerian federation there is also an attempt to create states of equal population size and to impose fair shares upon the states in the allocation of jobs and benefits through the doctrine of federal character.<sup>89</sup> Although the legal and political system of Nigerian federation does not allow political organization based on specific ethno national group, it tries to defuse political and administrative powers among states making their political power symmetry. Of course before the Crisis of 1967 the boundaries of Nigeria's states were basically drawn following ethno-linguistic boundaries with a view to

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<sup>87</sup>Alem, (n 41) 315-316

<sup>88</sup>Edmond J. Keller, 'Ethnic Federalism, Fiscal Reform, Development and Democracy in Ethiopia' (2002) 7 *Afr. j. polit. sci.* 26.

<sup>89</sup>Assefa, (n 1) 168



creating homogenous territorial units for the main ethno national groups of the country. The Nigerian federation thus created which is more akin to the present Ethiopian federation came into a disastrous end because of its failure to contain ethnic conflicts between and among the three major ethno national groups in the country, namely the Ibo, Yoruba and Hausa-Fulani. Immediately after the crisis a new federal scheme was engineered in which the state boundaries do not coincide with ethnic boundaries and hence it is said: “The proliferation of states in Nigeria produced a lively state politics and a more complex-and therefore less tense politics at the center.

Now the Hausa were spread among half a dozen states, the Yoruba among five, and the Ibo between two.”<sup>90</sup> On the other hand Nigeria bears a striking similarity with Ethiopia because in both countries one comes across a tapestry of triangular ethno national groups’ relationship amidst deep ethnic diversity. However, the two deeply divided African countries have opted for divergent approaches in their response to their ethnic dynamics. Concerning this political situation of the two countries Edmond J. Keller stipulates that:

In this regard by citing scholarly works in the cases of both present day Ethiopia and Nigeria, the style of-administrative decentralization has, in practice, been a mixture of deconcentration and devolution. This approach is said by numerous observers to have been chosen in Nigeria mainly as a mechanism for enhancing equality among regional states and the ethnic groups represented in them while, at the same time, creating a strong central government. By contrast, as we shall see below, the EPRDF has ostensibly been primarily concerned with reducing inequalities among the regional states and, at the same time, empowering the citizenry.<sup>91</sup>

As mentioned above, the federation in Nigeria, to a certain extent, resembles with that of Switzerland where from the very beginning Cantons are not intentionally established for specific ethno national groups although Switzerland has seventeen German and five Italy speaking Cantons respectively. According to Donald Horowitz (1985) Nigeria and India do not use ethnicity alone as the chief organizing device of their federations. Nigeria, in this respect, neither considers its ethno national groups as sovereign nor grants them the right of secession. Hence, it avoided the overlapping of ethno national and intra-federal boundaries

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<sup>90</sup>Donald Horowitz, *Ethnic Groups in Conflict* 2nd edn. (University of California Press 2000), 604.

<sup>91</sup>Keller, (n 88) 27

and divided the three dominant and competing ethno national groups into several administrative units in order to alleviate their destructive conflict to dominate the political center. On the contrary of the aforestated idea Ethiopia took a different trajectory and used ethnicity as the central organizing device of state formation and it in particular followed a multi-tiered approach in its territorial organization of regional states.

Therefore, because of this some of the bigger ethno national groups were provided their own regional states that were named after the names of the larger ethnic groups. In contrast, the smaller ethnic groups were either put together to form ‘multi-ethnic regional states’ or attached with some of the bigger ethno national groups of the country. The outcome of the federal restructuring of the country was therefore an asymmetrical federation of ethno nationalgroups.<sup>92</sup>

In Switzerland, around 75 per cent of Swiss are speakers of the various Swiss German dialects grouped together under the name *Schwyzertutsch* and distributed over seventeen cantons; the francophone Swiss constitute about 20 per cent of the population of the country inhabiting the four western cantons.<sup>93</sup> According to Horowitz such arrangement coupled with the type of electoral system and the presidential system adopted in Nigeria helped to create a political climate conducive for inter-ethnic co-operation. Thus, such federal arrangement avoids a heavy-handed usage of ethnicity as a political category although it underscores the need for state institutions to reflect the deep diversity of the country.

On the other hand, in states such as Ethiopia ethnicity is governed in a heavy-handedway; this is reflected in the decision making process to name each state after its dominant ethno national group.<sup>94</sup> In Nigeria, even where state boundaries have been drawn to correspond with ethno national lines, the “states should nonetheless have ethnically neutral topographical names, and [in] other federal states ... sub administrative units use historical names for the region.”<sup>95</sup> Nevertheless, contrary to India and Ethiopia the cantons of Switzerland did not emerge as

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<sup>92</sup>Asnake Kefale, ‘Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benshaangul-Gumuz Regions’ (PhD Dissertation, Leiden University 2009) 273-274.

<sup>93</sup>Jan Erk, ‘Swiss Federalism and Congruence’ (2003) Vol. 9 *Nationalism and Ethnic Politics*, 50, 56

<sup>94</sup>Will Kymlicka, ‘The Politics of Contemporary Language Policy in Ethiopia’ (2008) Vol 24 *Journal of Developing Societies* 24.

<sup>95</sup> Ibid.

autonomous decentralized provinces and regional states respectively out of the central government rather it emerged with relatively sovereign will of its former 25 independent member states. That is why the federal constitution of Switzerland under its Article 3 maintains the Cantons sovereign power by clearly stipulating that Cantons are sovereign, as far as their sovereignty is not restricted or limited by the same constitution.

## **5.6. Conclusion**

Although elite autonomy being necessary to accommodate ethno national minorities, elites coming basically from ethno national communities are competing with other ethno national elites from the same community to gain “their” community’s important votes. Federalism is therefore not an all-encompassing panacea. Rather it is a complex institutional arrangement, compatible with centralized and majoritarian governments, as it is with decentralized and consociational types of governments. Therefore, this research work intends to establish that while federalism does not necessarily promote security and ethnic peace, it cannot be blamed for increasing conflict, especially when it is combined with democracy and consociational mechanisms.

It is, however, not possible to prescribe a “one-size-fits-all” federal political structure. Because all sovereign states are unique by their own nature of system of governance and they have their own peculiar historical, political, social and economic situations and sometimes incomparable characteristics. The structure of ethno national diversity within a state, as well as whether a state is following democratic principles or not, will affect whether a particular federal form of government will succeed in managing diversity successfully.

In short, in light of the experience of Switzerland (cantons), Nigeria and India (states), the advocates of democratic decentralization or democratic self-rule argue that a federal system is only viable and manageable if the existing emotionally charged ethno national group feelings are further sub-divided into manageable geographic regions. However, the Nigerian experience is a little bit different from the Indian and Swiss federations, because while Nigerians have found the federal grid a conducive mechanism for managing conflict arising from their heterogeneity, the record of democratic structures is so poor. As a result, out of

Nigeria's 47 years of independent existence, thirty of those years were under military rule. Over the years, there have been frictions between the federal grid and Nigeria's democratic soil. Often the Nigerian "federation" had to operate without any democratic base.<sup>96</sup>

Following the viable concrete examples from the well managed federated nations, believing that the formation of an ethno national community contributes to the formation of a shared space that could provide individuals with a cultural context in which to establish relationships. Generally constitutional experiences of certain multi-ethnic federations such as Switzerland and Nigeria also show that power-sharing, fair and effective representation of the constituent units at the center and, as appropriate, at regional and sub regional state levels are crucial in the accommodation of the interests of ethno national minorities and the maintenance of greater political stability.<sup>97</sup>

That is why the Nigerian constitutions clearly states that the composition of the government of a state, a local government council, or any of the agencies of such government or council, and the conduct of the affairs of the government or council or such agencies, shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all peoples of the Federation.

Therefore, Ethiopia may learn and get lesson some important features of federalism and democracy from ample experiences of the aforementioned federal countries legal frame works and practical applications of the same and solve the existing legal and political problems arise from the mistreatment of minorities in general and ethno national minorities in particular. In other words, as will be discussed the details of the Ethiopian federal political system in chapter seven and the following case study chapters of this dissertation, there are legal and practical problems which negatively affect the rights of ethno national minorities of the country.

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<sup>96</sup>Elaigwu, (n 9) 435

<sup>97</sup>Getachew Assefa Woldemariam, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality' (PhD Dissertation, Melborn Law School 2014) 79-80

## **CHAPTER SIX**

### **The Rights of Ethno National Minorities in Pre 1991 Ethiopia**

#### **6.1. Introduction**

This chapter mainly deals with the historical background of the legal system of Ethiopia and its associates in order to have some light on the past legal system of the country. The focus of the chapter is therefore on the accommodation of ethno national minorities since Ethiopia is the country of diversities. Hence section two of this chapter discusses general remarks of Ethiopian political history in a brief manner and its legal framework starting from the ancient times, while section three deals with the first written constitution of the country and whether it gave certain space in accommodating the rights of ethno national minority groups.

Section four mainly investigates the revised constitution of Imperial Ethiopia whether it considered the fundamental rights and freedoms of ethno national minorities of the country. This section thoroughly discusses the most important reasons and fundamental questions why the first written constitution of 1931 is changed by the revised constitution and how the rights of citizens in general and ethno national minorities in particular have been recognized by the revised constitution of the country.

Section five talks about People's Democratic Republic Constitution of Ethiopia (PDRE) and its space to ethno national groups. It also highlights the differences and similarities of both the constitutional set up of Haile Selassie regime and the Derg's socialist legal framework. And finally conclusion is briefly drawn under section six.

#### **6.2. General Remarks**

Ethiopia is the most ancient independent State in Africa; its dynasties claimed their descent from the ancient rulers of *Axum*, a powerful empire in the world between the 1<sup>st</sup> and the 9<sup>th</sup> century AD. Considering this Salviac interestingly describes the Ethiopian feature as unique by her topographic isolation in contrast to the surrounding areas. Ethiopia is also unique in her independence as regards the peoples who are located at the foot of the mountains. But she is

very diverse in the interior by the indentations of the plateaux, the tier of the terraces similar to pyramids with steps, by the superimposed series of flora and fauna corresponding to an infinite crisscrossing of isothermic lines, and finally by parceling out of her social organization.<sup>1</sup> According to some writer the Ethiopian historical discourse claims that Ethiopian boundaries are sacred since they were established 3,000 years ago.

Despite its elusive image, however, Ethiopia is grudgingly acknowledged as constituting a distinct civilization and is thus one of the distinct civilizations in Samuel Huntington's *Clash of Civilizations*. Because of this, it has stood out as a symbol of black freedom and inspired freedom movements of oppressed people far and wide.<sup>2</sup> In this regard John Markakis on his part strongly stipulated that "Ethiopia maintained its unity and continuity throughout the second millennium A.D., successfully defending its independence against a series of foes- Arab, African, and European.

This achievement gained Ethiopia world renown and made it the symbol and inspiration of the oppressed black race".<sup>3</sup> Furthermore, it is forwarded that Abyssinian "society represented as an advanced level of social and economic organization" that enabled it to defend itself from European colonialism by eliminating slavery and protecting "all the peoples of greater Ethiopia from falling prey to European imperialism."<sup>4</sup>

That is why paragraph 4 of the preamble of PDRE) constitution of 1987 reasserts this reality that since the emergence of capitalism in Western Europe in the sixteenth century, colonialists repeatedly tried to bring Ethiopia under their control. However, the Ethiopian people have heroically and victoriously repulsed the repeated aggressive attempts of invaders and colonialists to occupy their motherland. In other words, it was the only country in Africa to escape from the yoke of European Colonialism. Concerning this reality, Saheed A. Adejumobi further asserted that Ethiopia was the only country to preserve its independence

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<sup>1</sup>Marital De Salviac, *An Ancient People in the State of Menelik: The Oromo Great African Nation*, (Ayalew Kanno tr, Paris 1901) 9-10

<sup>2</sup>Yared Legesse Mengistu, 'Protection of National Minorities in Multinational Federations: A Comparative Analysis'(PhD dissertation, Central European University 2010) 272

<sup>3</sup>John Markakis, *Ethiopia: Anatomy of a Traditional Polity* (Shama Books Addis Ababa 2006) 13

<sup>4</sup>Donald Levine, *Greater Ethiopia: The Evolution of a Multiethnic Society*, (University of Chicago Press 1994) 194

throughout the period of the European scramble and partition of Africa.<sup>5</sup> As a result, marginalized black people of the world in general and colonized peoples of African states in particular from the nineteenth century onwards proclaim Ethiopia as a liberator, a monument, and a living exponent and testimony of African political freedom.<sup>6</sup>

Moreover, the aforementioned writer strongly describes Ethiopia as a prominently featured in the iconography of both classical and modern era of cultural, religious, and political development and therefore is fertile territory for the enthusiast of both ancient and modern Africa. According to him it has also held a profound cultural significance for the black Diaspora as one of the world's community and, to say the least, Africa's oldest independent republics, which provided an (admittedly idealized) inspiration for the dream of black independence throughout the world.<sup>7</sup>

Besides, for many centuries, the territory bearing the name 'Ethiopia' has expanded and contracted, its ethno national composition reconfigured, and its socio-economic characteristics transformed. The state that eventually emerged in the nineteenth century included diverse cultural and ethno linguistic communities out of which successive rulers have tried to forge a nation, either by emphasizing the metaphor that Ethiopia is a 'museum of peoples' or by devising policies that would redress the contrary image that it is 'a prison house of nationalities and peoples'.<sup>8</sup>

Conventionally as mentioned above although the historical formation of the Ethiopian state goes back at least three thousand years, the establishment of contemporary Ethiopian state is linked to Emperor Menelik II in the late 19th century. In fact according to some renowned scholars the emergence of 'modern Ethiopia' is associated with the beginning of the processes of territorial expansion and centralization of political power. These two processes, undertaken in the name of nation building, were first initiated by Emperor Tewodros II in 1855.<sup>9</sup> The process of territorial expansion, which also continued during Emperor Yohannes IV (1872-

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<sup>5</sup>Saheed A. Adejumobi, 'The History of Ethiopia' in Frank W. Thackeray and John E (eds), *The Greenwood Histories of the Modern Nations* (Greenwood Press 2007) 1

<sup>6</sup> Ibid, p. 32

<sup>7</sup> Ibid, p. 2

<sup>8</sup> Ibid

<sup>9</sup>Teshale T., *The Making of Modern Ethiopia 1896-1974* (The Red Sea Press Inc 1995) 33 and Bahru Z., *A History of Modern Ethiopia 1855-1991* (Addis Ababa University Press 2002) 27-31.

1889), reached its climax under Emperor Menilik II (1889-1913) in the late 1890s resulting in Ethiopia taking its current shape.<sup>10</sup> Professor BahruZewde further stipulates that Emperor Menilk (r. 1889-1913) is rightly credited with the creation of modern Ethiopia, a process that he had begun years before he was crowned emperor. This renowned historian further explains that through successive states of expansion that lasted from about 1875 to 1898, he had given Ethiopia more or less its present shape, a shape that was sanctified through a series of boundary agreements that he signed with the neighboring colonial powers between 1897 and 1908.<sup>11</sup>

In addition to establishing the present Ethiopian state the Emperor is also well-known for defeating the Italian colonial army at the battle of Adwa. Thus the victory of Adwa is considered as a watershed both in the survival and evolution of the modern empire of Ethiopia.<sup>12</sup> Especially the great victory scored at Adwa in 1896 over a colonial army that was modern by contemporary standards, earned Ethiopia a special place of honor and a glorious history in the annals of anti-imperialist struggle. Concerning this situation James C.N. Paul on his part strongly stipulates that:

Late in the nineteenth century, the historic Ethiopian polity emerged from anarchical feudal federalism to a new zenith. Warlords were brought to heel; foreign invaders, bent on imposing Islam (Egyptians and Mahdists from the north) or European colonization (Turks and Italians advancing from Red Sea bases), were repulsed. The stunning, decisive defeats of Italian armies at Dogali in 1887, and especially at Adwa in 1896, preserved independence, revitalized the monarchy and inspired an Ethiopian imperialism.<sup>13</sup>

As many scholars and the current politicians of the country strongly believe that during the late nineteenth and the beginning of twentieth century's, Emperor Menelik II created the current Ethiopian state through expansion. This state or nation building process although it was by force created a central state with over eighty ethno national groups who speak over seventy six

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<sup>10</sup> Bahru Zewde, *A History of Modern Ethiopia: 1855-1991* (2nd edn, Oxford, JC 2001) 60-68

<sup>11</sup> Bahru Zewde, *The Quest for Socialist Utopia: The Ethiopian Student Movement 1960-1974* (James Curry press 2014) 188

<sup>12</sup> Merera Gudina, *Ethiopia: From Autocracy to 'Revolutionary Democracy', 1960s – 2011*, (Chamber Printing House 2010) 1

<sup>13</sup> James C.N. PAUL, *Ethnicity and the New Constitutional Order of Ethiopia and Eritrea*, (2000) 176



languages. Because of this, Ethiopia host to a mosaic of nation-nationalities and peoples speaking a multiplicity of languages that fall into four major language categories.<sup>14</sup> After the death of Emperor Menilik, political and administrative power was taken over by the short-lived succeeding rulers, namely Lij Iyasu and Empress Zewditu respectively. However, Regent Ras Teferi was the next ruler to succeed to the throne and he became Emperor Hailesilassie I. Of course Emperor Hailesilassie was also acknowledged by many people for modernization of the country's legal system and bureaucracy.

Because he for example, introduced the first modern written constitution to the country in 1931. Besides, in upon his ascendancy, Emperor Haile Selassie began also a program of political reform by introducing a constitution that shifted the consolidation of the bureaucratic empire away from the calculated balance of disunited regional leaders towards one of decentralized authoritarianism.<sup>15</sup> Concerning this issue professor Bahru Zewde on his part extensively noted that:

It was only during the regency of Ras Teferi Mekonnen and in the first five years of the reign of Haile Selassie that the process began that was to develop into full-fledged centralization after 1941. The Battle of Sagale (1916) disposed of one of the most powerful hereditary rulers of northern Ethiopia, *Negus* (King) Michael, paving the way for the appointment of the eldest son of Teferi Mekonnen, Asfa Wasan, as governor of Wallo. The centralization process gained its momentum with the introduction of what were called model provinces' (Charcher, Gera, and Guna), the replacement of Ras Gugsa Wale of Bagemder by Ras Kasa Hailu after the former was defeated and killed at the Battle of Anchem in March 1930, the appointment of Ras Emru Haile Selassie as governor of Gojam following the disgrace of the hereditary governor, Ras Hailu Tekle Haimanot, in 1932, and the termination of the autonomy of Jimma Abba Jiffar subsequent to the death of its legendary ruler, Abba Jiffar II, in the same year.<sup>16</sup>

However, prior to the centralization of the polity by Emperor Haile Selassie I (1929-1974), the various ethno national groups in the country used to enjoy a decent measure of autonomy. The emperors ('king of kings' in the Ethiopian parlance) at the center had to simply content

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<sup>14</sup>In Ethiopia there are four language categories, namely Semitic, Cushitic, Omotic and Nilo-Saharan.

<sup>15</sup>Adejumobi, (n 5) 54

<sup>16</sup>Bahru, (n 11) 188-189.

themselves with periodical tribute from the kings and lords ruling the different parts of the country and contribution of army in times of looming nation-wide military threat.<sup>17</sup> According to Saheed, the Emperor also established a parliament whose function was to discuss matters placed before it by the emperor himself although it did not have a full power to reject or substantially modify or change the draft document submitted to it. In reforming Ethiopia's political and administrative structure, the 1931 constitution provided for an appointed bicameral legislature and was the first time that non noble subjects had any role in official government policy making process.<sup>18</sup>

Although Ethiopia has a long history of system of governance and spot of ancient civilization in Africa, prior to the adoption of the first of the written constitutions of the country, the political philosophy, legal concepts and administrative responsibility of Ethiopian governments had been codified in the *Kibre Negest* (Glory of the Kings), which presented the concept that the legitimacy of the Emperor of Ethiopia was based on its asserted descent from king Solomon of ancient Israel and Queen Sheba (Makeda) of Ethiopia.

And the *Fitha Negest* (Justice of Kings), which was considered as a supreme law used in Ethiopia at least as early as 1450, to define the rights and responsibilities of the monarch and subjects, as defined by the Ethiopian Orthodox Church. Because of this, the *Fetha Negest* remained as the official supreme law of the country until 1931. Between the domestic agitations and resistance by regional governors who opposed the political efforts aimed at modernizing the legal and administrative structure of the kingdom on the one hand, and the implications of European explorations and colonial activities on the other, the Ethiopian state experienced new complexities, ambiguities, and pluralities in local and regional identities as well as social and political relations.<sup>19</sup>

Considering this reality, Haile Selassie established a modern administrative state structure, but did not completely abolish the feudal system as his reign was largely dependent on the same socio-economic and political system until the Derg regime came to power. Moreover, the Emperor also failed to install democratic system of governance in the country that would

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<sup>17</sup> Yared, (n 2) 283

<sup>18</sup> Adejumobi, (n 5) 54

<sup>19</sup> Ibid, P. 37-38

accommodate the diverse nations, nationalities and peoples of the country rather continued discriminatory political and administrative actions and practices against ethno national communities and distinct cultural groups of the country that led to his down fall in 1974. Although as mentioned above, Ethiopia is a melting pot and a mosaic of nation-nationalities and peoples speaking a multiplicity of languages that fall into different categories with a developed different cultures and exercise many religions, it was the imprisonment of ethno national groups until the Derg regime came to power.

However, contrary to this reality of the country the imperial regime led by Haile Selassie I engaged heavily in assimilatory practices around three main axes: “The Amharic language, Orthodox Christianity,” and the political culture of the imperial regime.<sup>20</sup> In other words, before 1974 the Ethiopian legal and political system was not accommodative of nations, nationalities and peoples of Ethiopia that makes the country mosaic, rich in culture, respected in history, strong in administrative activities and the like. Rather the Imperial regimes were instrumental in forging unity of the Ethiopian nations, nationalities and peoples through applying forced assimilation policy without considering the very existence of multiple ethno national groups and the country’s multifaceted diversity.

### **6.3. The 1931 Constitution and the Rights of Ethno National Minorities**

The coming to power of Emperor Haile Selassie in 1930 and the subsequent issuance of the 1931 Constitution, the first written or codified constitution in the political history of the country, importantly marks a new epoch in the country. It also heralded the end of the role of the duality that existed for centuries in the political and administrative system of Ethiopia. Because of this, provincialism and/ or the autonomous kingdoms, the traditional check and balance against the power of the king of kings, were completely absorbed into the centralized administration of Haile Selassie regime.<sup>21</sup>

As mentioned above, the 1931 Constitution of Empire Ethiopia was the first modern and codified constitution for Ethiopian legal, political and administrative system that intended to officially

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<sup>20</sup> Yared, (n 2) 284

<sup>21</sup> Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: Comparative study* (rev edn Artistic Printing Enterprise 2007) 20

replace the *Fitha Negest*, which had been considered as the supreme law of the land since the middle Ages. The 1931 written constitution was promulgated on 16 July 1931 in the presence of Emperor Haile Selassie himself, who had long desired to proclaim for his country, Ethiopia. According to the Emperor's autobiography written in 1936 while he was in exile, Haile Selassie had wanted Empress Zewuditu to proclaim such a document while he was Regent, but "some of the great nobles, to whose advantage it was to rule the country without a constitution, had pretended that it would diminish the dignity and authority of Queen Zewuditu if a constitution were set up."<sup>22</sup>

Once he became Emperor of Ethiopia in 1930, Haile Selassie then appointed a constitutional draft commission to prepare the draft document, whose leading members were the Europeans, namely Gaston Jèze and Johannes Kolmodin although some prominent Ethiopian intellectuals such as Tekle Hawariat Tekle Mariyam and Gedamu Woldegiworgis were included in the drafting process. This constitution was mainly copied from the Meiji Constitution of Japan, a country that educated Ethiopians considered as a model for its successful adoption of Western perspective and technology to the framework of a non-Western culture.<sup>23</sup> In this regard Saheed Adejumobi also strongly substantiated in his comprehensive statement that:

Impressed by Japan's metamorphosis at the end of the nineteenth century from a feudal society like Ethiopia into an industrial power, scholars like Heruy Welde Selassie, Bajerond Takle-Hawaryat Takla-Maryam, and Araya Abebe identified similarities between the Japanese Tokugawa Shogunate and the Ethiopian Zamana Masafent (the era of princes), the latter being a brief but turbulent period of political history, also called the Era of Princes, that lasted from 1769 to 1855. More importantly, they admired Japan for its administrative reforms that had been a potential tool for resolving the problem of underdevelopment.<sup>24</sup>

Therefore, the 1931 written constitution of the country was consolidated and more importantly asserted the Emperor's own legal and political status, reserved imperial succession to the line of Haile Selassie, and declared that "the person of the Emperor is sacred, his dignity inviolable, and his power indisputable." All powers over central and local government, the

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<sup>22</sup>Haile Selassie I(Emperor), *My Life and Ethiopia's Progress*(in Amharic), Vol 1 (England, Baz 1929 E.C), 147

<sup>23</sup>Bahru, (n 10) 110.

<sup>24</sup>Adejumobi, (n 5) 55

legislature, the judiciary, and the military were vested in the hands of the emperor himself.<sup>25</sup> With respect to that Saheed further pointed out that of more relevance to Emperor Haile Selassie's hegemonic designs was the declaration in the constitution that his progenitors be declared from the moment onwards as the only legitimate line. According to the new document, Haile Selassie and his successors descended "without any interruption from the dynasty of Menelik I, son of King Solomon of Jerusalem and of the Queen of Ethiopia, known as the queen of Sheba."<sup>26</sup>

In addition, the emperor's office was described as sacred, his dignity inviolable and his power indisputable. Therefore, from the aforesaid explanations we can reasonably conclude that this constitution was the result of essentially a concerted effort of Emperor Haile Selassie and his followers to provide a legal basis for replacing the traditional provincial rulers with appointees of absolute loyal to the emperor Haile selassie. Because of this, allowing nations, nationalities and peoples of the country to be treated equally, to participate and be equitably represented at all levels of government institutions including the center and administer themselves in their territory was not imagined at all.

In addition, Emperor Haile Selassie was not entirely ready to introduce the principles of democratic system of governance in the country's legal and political system let alone fully recognize the very existence of nation-nationalities, equitable representation and self-government rights of the same. As a result, the Emperor faced internal challenges following the end of the five-year Italian occupation. He, however, achieved some success breaking the power of feudal barons by strengthening the authority of the central government and making the positions of the nobles dependent on legal and rational criteria instead of religious and traditional ones.

According to Saheed A. Adejumobi his reform measures included a ban on soldiers' requisitioning or looting supplies from the peasantry, as the crime murder was confirmed as punishable regardless of political rank or economic class.<sup>27</sup> Following a five year colonial subjugation by the Italians ended in 1941 and the involvement of Great Britain in the struggle

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<sup>25</sup> Article 5 of the 1931 Constitution of Empire Ethiopia.

<sup>26</sup> Ibid, Article 3.

<sup>27</sup> Adejumobi, (n 5) 56

for liberation of the country gave rise to an increasing interest in modernizing the Ethiopian legal system, political policies and administrative activities. Besides, the internal developments were also important factors to revise the 1931 constitution in order to incorporate such new developments including accepting the principles of democracy and human rights developed by the international community as well as adopted by United Nations which Ethiopia is party.

#### **6.4. The Revised Constitution of 1955 and the Rights of Ethno National Minorities**

As mentioned above the 1931 Constitution was revised and replaced by a new relatively comprehensive written constitution in 1955. The purpose of revising the previous constitution and replacing by new one was to cope with socio-economic development and the political changes that were clearly witnessing in the country. Among such new developments the decolonization of Eritrea was the most important and highly pressing factor to have inclusive federal like constitution. Because at the end of World War II, Haile Selassie, then at the apogee of his prestige, began a vigorous and ultimately successful international campaign to reunite Eritrea with its motherland, Greater Ethiopia.<sup>28</sup>

As a result in 1952, the United Nations created a federation between Ethiopia and Eritrea under two different types of governments. However, the central government that led by absolute monarch was not ready to implement the principles of federalism that laid down in the constitution of Eritrea and thereby limits the central government's political and administrative power over the constituent units and that allows self-government rights of the concerned nation-nationalities and peoples.

In the end, the central government took successive political and administrative measures to abolish the federal arrangement that was established by the decision of the United Nations General Assembly and made Eritrea as part and parcel of Ethiopia like those of any other traditional provinces using its ultimate power through incorporating it into the country considering it as one of the existing disempowered regular provinces. Concerning this reality Assefa Fiseha on his part rightly pointed out that:

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<sup>28</sup>Paul, (n 13) 177

In a federation resulting from two units, one would expect there to be three institutions. The two constituent units and one other overarching federal government for both of them. Furthermore, a supreme constitution which both units submit to is a requirement. None of them existed in the UN sponsored federal compromise. The Resolution had provided for a Federal Council, an institution that was a faint approximation of a federal body. This body was to comprise Ethiopian and Eritrean representatives in equal numbers and *advise* the Emperor on matters of the federation. The Council was simply ignored and practically done away with before it could even start functioning. As a result, the federal powers belonged to the Ethiopian government. The Ethiopian Emperor was the sovereign, the Ethiopian courts were the federal courts and the Ethiopian Ministers were the ministers of the federal government.<sup>29</sup>

Therefore, as mentioned above the regime was not only reluctant to fully implement the law promulgated by UN that established Ethio-Eritrean federation but also it strongly wanted to centralize all levels of government institutions. In this regard James C.N. Paul also pointed out that local government was far more important to the vast majority of Ethiopian peoples. However, the constitution made no provision for either the modernization or democratization of this sector let alone to recognize the right to self-government to nation-nationalities and peoples of Ethiopia.

Rather, the organization and staffing of local administration was a prerogative of the emperor, who divided Ethiopia into provinces, districts and sub-districts, and, in theory, appointed governors for all of these units.<sup>30</sup> In fact as mentioned above, the revised constitution of 1955 brought some important changes in organizing the political system of the country, theoretically limiting the absolute power of the emperor to a certain extent and recognizing human and democratic rights of the peoples of Ethiopia.<sup>31</sup>

It has also recognized some fundamental rights and freedoms unlike the previous constitution of 1931.<sup>32</sup> However, it was not known by the nations-nationalities and peoples of Ethiopia, as the emperor was the ultimate maker and granter of any legislation whether they are fundamental or not including the constitution of the country.<sup>33</sup> Concerning this reality, citing the work of John

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<sup>29</sup> Assefa, (n 21) 31

<sup>30</sup> Paul, (n 13) 184

<sup>31</sup> Article 92 of the Revised Constitution of 1955, Empire Ethiopia.

<sup>32</sup> For example Articles 37, 38, 40, 41 and 43 of the Revised Constitution of 1955 of Empire Ethiopia.

<sup>33</sup> The very first paragraph of the revised constitution clearly states, twenty four years ago, at the beginning of our reign, we granted to our faithful subjects and proclaimed a constitution for the empire of Ethiopia.

Markakis (1974), James C.N. Paul strongly asserts that during that time few ordinary Ethiopians were familiar with the content of their constitution, which had been laboriously drawn up in secret and adopted quickly by the parliament of the country, with no series public debate.<sup>34</sup> This not only legal system of the country but also socio-political situation of the same made the nations, nationalities and peoples of Ethiopia ignorant of their constitution and did not claim whether this constitution guarantees their fundamental rights.

He also further explained the then overall situation of the country and clearly states that during that time elections were generally viewed with cynicism by the urban middle classes, and with apathy in the countryside where they were apolitical affairs dominated by landholding elites. Political parties, associational activities, an independent press and other legal and political infrastructures enabling civil society participation in governance were effectively discouraged.<sup>35</sup>

With regard to equitable representation of nation-nationalities and peoples of Ethiopia in the politics of the country the imperial regime was ignorant of the real participation of nations, nationalities and peoples of Ethiopia. In this regard according to some scholar, by 1967, seven years before the 1974 Popular Revolution broke out; a case study of six south-central provinces of the country namely Bale, Arusi, Sidamo, Gamu Gofa, Kafa and Illubabor has revealed that two of the six provincial governors were army generals while the remaining four were Shoan noblemen. Even in the sub-provinces (Awrajas), all but two of the governors were aliens to the areas to which they were appointed.<sup>36</sup>

Moreover, of the 156 top central government officials (vice-minister and above) recruited between 1941 and the end of 1967 only three were from the six south central provinces. With the exception of Wellega, which always had been assimilated to the Abyssinian core and been accorded more representation at the centre, the participation of the periphery at the centre was therefore negligible.<sup>37</sup> Such factors and other social, economic as well as politico-legal situations of the country, the 1960 attempted coup proved the dissatisfaction of the nations, nationalities and peoples of Ethiopia and led to a further resistance against the imperial regime although

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<sup>34</sup>Paul, (n 13) 183

<sup>35</sup>Ibid

<sup>36</sup>Christopher Clapham, 'Centralization and Local Response in Ethiopia' (1975) Vol. 74 *African Affairs* 76.

<sup>37</sup>Yared, (n 2) 287



Articles 4 and 62 (A) of the revised constitution of 1955 discouraged and absolutely prohibited any action against the imperial regime including the law suit against the Emperor respectively.<sup>38</sup>

Moreover, the successive political and administrative measures taken by the same government to annex the UN sponsored Eritrean federated state in 1962 created another serious political problems and administrative grievances not only on the nations, nationalities and peoples of Eritrea that needed independence but peoples who wanted unity. Of course according to John Markakis (1974: 362) the Ethio-Eritrea federation (1952-1962) was more of an autonomous arrangement than a federation, as Eritrea had a liberal constitution that recognized limited rights of freedom of association and speech and became part of a highly centralized state under an absolutist monarch.

In the end, the constitutional asymmetry between the two contributed to the demise of the federation in 1962. In other words, the federal arrangement was not the conventional type of federation between two equal parties or constituent units but rather one that set up Eritrea as an autonomous unit under the Ethiopian sovereign.<sup>39</sup> Considering this factor, the Eritrean youth and the then politicians of the same were not comfortable with that unilateral decision as well as the then system of governance and continue in such a way with Ethiopian monarchical regime from the very beginning and immediately declared their discontent through mobilizing Eritrean people for the struggle against Ethiopian administration.

The successive political, legal and administrative measures taken by the imperial regime against the federated Eritrea, the opposition group sparking independence struggle using Eritrean youth which lasted for 13 years continuous war and later led to the popular Ethiopian revolution of the 1974. This revolution was mainly led by Ethiopian Student Movement which were basically radical in taking political measures and ideologically left-wing university student organizations and intellectuals in order to address the longstanding national question of the country. More importantly, the failure of the imperial regime to accommodate the national question of the peoples of Ethiopia in general and the UN-sponsored federation with Eritrea in particular triggered a sustained and strong armed struggle that was to have a radicalizing effect on both

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<sup>38</sup> Before the 1960 there were peasant resistances such as 1942 Weyane movement of Tigray, and so on.

<sup>39</sup> Bahru, (n 11) 194

left-wing university students and the soldiers, quite apart from corroding the regime and draining the country's natural resources.<sup>40</sup>

That is why in the late 1960s some revolutionary university students were courageously raising and posing certain issues related to national question, and to a certain extent, trying to articulate an important political and legal point related to such ethno-national justice which caused a split in the university student body into two and thereby caused to even vigorously fight each other. That was, mainly among other things, the question of nationality and its articulation by late Walegn Mekonnen, who came from the so-called dominant nation of Amhara people, at the student forum and in the publication of *Struggle*, newspaper of the university students' organization, which was edited and owned by the student body. In this regard, Bahru Zewde, a renowned historian in Ethiopian historiography, strongly asserts that:

Things began to change in the summer of 1969, when a small group of students came up with a radically different approach, which envisaged the support of ethno-nationalist movements not only in their own right but as stepping stone to the multi-national liberation struggle. It was this new positions that Walegn Mekonnen, with fresh memories of his own interactions with Eritrean Liberation Front (ELF) and Oromo prisoners during his detention, presented to a packed audience at the Christmas Hall of Haile Slassie I University (HSIU) in October 1969, and later published in *Struggle*.<sup>41</sup>

In his presentation, Walegn first raised certain important questions to the audience about the real identity markers of the peoples of Ethiopia and he attempted to answer those questions himself by explaining the socio-political situations of the country, as quoted by Balsvik, in the following strong and more touching statement. According to Walegn, "To be "genuine Ethiopian" one has to speak Amharic, to listen to Amharic music, to accept the Amhara-Tigre religion, Orthodox Christianity, and to wear the Amhara-Tigre Shamma in international conferences. In some cases to be an "Ethiopian" you will even have to change your name. In short to be an Ethiopian, you will have to wear an Amhara mask (to use Fanon's expression)."<sup>42</sup> And he further explained the nature of democratic state which clearly shows his outstanding view and that would

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<sup>40</sup> Ibid, p. 268.

<sup>41</sup> Ibid, p. 273.

<sup>42</sup> Randi Ronning Balsvik, *Haile Selassie's Students: The Intellectual and Social Background to Revolution, 1952-1974* (Addis Ababa University Press 2005) 277

accommodate the diverse ethno national societies of Ethiopian state although the imperial regime did not consider this proposed novel idea. According to him so as to accommodate the existing diverse interests of the Ethiopian nations, nationalities and peoples the state should be inclusive of ethno national communities of the country as he clearly stipulates that “it is a state in which all nationalities participate equally in state affairs, it is a state where every nationality is given equal opportunity to preserve and develop its language, its music and its history.

It is a state where Amharas, Tigres, Oromos, Aderes, Somalis, Wellamos Guragis, etc. are treated equally. It is a state where no nation dominates another nation be it economically or culturally”.<sup>43</sup> However, according to Professor Bahru, popular movements of ethno-nationalist vintage have been evident since 1941, notably in the First Wayane in Tigray in 1941-1943, the activities of the Mecha-Tulema Oromo self-help association and the Bale uprising in 1964-1970.<sup>44</sup> Generally according to Bahru, the student movement wanted to bring radical regime change in the Ethiopian political and administrative system of governance and mainly characterized as a war wagging revolutionary movement.

And it was also highly influenced by Soviet Union’s Volshevic party’s socialist ideology to resolve legal, administrative and political problems of the country. Concerning this issue Asnake Kefale rightly noted that “Many of the concepts used to discuss problems of ethnic relations in Ethiopia were copied from Russian revolutionaries. The students, therefore, not only considered Ethiopia akin to Tsarist Russia as a ‘prison house of nationalities’ but also sought to ‘resolve’ the problem through Stalinist principles of self-determination, which profess the right of a ‘nation’ to ‘arrange its life in the way it wishes’ either ‘on the basis of autonomy’, ‘federal relations with other nations’ or ‘complete secession.’”<sup>45</sup> In this regard, Professor Bahru Zewde further stipulated that the importance that the national question assumed in the Ethiopian student movement had to do above all with the need to understand and accommodate the most serious armed challenge to the imperial regime.<sup>46</sup> And the opposition against the Emperor intensified in the 1970s. Several uprisings took place in various urban areas, in which every section of the public took part,

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<sup>43</sup> Ibid.

<sup>44</sup> Bahru, (n 11) 187-188

<sup>45</sup> Asnake Kefale, ‘Federal Restructuring in Ethiopia: Renegotiating Identity and Borders along the Oromo–Somali Ethnic Frontiers’ (2010) 41(4) *Development and Change* 63

<sup>46</sup> Bahru, (n 11) 258

including the teachers, peasants, soldiers, students, taxi drivers, and trade unions. Because of this prolonged strikes, boycotts, and mutinies were widespread during the last days of Emperor Haile Selassie.<sup>47</sup>

However, by denying ethno linguistic and other fundamental rights, the regime expedited its own demise. The popular revolution that broke out in the country in 1974 set in motion a series of events that permanently disfigured the country. The so-called Communist Dergue regime popped up on the political scene riding on the heels of this poorly-organized and spontaneous revolution.<sup>48</sup> The absence of well-organized political parties in the country before and during that popular revolution resulted in the hijacking of the state power by a group of mainly junior military officers of the imperial regime called Derg<sup>49</sup> in September 1974.<sup>50</sup>

In other words, although according to Professor Bahru Zewde the radicalization of Ethiopian students, both at home and abroad, was a cumulative process rather than a student occurrence, as it began in 1962 on the home front, and attained its climax in 1969,<sup>51</sup> the student movements were not as such matured enough to establish a vanguard political party that would lead the popular revolution and thereby avoid unnecessary intervention of such junior military officers in the political and administrative power of the country.

That is why the military officers later (after 13 years) justified their intervention in the political activities of the country in the preamble of PDRE constitution by stipulating that in the absence of organized vanguard leadership during the outbreak of the revolution, the Provisional Military Administrative Council, which was constituted from that segment of the armed forces, which formed an integral part of the working people, began to coordinate and lead the revolutionary struggle.<sup>52</sup> It means that had the student movement been strong, well organized and politically

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<sup>47</sup> Andargachew Tiruneh, *The Ethiopian Revolution 1974-1987 A transformation from an aristocratic to a totalitarian autocracy* (Cambridge University Press 1994) 37 and for further understanding see John Markakis, 'The military state and Ethiopia's path to socialism' (1981) 21 *Review of African Political Economy* 11 as well as John Markakis 'Garrison Socialism: The case of Ethiopia' (1979) 79 *MERIP Report* 6

<sup>48</sup> Yared, (n 2) 275

<sup>49</sup> The word Derg is the name of a committee of military officers coming from all sections of the Defense and the Police forces of the country.

<sup>50</sup> On September 12/1974 the military junta took power and deposed Emperor Haile Selassie I.

<sup>51</sup> Bhru, (n 11) 270

<sup>52</sup> Paragraph 8 of the preamble of PDRE constitution of 1987.

matured enough to lead the popular revolution hijacked, that popular revolution by such military junta would not have happened and easily took place by the same military officers.

In other words, during that particular time if there were well organized and politically matured intellectual led political activities against the imperial regime, the junior military officers would not easily take such political power and thereby the question of nationalities would get proper attention and at least, to a certain extent, positive political response to their prolonged claims of visibility, equitable representation and the right to self-government of nation-nationalities and peoples of Ethiopia among others. This assumption is not simply drawn and forwarded as a viable option without having any positive political clue of the then university students's led political movements, rather considering that the EPRDF's legal and practical response to the question of nationality.

#### **6.5. The 1987 PDRE Constitution and the Rights of Ethno National Minorities**

Following the downfall of Haile Silassie's so-called feudo-bourgeois regime, the Military Provisional Administration Council (PMAC) led Ethiopia for about 13 years without having formally written constitution and thereby allowing equitable representation and self-government rights to nations, nationalities and peoples of the country. In other words, the so-called Communist Dergue ruled with neither a written constitution nor a parliament from 1974, when it suspended the revised Constitution of 1955 and dissolved the Imperial Parliament, until the time the PDRE Constitution came into force in 1987 and the National Shengo (National Council) was constituted.<sup>53</sup>

Because of this, in the beginning of revolutionary activities the position of the *Derg* on the issue of ethnicity was 'denying even the very existence of ethno national groups and related differences'. As a result the *Derg* made it clear that maintaining the territorial integrity of the country without considering the questions of ethno national groups was its main concern. Hence, it adopted '*Ethiopia Tikdem*, (Ethiopia first)' as its main slogan.<sup>54</sup> Considering this fallacious political situation Yared Legese exhaustively expressed in the following manner:

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<sup>53</sup> Yared, (n 2) 275

<sup>54</sup> Christopher Clapham, *Transformation and continuity in revolutionary Ethiopia* (Cambridge University Press 1988) 46

When the Dergue came to power in 1974, there was much hope and anticipation that it would appropriately address the already brewing ethnic grievances. These grievances had found manifestation in the First Weyane Uprising (waged by the Tigrayan ethno linguistic group), the Gedeo Uprising (waged by the Gedeo ethno linguistic group), the Bale Uprising (waged by the Oromo ethno linguistic group), the Gojjam Peasants' Rebellion (waged by peasants of the Amhara ethno linguistic group) and many other ethnic- and class-based movements. The Dergue exerted a half-hearted and half-witted effort to cater to the age-old demands of minority ethno-national groups.<sup>55</sup>

However, the second ethno national social-engineering program (1974-1991) was the military government's attempt to maintain a unitary state (with unfulfilled promises of regional autonomy) on the basis of Marxist-Leninist ideology. According to some commentators this programme made some gestures towards cultural pluralism in its National Literacy Campaign (1979-1991) and in its television and radio broadcast of folk music and folk dance.<sup>56</sup>

Later the National Democratic Revolution (NDR) not only acknowledged the past injustices that the various ethno national communities of the country had suffered, but also recognized the right to self-determination of the ethno national communities of the country. The right to self-determination was meant to be enjoyed 'on the basis of equality and within the framework of local self-government'.<sup>57</sup> According to John Markakis, the *Derg* regime, however, took no significant practical measure to implement this socio-political programme. Because of this, the territorial structure of the provincial and local administration remained unchanged. Besides, the *Derg* retained Amharic as the only official language of the country. Concerning this political situation Saheed Adejumobi further argues that it however remains committed to the old Orthodox Christian demarcation of the nation, which was antithetical to the proclamation of the equality of ethno national groups. The contradictions and ambivalences of the revolution, according to Marina Ottaway, were also an attempt to employ Marxist-Leninist doctrines and more importantly the lessons of the Russian Revolution of 1917 to the domestic project of curbing the political threat to the nation. Such a

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<sup>55</sup> Yared, (n 2) 286

<sup>56</sup> Alem Habtu, 'Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution' (2005) Vol. 35 *Publius* (Oxford University Press 321

<sup>57</sup> John Markakis, 'The military state and Ethiopia's path to socialism' (1981) 21 *Review of African Political Economy* 19

threat, she strongly stressed, was most evident in the explosion of ethnicity that occurred between 1975 and 1976.<sup>58</sup>

In other words, on one hand the Derg regime recognized the equality of all Ethiopian nationalities on the other it did not take practical measures to respect and guarantee the rights of ethno national groups of the country. Because of this, the recognition of equitable representation and national self-determination appeared to conflict with the strong pan-Ethiopian nationalism that the Derg put forth from the very beginning. Its slogan *Ethiopia Tikdem!* Expressed the priorities of the new regime: unity and preservation of the state.<sup>59</sup>

In this regard Zemelak Aytenew Ayele also wrote that “in fact the ethnic question was ignored for almost 10 years as the government was preoccupied with countering other challenges. Only in the 1980s did the ethnic question become an issue among the *Derg* officials and this was mainly because the regime was facing sustained military assaults from several ethnic-based rebellious groups including the Eritrean People’s Liberation Front (EPLF) and the Tigray People’s Liberation Front (TPLF).”<sup>60</sup>

Although the Derg regime was not as such ready to respect and fully implement its own strategy, as mentioned above with regard to the rights of nation-nationalities and peoples of Ethiopia the national democratic revolutionary programme which had been adopted by military regime in 1975 was instrumental to recognize and thereby allow ethno national groups to exercise in a limited manner their fundamental rights. As rightly pointed out by Colonel Fisha Desta who was member of the military administration since 1974 and later he became the most important person next to Mengistu H/Mariam in his book he put a brief statement about the same programme. According to Colonel Fiseha Desta the National Democratic Revolutionary Programme has stated that:

*Any nationality in Ethiopia has been recognized to exercise the right to self-determination including the right to equality thereby its history and identity, culture and tradition, language, religion and basic rights should be respected under the spirit of Socialism. In the Ethiopian*

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<sup>58</sup>Adejumobi, (n 5) 121

<sup>59</sup>Lovise Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000*(2002) 31

<sup>60</sup>Zemelak Ayele, ‘*Decentralization, Development and Accommodation of Ethnic Minorities: The case of Ethiopia*’ (PhD Dissertation, University of the Western Cape 2012) 153

*concrete situation the contradiction of nationalities would be resolved when nationalities allowed administering themselves in their territory (by forming autonomous regions). Any nationality in its internal affairs has a power to administer, to use its own language in its day to day political, economic and social life, to elect its leadership and administrators. The right to self-administration of nationalities would be also implemented democratically.*<sup>61</sup>

However, the Derg regime was not as such committed to abide by its promise and political programme as well as immediately declared its position towards nationality movements' against the same. Because of this, by 1977, almost all of the country's 14 administrative regions including Eritrea played host to one form of insurgency or another. Because of this rebel-held territories faced a continuous threat of invasion from the Ethiopian army. In this regard the Tigrean People's Liberation Front (TPLF) was a very active movement in Tigray region, while the Oromo Liberation Front (OLF) was more active in the southern regions of Bale, Arsi, and Sidamo than other regions where the Oromo people live.

Whereas the Western Somali Liberation Front was more active in the Ogaden and the Somali Abo Liberation Front (SALF) based their insurgent activities in the countryside of eastern Ethiopia.<sup>62</sup> Moreover, the Afar Liberation Front (ALF) also began an organized attack against the Derg regime and cooperating with Eritrean liberation groups who were fighting for complete independent in the north-eastern part of countryside. Considering the aforementioned political situations of Ethiopia and strong pressure of some dominant ethno national groups of the country, particularly supported by the vanguard Eritrean, Tigrayan and Oromo movements, the Derg regime promised to create autonomous regions recognizing their political and administrative role in peace making process modeled after the Soviet constitution when it consolidated PDRE constitution in 1987. But that policy of decentralizing the government power was abandoned and talk of devolution was thereafter treated as sedition. This political and administrative measure was of course the result of the discussion on ethno national problems as there was an attempt to consider the representation of major ethno national groups in the constitutional drafting commission. Although Yared Legese argues that the Derg came closer to acknowledging the ethnic dynamics when the People's Democratic Republic of Ethiopia (PDRE)

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<sup>61</sup>Fiseha Desta, *The Revolution and My Memory* (in Amharic, 2015) 167

<sup>62</sup> Adejumobi, (n 5) 125



Constitution was ratified in 1987 and its recognition of five autonomous regions belied the class-oriented nature of the Derg regarding ethno linguistic claims.<sup>63</sup>

However, according to him during the drafting and adoption process of the PDRE constitution and the discussion held on the same issue, only few questions were raised about the failure of the draft document in addressing nationalities problem and the right to self-determination including the right to equitable representation and self-government of nations, nationalities and peoples of the country. Because of this, as mentioned above disaffected Tigrayan and Oromo radical intellectuals and political elites formed strong nationalist resistances and this makes the regime found itself waging many wars against its own nation-nationalities and peoples, with a brutality.<sup>64</sup>

This harsh administrative, political and military measure taken against the ethno-nationalist based insurgencies created more grievances on nations-nationalities and peoples of Ethiopia that were negatively affected by the regime's policy of strong centralization war campaign against them. Although the problem of nationalities was lately debated in the constitutional drafting commission of the Derg regime as well as even in the central committee of the Workers Party of Ethiopia (WPE), the regime would and could not resolve the fundamental problems of nationalities and address the longstanding national question of the country as well as further abandon its desire to create a single multiethnic state.

Rather it was so encouraged to implement the fundamental principles of regional autonomy as well as establishes a federal system of governance that could probably accommodate the diverse interests of nations, nationalities and peoples of this poor country. That is why the framers of PDRE constitution clearly states their strong political stand that the unity of our country and the equality of nationalities based on our right to self-determination is earned.<sup>65</sup> However, practically there was no as such equal treatment of nation-nationalities and peoples of the country in the regime's political and administrative activities and the right to self-rule was not allowed. Aafter waging many wars in every corner of the country and failed to manage the warring situation of

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<sup>63</sup> Yared, (n 2) 289-290

<sup>64</sup> Ibid, p. 186.

<sup>65</sup> Last paragraph of Peoples' Democratic Republic of Ethiopian Constitution of 1987.

the same and achieve its final goal, the Derg regime tried to create autonomous regions by promulgating PDRE constitution in 1987.

Nevertheless, those constitutionally recognized autonomous regions were not legally and politically empowered to administer themselves by their own genuinely elected authorities and there was also a clear differential treatment among the so-called autonomous regions.<sup>66</sup> Concerning this political rhetoric Andargachew Tiruneh clearly stipulates that autonomous regions were established only for some five regions: Eritrea,<sup>67</sup> Tigray,<sup>68</sup> Afar, Issa and Ogaden of the Ethiopian state. According to some of these, for instance Eritrea had local and regional administrative units under their administration while those like the Ogaden had only one administrative link between the local people and the central authorities.<sup>69</sup>

He further asserts on his discussion that on the face of it, the reference to certain regions as 'autonomous' suggests that these are more independent from the centre than regular administrative regions and that they have more power over local affairs than regular administrative areas do.<sup>70</sup> However, the PDRE constitution of 1987 treated both alike. Because it gives them the same political and administrative powers and then states that bylaws, which are consistent with those constitutional principles, will be issued providing for further details concerning the powers of the autonomous regions.<sup>71</sup> In other words, in spite of what their name, the 'autonomous regions' were not actually real autonomous. Both the administrative and the autonomous regions of the country had similar administrative structures, functions, and powers under the PDRE Constitution. Furthermore, in this regard Aalen Lovis on her part strongly argues by substantiating the aforementioned strong argument in the following statement:

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<sup>66</sup> Among these autonomous regions Eritrea was led by General Tesfaye G/Kidan and Tigray by Captain Legesse Asfaw who were the most influential and important individuals in the Workers Party of Ethiopia.

<sup>67</sup> It was governed by Letenal Genera Tesfaye Gebrekidan directly appointed by central government.

<sup>68</sup> It was governed by Captain Legesse Asfaw directly appointed by central government.

<sup>69</sup> Andargachew, (n 47) 281

<sup>70</sup> According to Article 97 and 98 of PDRE constitution of 1987 there is no any difference between administrative and autonomous regions although Article 99 of the same constitution clearly stipulates that without prejudice to Article 97 of this constitution, the special powers and duties that the Shengos of autonomous regions may assume, shall be determined by the national Shengo rather putting their special political power that make them different from Shengos of administrative regions in the same constitution.

<sup>71</sup> Andargachew, (n 47) 282

In the Derg's Constitution of 1987, Ethiopia was recognized as a multinational state. According to this Constitution, five of the 30 administrative regions, including Eritrea, Dire Dawa, Tigray, Assab, and Ogaden, gained autonomous status. But the powers enjoyed by these (autonomous) regions were strictly delegated and were not protected by any constitutional guarantees. Under the tight control of the Workers Party of Ethiopia, national groups gradually became even more suppressed and less empowered than previously.<sup>72</sup>

Moreover, the Derg regime pursued a policy of Ethiopian nationalism, which often led to violation of human rights against ethno national groups who did not support the Derg's policy of centralization of political power and exercise of abuse of administrative authorities in the name of unity of the Ethiopian state. According to Article 2 of the 1987 People's Democratic Republic of Ethiopian Constitution, the country adopted a unitary state structure which the specific provision of the PDRE constitution clearly states that: "The People's Democratic Republic of Ethiopia is a unitary state in which all nationalities live in equality and shall ensure the equality of nationalities".<sup>73</sup>

And the PDRE constitution of 1987 further strengthens this assertion that the people's democratic republic of Ethiopia is a unitary state comprising administrative and autonomous regions of the country.<sup>74</sup> Besides, following the adoption of PDRE constitution in 1987, the redrawing process of the autonomous and other regular administrative regions made by the regime itself was a very problematic political decision from the very beginning as the basis for the redrawing of such administrative map appears to be more political than administrative convenience and considering of ethno national groups interest or fundamental rights and freedoms of each ethno national group and it more intensified the political crisis of the country. Concerning this critical political situation of the then administrative structure made by the Derg regime Andargachew Tiruneh wrote:

[T]he various ethnic groups, especially the big ones like the Oromo and the Amhara, have been divided into smaller local and regional administrative areas than under the old order. In the case of the autonomous regions of Eritrea and Tigray, at least the biggest linguistic group (the Tigrinya speakers) has been split down the middle. Also, a number of other linguistic groups have been allowed to continue to come under the administration of the Eritrean Autonomous Region. The linguistic group of Somalis comes under the administration of the Issa and the Ogaden autonomous regions. The one exception to all this is the Autonomous

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<sup>72</sup>Aalen, (n 59) 32-33

<sup>73</sup>Article 2 of Peoples Democratic Republic of Ethiopian Constitution of 1987.

<sup>74</sup>Ibid, Article 59

Region of Afar where the administrative unit and the national composition may be said to be coextensive.<sup>75</sup>

As a result, with respect to ethno nationalist based demands, the emperor and the military regimes pursued the same legal approach and political goal except the latter, although it was so late and superficial rather than genuine, tried to introduce regionalism as alternative political solution and at least legally recognized the very existence and equal rights of nation-nationalities and peoples of Ethiopia.<sup>76</sup> With regard to this conclusion Zemelak Aytenew Ayele also rightly stipulates that:

On the ethnic question, as was seen above, the NRD of the *Derg* recognized the political, economic, and cultural marginalization of ethnic minorities. It also pledged to use the establishment of regional and local self-government as a means to accommodate ethnic minorities. As indicated previously this move was a political maneuver by the *Derg* to win over the *Meison* to join the government. It cannot be gainsaid, however, that the recognition of the plight of ethnic minorities was another important ‘departure’ from the past. A pledge to allow each ethnic community to administer itself, to determine its political destiny, and to use its own language was unheard of in the past 100 years of the country’s history.<sup>77</sup>

In other words, the *Derg* regime was at least ready and to some extent courageous to acknowledge the very existence of multi-ethnic society in the country and extends certain political recognition and legal protection of their equal rights from the very beginning even though practically it failed to genuinely accommodate and encourage them to be equitably represented in all levels of government institutions and allow to exercise self-government rights of their own.

This concept was also incorporated in the PDRE constitution of 1987 under its Article 35 stating that Ethiopians are equal before the law, irrespective of nationality, sex, religion, occupation, social or other status and equality among Ethiopians shall be ensured through equal participation in political, economic, social and cultural affairs. That is why Professor Alem Habtu further

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<sup>75</sup> Andargachew, (n 47) 282-283

<sup>76</sup> Assefa Fiseha, ‘Emergence of Territorially Based Cleavages and Constitutional Responses in Ethiopia: Implications for the Horn of Africa’ in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (2015) 16

<sup>77</sup> Zemelak, (n 60) 163

explains that in the last years of its rule, the military regime created twenty-four regular administrative regions and five mainly ethnic based autonomous regions within the unitary state, but no devolution of authority was discernible.

Although Article 65 (2) of PDRE constitution clearly stipulates that the representation of nationalities in the national Shengo (Council) shall be ensured in the electoral process, practically their equitable representation was not ensured. Because of this, as mentioned above ethnic-based opposition organizations intensified their assault on the military government of Ethiopia. Thus, ethno nationalism and cultural assertion emerged as a major political question in the Ethiopian polity and was also a major factor in the demise of the centralizing military regime in May 1991.<sup>78</sup> Following this regime change the existing politico-legal and administrative situation also led to the establishment of ethno national-based federal political system in the Ethiopian polity.

Because theoretically federal political system encouraged the full recognition and exercise of equitable representation as well as allow the right to self-government and shared rule of nations, nationalities and peoples of Ethiopia. In other words, although in practice there are so many problems in relation to self-government and equitable representation of ethno national groups in the current Ethiopian polity, legally speaking there is a huge progress in relation to the existence and exercise of the fundamental rights of ethnic groups of federal Ethiopia.

## **6.6. Conclusion**

As mentioned above, for a long period of time, Ethiopia was ruled by successive monarchies and very recently by a military led dictatorial government for more than a decade and half. As stated in the introductory part of this chapter although it was the only independent country in the African continent, both systems of government were not better than colonial rule for the enjoyment of fundamental human and democratic rights by its citizens in general and ethno national minority groups of the country in particular. Even though proper recognition and protection of minority rights in general and ethno national minority groups in particular in a monarchical and dictatorial administrations is unthinkable as the rulers tends to mainly favor

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<sup>78</sup>Alem, (n 56) 322

one culture, one language, one religion and one people with strong unitary system of governance, it does not mean however that each ethno national minority group did not totally practice and to some extent enjoy different religion, culture and language in their day to day life.

Rather it is to imply that the cultures, languages and religious practices of nations, nationalities and peoples of the country did not have equal legal status and political recognition with that of the state favored culture, language, and religion. Due to this reason politically, economically and socially most of ethno national minority groups were oppressed by the state machineries and members of the dominant nation until May 28/1991. The Ethiopian crown has also been accused of forcibly configuring cultural communities as peripheral “subjects” and “dependents” to be pacified rather than protected their fundamental rights and freedoms.

In reaction to this pacified situation, many ethno national minority groups became more militant in their opposition to Ethiopian absolutist monarchy. The dissatisfaction with the hierarchical social, political, and economic structure of the Ethiopian state that was anchored upon Amhara-Tigre cultural domination too precipitated new projects of reconstructed historical narratives.<sup>79</sup> This harsh as well as discriminatory legal, administrative and political situation of the country also continued in the Ethiopian system of governance until the 1974 popular revolution came to picture although immediately it was hijacked by the military junta continued with no significant change with regard to empowering ethno national groups of the country.

Nevertheless, the extent and scope of the suffering and oppression of Ethiopian ethno national minorities differed from region to region and from time to time depending on the strength and political will of the central monarchical and dictatorial regimes. According to the late Walelgn Mekonnen, who was a radical left-wing fighter ascending to the highest echelons of the government had been reserved to the Amhara and Tigre by ethnicity and orthodox by religion. While, other ethno national groups of the country would wear and speak the Amhara-Tigre culture, language and faith to ascend to such government offices and to exercise the right to

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<sup>79</sup>Adejumobi, (n 5) 108

political participation in the country's system of governance. In other words, equality before the law and non-discrimination based on ethnicity although recognized by respective codified constitutions of both the feudal and socialist Derg systems, in practice they were alien to Ethiopia, let alone extending special rights and strong legal protection for those ethno national minorities of the country. Indeed, "the regime strived to erase the ethno national identity of the non-Amhara-Tigre peoples and to replace it with an Amhara identity and culture."<sup>80</sup>

Aalen Lovis on her part further elaborates this governance system of the country by saying that the politics of ethnicity in Ethiopia is set in a context of successive authoritarian regimes and a history of suspicion and inequality between different ethno national groups of the country. Because of this, during both the rule of Emperor Haile Selassie (1931–74) and the military Marxist regime of Mengistu Haile Mariam (1974–91), ethno national groups, cultures, and languages were clearly ranked, and ethnically based movements were highly oppressed and treated in a discriminatory manner.

As Zemelak Aytenew Ayele strongly argues prior to 1974, virtually no equitable representative institutions existed in the country's system of governance other than Parliament and a few municipal councils. Parliament was the domain of the nobility. Even if in some urban areas municipal councils were established, democratic practice was limited to only property owners.<sup>81</sup> Because of this, inequality based on ethno national affinity has been a part of Ethiopian political history and system of governance since the establishment of the modern state at the end of the nineteenth century, with the Amhara perceived as the ruling ethnic group of the country.<sup>82</sup>

As a result of failure to address the aforementioned questions of ethno national groups of Ethiopia, the political struggle for democracy, equality, self-government, equitable representation and generally for liberty from national oppression and seeking good governance continued unabated. And it has been also stated that "all the liberation movements represented ethnic loyalties and claimed to wage war to break the then political, economic,

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<sup>80</sup>Christophe Van der Beken, 'Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach' in Tsegay Regassa (eds), *Issues of Federalism in Ethiopia: Towards an Inventory*, Ethiopian Constitutional Law Series (Addis Ababa University Press 2009) 236

<sup>81</sup> Zemelak, (n 60) 162

<sup>82</sup>Aalen, (n 59) 4

social, cultural, and religious domination of the Amhara-Tigre elite led regime over their own ethnic communities and consequently advocated their own self-determination.”<sup>83</sup> Besides, critical examination of Ethiopian Afro-Marxism acknowledges the contribution of intellectuals, student movements, and the peasantry including the resentment of Ethiopian workers at large. On the contrary, peasants, workers, and oppressed ethno national groups were largely excluded from contributing to party policy.

The supposed revolutionary vanguard movements of Ethiopia also failed to emerge, since the Worker’s Party of Ethiopia, which commenced in 1984, was dominated by the junior military officers of the country at all levels of government institutions.<sup>84</sup> Because of the general failure of the Derg’s and later the Workers Party led government of Ethiopian political policies and administrative approaches as well as the growing wave of demanding change of political and administrative situation of the country, the realignments of them in global relations more encouraged radical opposition in domestic affairs. Besides the erosion of international patronage, especially from the old Eastern Bloc, demoralized the officials of the Derg regime and soldiers of the ruling government.<sup>85</sup>

Therefore, the opposition, especially those actively engaged in guerilla warfare for a long period of time; saw this political situation and international crisis as a good opportunity to escalate their insurgency against the unpopular dictatorial regime led by military junta and later Workers Party of Ethiopia. With this step, these nationalist guerilla fighters that were mostly Marxist-Leninist in their political orientation temporarily sacrificed unique and separate goals of self-determination for the purpose of overthrowing the Derg regime. The dominant partners in the new organization, however, were mainly the Tigrean People’s Liberation Front (TPLF) led Ethiopian Peoples Revolutionary Democratic Front (EPRDF) whose members include Ethiopian Peoples’ Democratic Movement (EPDM) later changed its name into Amhara Nation Democratic Movement (ANDM), Oromo People Democratic Organization (OPDO) and Ethiopian Democratic Officers’ Revolutionary Movement (EDORM).

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<sup>83</sup>Beken, (n 80) 236

<sup>84</sup>Adejumobi, (n 5) 128

<sup>85</sup> Ibid, p. 133



## **CHAPTER SEVEN**

### **The Rights of Ethno National Minorities in Federal Ethiopia**

#### **7.1. Introduction**

This chapter deals with the current federal political system of Ethiopia which shortly introduces federalism and its related concepts in order to shed some light on the accommodative nature of federal political system of the country. Hence the focus of the chapter is basically on the constitutional and political system that tries to treat ethno national minorities since the 1991 transitional period charter of the country. As Ethiopia is the country of diversity the chapter mainly discusses the desperate need to accommodate such diversities in general and the rights of ethno national minority groups in particular.

Therefore, Section two of this chapter talks about general remarks of Ethiopian federal political system in a brief manner and its legal framework starting from the transitional period charter, whereas section three discusses the Transitional Period Charter of 1991 in association with the Rights of Ethno national Minorities. Section four discusses the federal constitution of the country and whether it gives sufficient space to the rights of ethno national minority groups at national and sub national level.

This section briefly discusses the most important reasons and fundamental questions why the federal constitution of 1995 gives more space to the rights of ethno national minorities and how they have been recognized by subsequent legislations. Section five draws a conclusion based on the arguments mentioned above whether the rights of ethno national minorities legally recognized, protected, respected and politically accommodated. This section also highlights some differences and similarities of both the constitutional set up of the federal government and the regional states constitutional frameworks.

#### **7.2. General Remarks about the Current Political System of Ethiopia**

As the Derg regime, later People's Democratic Republic Government of the country led by the Workers' Party of Ethiopia, failed to ensure the prevalence of rule of law and democracy as well as severely experienced internal and external conflicts and on 28 May 1991, Ethiopian Peoples Revolutionary Democratic Front (EPRDF) took control of Addis Ababa, the capital

city of Ethiopia. After almost one month of interim rule by EPRDF, on 1 July 1991, it called the opposition parties and all prominent individuals of the country who are assumed they have concerns about Ethiopian situation, so as to convene the Peace and Democracy Conference and thereby adopted Transitional Period Charter for the peaceful and democratic transition of the country's system of governance.

In other words, following this regime change through military force of mainly TPLF/EPRDF-led political organizations of the country the Peace and Democracy Conference held in Addis Ababa from July 1-5/1991 and proclaimed the Transitional Period Charter, a precursor to the FDRE Constitution of 1995, and also instituted the transitional Government of Ethiopia.<sup>1</sup> This political and legal incident was mainly characterized by James Paul in the following manner:

In May 1991, the Derg collapsed. As communism withered away, the TPLF [led-Ethiopian Peoples Revolutionary Democratic Front] moved quickly to reconstitute the state - by legitimating itself as a government, establishing an essential foundation for a federal constitution, creating de facto one-party rule, marginalizing Amhara and Oromo opposition, and liquidating the Eritrean problem. Legitimation was established by quickly shedding the peculiar Marxist ideology and embracing the rhetoric (if not all of the substance) of liberal democracy, and by convening a national (peace and democracy) conference to adopt an interim constitution, a charter for a Transitional Government of Ethiopia (TGE). Composed primarily of leaders of ethnic parties spawned by the civil war, the conferees reflected a dramatic shift of political power from Shoan urban elites to new politicians from hitherto marginalized regions.<sup>2</sup>

During this Peace and Democracy Conference relatively many representatives were called from about 27 political parties although some of them were not comfortable with the EPRDF-led peace making process. However, certain opposition political groups were not officially invited to be part of the peace making process, such as the defeated Workers' Party of Ethiopia (WPE), Ethiopian People's Revolutionary Party (EPRP) and All Ethiopian Socialist Movement (Meison). In this regard as that time although he was part of the whole peace making process of the country representing Oromo People Democratic Organization (OPDO),

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<sup>1</sup>Fasil Nahom, *Constitution for Nation of Nations: The Ethiopian Prospect* (Red Sea Printing Press 2004) 38

<sup>2</sup>James C.N. Paul, *Ethnicity and the New Constitutional Order of Ethiopia and Eritrea*, (200) 187

Dr. Negaso Gidada<sup>3</sup> in his lecture presented to certain members of interest group abroad clearly stipulates that with the aim to end the war and to find peaceful solution for the problems of Ethiopia the EPRDF convened the Peace and Democracy Conference of July 1991 on which all existing opposition organization, armed or not armed, participated except the Workers' Party of Ethiopia (WPE, established by the military government), the Ethiopian People's Revolutionary Party (EPRP) and the All Ethiopian Socialist Movement (AESM).<sup>4</sup> Besides, substantiated Dr. Negaso's statement another writer strongly stipulates that:

Several important groups long opposed to the Derg but politically at odds with EPRDF were excluded or chose not to participate; creating what critics of "The Conference of Nationalities" termed a problem of inclusion and lack of a national consensus from the start of the transition. Among organizations left out were the American and European-based Ethiopian People's Revolutionary Party (EPRP), whose army had fought the TPLF in bitter military struggles in Tigre during the civil war; the All-Ethiopian Socialist Movement (MEISON); and the Coalition of Ethiopian Democratic Forces (COEDF). Precluded from the process, these groups went their separate ways principally to opposition exile bases abroad.<sup>5</sup>

Moreover, Theodore M. Vestal further explains that in July 1991 the EPRDF, with the diplomatic backing of the United States, held its Founders Party and organized a national conference in Addis Ababa with over twenty other groups, mostly ethno national liberation fronts, some of which were created by the EPRDF itself for the occasion.<sup>6</sup> Despite the exclusion of those multiethnic political groups, the diverse representation of political parties and other important social groups including some prominent individual citizens strongly suggested that the EPRDF was at first willing to allow broad based participation in the peace making process, consolidation of democratic principles and thereby constitutional drafting for the transitional government. However, according to some commentator, the EPRDF remained

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<sup>3</sup>Dr. Negaso Gidada was one of those active political participants of the peace making process representing Oromo People Democratic Organization (OPDO) and the first elected president of Federal Democratic Republic of Ethiopian.

<sup>4</sup>Negasso Gidada, 'The Politics of Federalism in Africa: The Case of Ethiopia – Challenges and Prospects', Lecture Note, <http://aigaforum.com/article1/The-Politics-of-Federalism-in-Africa.htm> Accessed on 05/12/2015.

<sup>5</sup>Theodore M. Vestal, *Ethiopia: A Post-Cold War African State* (Praeger 1999) 7

<sup>5</sup> Ibid, p. 12

<sup>6</sup> Ibid, p. 12

in charge of the conference and kept participation and the agenda under its strong control.<sup>7</sup> Substantiating the strong and logical conclusion of different Ethiopian scholars, Getachew Assefa Woldemariam on his part rightly stipulated that “in this way the political transition began without the full participation of all stakeholders, such as political organizations representing a wide variety of views, including those opposed to the ethnic political restructuring of the country. The participation of all political contenders (not just the ones with the same views as the EPRDF) was badly needed for a meaningful transition into democracy in a past conflict society like Ethiopia.”<sup>8</sup>

And hence Ethiopia declared in July 1991 that it was ready to provide a legal framework and political situation for the recognition and protection of the rights of ethno national minorities in the shape of ethno national and cultural autonomy through implementing comprehensive federal system of governance. A declaration, however legally binding, it was not enough to secure the fullfledged implementation of the existing legal frameworks and political commitments of both federal and regional state governments.

In this chapter and in the following respective sections, the researcher shall explore how the ethno national minority groups understood their fundamental rights as well as cultural autonomy and organized its community political life, the legal and practical implementation of the Minority Declaration in the Transitional charter and the subsequent federal constitution of the country and thereby the respectively revised constitutions of national regional states of Ethiopia under discussion.

### **7.3. The Transitional Period Charter and the Rights of Ethno National Minorities**

As briefly mentioned in the previous section of this chapter the Peace and Democracy Conference adopted the Transitional Period Charter which is regarded as an interim constitution for transitional government of Ethiopia pending the adoption of the future permanent constitution of the country. The Transitional Period Charter also established an 87-member council, of which the members of EPRDF only seize 32 seats.<sup>9</sup> Because of this initially, most social and interest

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<sup>7</sup>Negasso Gidada, (n 4)

<sup>8</sup>Getachew Assefa Woldemariam, ‘Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality’ (PhD Dissertation, Melborn Law School2014) 71

<sup>9</sup>The Council of Representatives (CoR) was mainly composed of ethnic party representatives formed the transitional government including some prominent persons of Ethiopian citizens.

groups including prominent persons of the country supported the peaceful transition because of the EPRDF's apparent commitment to political pluralism. Mainly led by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF), the National Peace and Democracy Conference held successfully and decided to build a political system based on ethnicity, which shaped Ethiopian politics in a different way and the future constitution-building process.

During this critical time the granting of the right to self-government for the ethno national groups of the country was so interesting and decisive because it was to be guaranteed by legal means and this legal instrument had been ratified for the first time in the Ethiopian political history. In this regard Professor Alem Habtu strongly argued that:

In 1991, following the collapse of military rule, Ethiopia's new leaders established a federal system composed of largely ethnic-based territorial units. The main purpose was to achieve ethnic and regional autonomy, while maintaining the state of Ethiopia as a political unit. The initial process of federalization lasted for four years and was formalized in a new constitution in 1995. Ethiopia's multiethnic federal system is (therefore) significant when set alongside other federal systems because it provides for the secession of any ethnic territorial unit.<sup>10</sup>

Since there is a rich cultural and institutional tradition in the country, politically recognizing, practically respecting and legally protecting these multiple national resources including small but historic ethno national communities of the country by constitution, other bylaws, political policy and practical application of governmental institutions were and are a must precondition and timely issue in the current Ethiopian political system.

This legal and practical assertion was also important step forward because it would enable the ethno national minorities of the country to secure their very existence, cultural autonomy as well as equitable representation and thereby suited the future Ethiopian federal political system. The charter further established the framework for the provisional government and promised the right to self-determination in general and the right to self-government for all nations, nationalities and peoples of Ethiopia in particular.<sup>11</sup> Thereafter, new legislation was drawn up and formally promulgated by the provisional council of ethnic based political party

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<sup>10</sup> Alem Habtu, 'Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution' (2005) Vol. 35 *Publius* (Oxford University Press) 313.

<sup>11</sup> Article 2 of Transitional Period Charter talks about the right to self-determination including the right to self-rule.

representatives which carved and restructured the country's administrative set up into new ethno national based administrative regions which would be governed locally by elected councils. A manifesto explaining this unprecedented legislation suggested that ethnicity had replaced class as the official basis of politics in Ethiopia. It seemed likely that the new administrative regions would be transformed into quasi-sovereign regional states by the future constitution.<sup>12</sup>

This new legislation is known as proclamation No. 7/1992 and it identified 63 territorially concentrated ethno national communities. Forty-seven out of the 63 ethno national communities were declared capable of establishing their own self-government, starting from *Wereda* (District) level. The boundaries of each ethno national-based self-government area were also demarcated mainly based on the pre-1974 *Wereda* boundaries. Hence, *Weredas*, the majority of whose residents belong to a specific ethno national community were brought together to form a regional or a sub-regional self-governing area of the particular ethno national community.<sup>13</sup>

According to the policy of the EPRDF-led government and the new legislation enacted by the transitional council of representatives, ethno national identity has been declared as the ideological basis of political organization and administrative structure. And it had been enshrined in the Federal Democratic Republic Constitution of Ethiopia, adopted on 8 December 1994 defining the outlines of the new Ethiopian system of governance.<sup>14</sup>

With regard to fair and equitable representation of ethno national groups of the country at national level the Transitional Period Charter incorporated a specific provision that distributes key political power at the center to different ethno national groups of the country. Although some appreciates this political and administrative measure as well as recognized as a positive step forward, however, critics argued against this approach that:

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<sup>12</sup>James C.N. Paul, (n 2) 188, and see also National Regional Self-Government Proclamation, No. 7, 1992, *Negarit Gazeta* (1992)

<sup>13</sup>Article 3 and 4 of Proclamation No. 7/1992.

<sup>14</sup>Jon Abbink, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (1997)Vol. 41 *Journal of African Law* 159.

In a gesture towards ethnic representation in the institutions of the transitional government the charter provided that the Head of state, the Prime Minister, and the Vice-chairperson and the Secretary of the Council were (expected) to come from different ethnic groups. (However), it did not address the question of ethnic representation at the levels of minorities or other high Civil, Military and Security Officials, nor did it address this issue at the level of other myriad bureaucratic or government-owned economic institutions.<sup>15</sup>

Apart from the Transitional Period Charter proclamation No. 7/1992 also provided that minority ethno national groups should be given equitable representation in the councils of the *Wereda* administrative units in which they reside although they have no say on other aspects of their fundamental rights including self-government at *kebele* levels.<sup>16</sup> Following the aforementioned political and legal measures taken by the transitional government in January 1992, the Council of Representatives divided the country into 14 administrative regions including Addis Ababa, capital city of the country, based on language and roughly along ethnic lines.

This government decision further reinforced ethnicity as the guiding force behind Ethiopian politics and campaigning issues of political power. Besides, in 1993, the Transitional Government of Ethiopia (TGE) also established a Constitutional Drafting Commission to prepare a draft document for submission to a specially elected Constitutional Assembly, vested with plenary powers to and adopt as well as promulgate a final organic law which may serve the source of other sub-constitutional legislations of the country.

During this time certainly democracy and rule of law were promised to be in place to the concerned nations, nationalities and peoples of Ethiopia; however, the issue of federalism was left open to the future permanent constitution of Ethiopia.<sup>17</sup> Following this political policy direction, different public forums were also held across the nation and abroad to discuss issues that should be incorporated in the draft document and reconsider the most important opinions of civic organizations and political parties including the pertinent scholars of the country. Concerning this issue Theodore Vestal also clearly stipulates that:

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<sup>15</sup> Getachew, (n 8) 72-73

<sup>16</sup> Article 5 (30) of Proclamation No. 7/1992.

<sup>17</sup> Proclamation, No. 24, 1992, A Proclamation for Establishment of Constitutional Drafting Commission, (1992)

The CDC "invited international experts to address members of the commission and the public on different aspects of constitutional law." The most meritorious of these efforts was the showplace "Symposium on the Making of the New Ethiopian Constitution" held in Addis Ababa from 17-21 May 1993 under the sponsorship of the Inter Africa Group, a non-governmental organization with close ties to the TGE. Several distinguished international scholars, lawyers, and jurists joined Ethiopian government officials, legal experts, and invited participants in "lively and thought provoking discussions" and presentations.<sup>18</sup>

However, many of the EPRDF's opposition political groups felt that they could not participate fully unless they agreed with the EPRDF leaders in the future election process and the rules of the game as they were suspicious towards the trustworthiness of EPRDF's political and legal action and its commitment to implement genuinely the rules of the game. Following this situation although the opposition parties strongly contended the election process from the very beginning, on 5 June 1994 national election was held to elect members of a Constitutional Assembly for the purpose of reforming and formally adopting the future permanent constitution.

Based on such reasons and several other factors, in this national election the EPRDF won 484 out of the 547 seats in the Constitutional Assembly and the remaining seats of Constitutional Assembly were mainly taken by its strong affiliates. As a result without active political participation of major opposition parties, the Constitutional Assembly discussed on the draft document and ratified the future constitution on 8 December 1994 and then EPRDF achieved its first chapter of long term political aspiration.<sup>19</sup>

In this regard, Alem Habtu stipulated that the draft constitution was discussed publicly in urban neighborhood and peasant associations throughout the country during summer season of 1994. In other words, the process of drafting and redrafting of a new constitution began on a nationwide basis between 1992 and 1993, with relatively hot debates taking place not only in the major cities of the country but also at the rural village levels in the country side. And then, an elected Constituent Assembly, which was mostly composed of EPRDF partisans and its

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<sup>18</sup>Vestal, (n 5) 83

<sup>19</sup> Major Admassie was the only person who tried to reflect the very ideas and positions of the opposition parties and other citizens who did not support EPRDF's political program.



affiliates, ratified the federal constitution in December 1994 and it came into force in August 1995.<sup>20</sup> Generally speaking, as Zemelak Aytnew Ayele asserted that the Transitional Government of Ethiopia invested all its energy during the transitional period in responding to the ethno national question. The Transitional Period Council of Representatives and Proclamation No.7/1992 also went a long way to responding to the ethno national question... Important practical measures were also taken to respond to the ethno national question. And hence the right to self-determination of each ethno national community was recognized.<sup>21</sup>

#### **7.4. The 1995 FDRE Constitution and the Rights of Ethno National Minorities**

Following the adoption of the fundamental documents of human rights set by international community and continental human rights system of African nations as well as recognizing the importance of the principles of federal political system as discussed in chapter four of this dissertation, the Federal Democratic Republic of Ethiopian constitution of 1995 and almost all national regional state revised constitutions of 2001 and onwards have guaranteed the rights of minorities in general and ethno national minority groups in particular.<sup>22</sup>

Besides, as mentioned in chapter one, except state of Oromia and Ethiopian Somali region, they have also tried to fully recognize the very existence of ethno national minorities as well as duly give a constitutional guarantee and legal protection to the rights of minorities in general and ethno national minority groups in particular in accordance with the principles laid down by International Human Rights instruments and the African Charter on Human and Peoples Rights which Ethiopia is a party. Concerning this assertion Data Dea clearly and to a certain extent exhaustively stipulates that:

After taking control the TPLF/EPRDF instituted what many analysts consider the most minority-rights friendly constitution on the African continent. The most obvious, if not the most celebrated, minority rights bearers, according to the new constitution, are Ethiopia's nations, nationalities, and peoples or what anthropologists call ethnic groups. The new

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<sup>20</sup>Alem, (n 10) 326

<sup>21</sup>Zemelak Ayele, 'Decentralization, Development and Accommodation of Ethnic Minorities: The case of Ethiopia' (PhD Dissertation, University of the Western Cape 2012) 171

<sup>22</sup>As mentioned in the introductory part of this dissertation from nine National Regional states of Ethiopia the preamble and Article 2 of the 2001 Revised Constitution of Oromia National Regional State does not recognize even the mere existence of ethnic minorities actually living in the region.

Ethiopian constitution's provisions on human and ethnic minority rights are in perfect synchrony with the African Charter on Human and People's Rights (also known as Banjul Charter, entered into force in 1986) as well as all major U.N. conventions on human rights.<sup>23</sup>

However, not only practically but also legally there are some serious problems with regard to fair and equitable representation and political problems concerning treatment of ethno national minorities that are considered mostly non indigenous but in some cases even the indigenous peoples of the same region. In other words, although in practice there is an endeavor to achieve a fair ethno national balance in appointment of ministers, Bureau Heads and other administrative authorities, the FDRE constitution of 1995 and the regional state revised constitutions do not contain specific provisions prescribing ethno national composition of all government branches of both federal and regional states.

According to the new federal constitution of Ethiopia particularly in a provisions laid down under chapter three of the FDRE constitution, which is considered as a bill of rights to Ethiopian legal system, the following brief statement that strongly asserts the recognition and protection of fundamental rights of all individuals of the country and minorities in general and ethno national minority groups living in the country in particular is indicated. That means the FDRE constitution of 1995 clearly states that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.”<sup>24</sup> Besides, the FDRE constitution of 1995 further provides certain basic group rights including the right to self-determination to such ethno national groups of Ethiopian population. For example under Article 39 of the same constitution we can identify some four important components of group rights in the form of self-determination, equitable representation, preservation of culture and associated rights.

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<sup>23</sup>Data Dea Barata, ‘Minority Rights, Culture, and Ethiopia's "Third Way" to Governance’(2012) Volume 55 *African Studies Review*64

<sup>24</sup>Article 25 of the FDRE Constitution of 1995.

The first and the most important but highly contested right among Ethiopian scholars and politicians is stipulated under Article 39 (1) of the FDRE constitution which clearly states that “every nation, nationality and people in Ethiopia has an unconditional right to self-determination, including and up to the right to secession.” Secondly every ethno national group of the Ethiopian population can fully exercise their linguistic and cultural rights. This fundamental right is also provided under Article 39 (2) of FDRE constitution of 1995 and clearly stipulates that “every nation, nationality and people in Ethiopia has the right to speak, write and develop its own language; to express, to develop and to promote its own culture; and to preserve its own history.”

Thirdly, according to the federal constitution of the country all ethno national groups of the Ethiopian population are guaranteed to govern their political and administrative affairs in their respective territorial administration based on their free will. Fourthly, all ethno national groups in Ethiopia are also allowed to be equitably represented at federal and regional state government institutions. In this regard, Article 39 (3) of the same constitution strongly states that “every nation, nationality and people in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and federal governments.”

In addition to this specific provision, according to Article 47 (2) of the same constitution all ethno national groups in the country have the right to establish their own independent regional state at any time when they want. Because sub-article 2 of the same Article clearly stipulates that “nations, nationalities and peoples within the states enumerated in sub-article 1 of this Article have the right to establish, at any time, their own states.” Moreover, according to Article 52 (2) (a) of FDRE constitution regional states are politically empowered to establish a state administration that best advances self-government, a democratic order based on the rule of law.

Besides, Article 88 (1) of the same constitution of 1995 provides that the promotion of the people’s right to democratic self-rule at all levels of government institution is one of the political objectives of Ethiopia’s constitutional system that must guide the interpretation and implementation of the constitution and other subsidiary laws of the country. This specific

provision further imposes an important obligation on government as it clearly states that guided by democratic principles, the Ethiopian government shall promote and support the people's self-rule at all levels of government institutions. Of course as mentioned in the earlier section, in the Ethiopian legal and political system, a remarkable formal and strong recognition of the existence and protection of minority ethno national groups traces back its origin in the 1991 Charter of the Transitional Government of Ethiopia.<sup>25</sup> On the basis of Article 2 of the transitional period charter, proclamation number 7/1992 and proclamation number 11/1992 have defined minority nationality as "nationality or people which cannot establish its own *Wereda* Self-Government" owing to smaller size of their population.<sup>26</sup>

In compliance with the majority of multicultural state constitutions, the FDRE constitution does not also provide, express and direct definition of ethno national minority groups. However, most of the nations, nationalities and peoples of Ethiopia deserve minority recognition and thereby protection at national regional state and sub-regional state level of governments since only few nations, nationalities and peoples managed to have their own separate national regional states or nationality administrations which allow political and administrative autonomy over their own specific ethno national groups respectively.<sup>27</sup>

In this regard, even members of those nations, nationalities and peoples who are the dominant group in their respective regional states or nationality administrations have remained dispersed ethno national minorities in almost all regional states of Ethiopia and nationality administrations in certain regional states as a result of socio-economic and historical factors. With this in mind, most ethno national groups in Ethiopia constitute minorities not only at national level but also in the most regional states including local governments. As noted above, since 1995 the Federal Democratic Republic of Ethiopia has been predominantly administered by an ethno national federalist administrative structure marked by some distribution of responsibilities among ethno national groups and regional components with the

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<sup>25</sup> Art. 13 of The Transitional Period Charter of Ethiopia, Negarit Gazetta, 50th year, 1991, No. 1.

<sup>26</sup> Art 2 (7) of proclamation No. 7/1992, A proclamation to provide for the Establishment of the national/Regional Self-Governments, Negarit Gazeta, 51<sup>st</sup> 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, 51<sup>st</sup> year, No. 6, 8th February 1992.)

<sup>27</sup> Tigray, Amhara, Oromo, Afar and Somali nation-nationalities constitute majority in their home states while other nations-nationalities do not have their own regional state although many nation-nationalities established nationality administrations in the form of Zone and Special Wereda.

objective of maintaining the overall territorial integrity of the country in general and unity of the nations, nationalities and peoples of Ethiopia in particular. Concerning this concept Data Dea also argued that in 1991, the new leaders of Ethiopia established a multiethnic federation that provides for the right to self-rule including secession. The secession clause was incorporated for reasons of ideology and necessity. Because of this, the federation consists of largely ethno national-based territorial units and further encourages political parties to organize along ethno national lines. The Ethiopian case is therefore a radical departure from most other federal systems.<sup>28</sup>

As mentioned in the previous respective chapters, the nationality question was a very important issue in Ethiopia since the introduction of modern state structure as well as political system. Because of this and other types of cultural oppression, the country was characterized as a prison house of nation-nationalities and peoples of its own. This historical and political fact leads to establishing ethno national based left-wing resistance groups in the 1960s and continued until the demise of the Derg regime.

As a result, the right to self-determination including and up to secession has become an important precondition to those highly discriminated and politically oppressed ethno national groups of Ethiopia. This ideological view was also incorporated in the political policies of TPLF/EPRDF led federal government of Ethiopia and its legal system since the transitional period. As stated in the aforementioned work the intent of the Ethiopian ethnic federalism was also “...to create a more prosperous, just and representative state for its entire people.”<sup>29</sup>

Considering this positive legal and political environment of the country a writer argued that to evaluate the capacity of Ethiopian Federal political system pertaining to the accommodation of ethno national diversity and properly regulate ethno national group conflicts, the regional state constitutional mechanisms have their own important role. Particularly to realize not only the rights of equitable representation and self- government of such ethno national groups but

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<sup>28</sup>Barata, (n 23) 313

<sup>29</sup> Ibid

also to maintain unity in diversity.<sup>30</sup> In the Ethiopian federal administrative arrangement almost all regional states have at least some kind of ethno national and cultural compositions although the degree of their diversity or heterogeneity of the society differs from region to region.<sup>31</sup> According to Jon Abbik a specific problem in the Ethiopian political context is that every national regional state now so designated under the federal arrangement is multi-ethnic, even Tigray (where Saho and Kunama as well as Amhara, Oromo and other minorities live along Tigray people). None of the nine national regional states is mono-ethnic, so the protection of "minority rights" is also crucial in the future constitutions of such regional states.<sup>32</sup>

In other words, although none of the national regional states is ethnically homogenous, a particular ethno national group constitutes a significant numerical majority in each of the first five national regional states listed under Article 47(1) of the FDRE constitution of 1995. Because of this reality, they are expected to recognize and protect the very existence, self-government and equitable representation rights of other nation-nationalities and peoples living in their respective territorial administrations.

Besides, ethno national minority groups in Ethiopia are not given the opportunity to counter balance the majority tyranny in the lower houses of the federal and regional state parliaments during law making process and issuance of different policies at federal and regional state level. The recognition of fundamental rights is not as such enough and hence national regional states need to put in place legal and political mechanisms that can ensure the implementation of politically and constitutionally recognized as well as guaranteed rights of such nation-nationalities and peoples of Ethiopia.

This is especially true with group rights and related issues, which, like the individual rights impose negative obligations on the regional states but also require the regions to take further political and administrative measures that are necessary to ensure the realization of these

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<sup>30</sup>Christophe Van Der Beken, 'Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level'(2007)Vol. 20 *Africa Focus* 105

<sup>31</sup>For instance in Oromia there are Amharas, Gurages, Hadias Somalis, Halaba and Zaye people among others. In Afar there are Argoba, Tigray and Issa etc. In Somali Region there are Oromos, Amharas, Shekash community among others and so on.

<sup>32</sup>Abbink, (n 14) 163

fundamental rights and freedoms guaranteed by FDRE constitution of 1995 and the subsequent sub constitutional legislations. In this regard, the regional states have in particular sought to use the territorial subdivisions of their units to respond to the problem of internal minorities.<sup>33</sup> Furthermore, Christophe Van der Beken also strongly argued that tensions and conflicts between different ethno national groups can also occur within the borders of one particular region. Ethnic harmony in the Ethiopian state is therefore unthinkable without having strong harmony inside the regional states.<sup>34</sup> According to Christophe, the right to self-determination of all Ethiopian ethno national groups can only be realized if and only if the national regional state constitutional provisions also develop the necessary mechanisms.<sup>35</sup> Concerning this issue James Gardner also strongly argued that:

Sub-national constitutions are likely to play a real and substantial role in the protection of the human rights of sub-national populations in two circumstances. The first is when a sub-national constitution is given life by sub national constitutionalism, a political ideology capable of infusing sub-national constitutions with the weight of sub-national aspirations for meaningful local autonomy and self-governance. The second is when a state's internal structure of federalism is contestatory, a variety of federalism that institutionalizes a competition between national and sub-national governments for the allegiance and loyalty of the people.<sup>36</sup>

The aforementioned writer further explains that these actions, one might then say, are inherently constitutive of a sub-national identity, and it follows that a well-drafted sub-national constitution therefore will inevitably express to some degree the beliefs and aspirations of the people of the sub-national unit, and their conclusions about how their rights ought best to be protected.<sup>37</sup> This reality may draw some one's attention to further examine the legal frameworks, administrative structures, political policies and practical implications of responses to the rights of self-government and equitable representation granted to ethno national minority groups living in their respective national regional states of federal Ethiopia under consideration. In other words,

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<sup>33</sup>Christophe Van Der Beken and Yonatan Tesfaye Fesseha, 'Empowerment and Exclusion: The Legal Protection of Internal Minorities in Ethiopia', in Asnake Kefele and Assefa Fisseha (eds), *Federalism and Local Government in Ethiopia*, (2015) 58

<sup>34</sup>Beken, (n 30) 113

<sup>35</sup> Ibid

<sup>36</sup>James A. Gardner, 'In Search of Sub-National Constitutionalism'(2008)Vol. 4,*European Constitutional Law Review* 325 326

<sup>37</sup> Ibid, p. 332.

examining the Amhara and Oromia national regional states legal frameworks and practical responses as well as the status of accommodation of ethno national minorities within their respective administrative territory may help us to see the difference between the two geographically biggest population-wise sizable, and economically the most influential but since 1991 politically less empowered in the polity of the country. Because as clearly stated in the statement of the problem of the study, the current political situation, legal framework and administrative structure of the country, together with national regional states, creates new ethno national minority groups not only at federal level but also within the newly established regional states.

Particularly, the current legal frameworks of almost all regional states of Ethiopia and their governmental institutions practical implementation of the same do not show their real political commitment in recognition and guaranteeing of the fundamental rights and freedoms of ethno national minorities living in their respective regional state. Concerning the existing socio-political reality of federal Ethiopia including the regional states and the defects of legally recognized administrative structure of the country. Getachew AssefaW/Mariam strongly noted that:

In addition to its failure to defuse pre-existing minority concerns, ethnic federal/self-determination structure has generated new and more ominous minority rights problems. These problems have come about because, while dividing up and exclusively assigning the ownership of the territories of the whole country to various major and/or dominant ethno-linguistic groups, in some cases individually and in others jointly, the ethnic federal arrangement fails to guarantee the rights of minorities that live on territories assigned to one or more groups. Thus, while declaring for example, that the territory called 'the state of Oromia' belongs to the Oromos, it does not guarantee the rights of millions of non-Oromos living in Oromia.<sup>38</sup>

Moreover, while the Ethiopian federal constitution has recognized "ethno-national minority rights" in one form or another, even if the outlines of this concept remain ambiguous and legally fuzzy, it has not properly addressed the presence of the "non-ethnic" population in Ethiopia: not only do the large group of persons with "mixed origin" parents not have a

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<sup>38</sup>Getachew, (n 8) 16



structural place in the order of things, also the growing urban population is almost left out and practically it become complicated.<sup>39</sup> Of course this legal and practical problem might be resolved by using Article 39 (5) of the FDRE constitution of 1995 which considers the existence of people who may not belong one of either ethno national groups or their parent came from different ethno-national groups. Nevertheless, when we examine some national regional states legal and political frameworks and thereby practical implementations of the government institutions of the same, we can find some serious legal gaps and practical problems towards recognition and protection of ethnic minorities in general and the rights of existence, self-rule and equitable representation of ethno-national minority groups in particular.

In other words, although we might investigate the details of the national regional state underdiscussion legal and practical responses in relation to the rights of ethno national minorities', we can say that most regional states lack political commitment to extend proper legal protection to ethno national minorities living in their respective administrative territory. Concerning this reality, Aalen Lovis on her part by assessing the Ethiopian legal and political system and practical application of the same argues that although the Ethiopian constitution includes a wide range of rights, sub groups within the ethno national groups have not received any particular consideration in the constitutional framework. Consequently, historically marginalized minorities within the various ethno-linguistic units of Ethiopia do not have rights to special representation under the ethnic federal system introduced by the EPRDF.<sup>40</sup>

To make this argument sounder, some important examples are stated here in the following statement. For instance, as mentioned in the previous and the next chapters respectively, in Oromia national regional state ethno national minority groups not only those spread across the region by the previous regime resettlement programme and currently using their constitutional right, but also those territorially grouped in some pocket areas of the region, do not recognized as a distinct community and have no their own self-government as well as representation.

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<sup>39</sup>Abbink, (n 14) 171

<sup>40</sup>LoviseAalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience 1991-2000* (2002) 127

In other words, even some indigenous groups found in Oromia national regional state are not exercising the right to self-government and equitable representation at all levels of government institutions. Along that, all ethno national minority groups living in Oromia region, including such territorially concentrated historic ethno national minorities (for instance Zay community) are not even recognized as distinct ethno national communities and thereby are not equitably represented both at federal and all levels of national regional state administrative hierarchy. To a certain extent similar legal and practical situation holds true in the Amhara national regional state when it comes to genuine recognition and implementation of self-rule and equitable representation of ethno national minorities in the regional state government institutions.

However, as the researcher shall discuss later in chapter eight, some ethno national minorities living in the Amhara national regional state are legally recognized and politically allowed to administer themselves although in this area there are some restrictive constitutional provisions and practical barriers to fully implement constitutionally entrenched principles laid down in the FDRE constitution of 1995 that are important for recognition, legal protection, equitable representation and self-government of such historic ethno national minorities.<sup>41</sup>

These legal and political challenges encountered in both Amhara and Oromia national regional states are not comprehensively addressed by previous researchers although there are some research works and Journal Articles dealt with the same issue focusing on the same regional states constitutional and legal framework as well as practical treatment in relation to accommodation of ethno national minorities.<sup>42</sup>

Therefore, considering this research gap and practical problem the study is expected to provide additional insights about the fundamental rights and freedoms of ethno national minorities in Ethiopia and in those selected national regional states for policy makers of both federal and regional state governments to re-examine and modify the existing defective legal

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<sup>41</sup>Kemant community of Amhara region is not fully recognized to administer itself and due to this reason it is not yet represented at all levels of government institutions although recently it legally recognized by regional state council to be a special Wereda consisting 42 Kebeles and represented in the house of federation.

<sup>42</sup>For instance Sisay Mengistie Addisu, *The Rights of National Minorities under Amhara Region Constitution*, Ethiopian Human Rights Law Series, Vol. V, December 2012, School of Law, Addis Ababa University Press, p. 142. And see Christophe Van der Beken works on Ethiopian regional states and Tokuma Daba's LL.M Thesis (2010), School of Law, Addis AAbaba University.

frameworks and political policies that are negatively affecting the day to day lives of such millions of ethno national minorities. Not only government institutions but also future reseachers who are interested and more concerned about legal and political situations of ethno national minority groups of Ethiopia would get some important insights for further critical investigation. Because those-ethno national minorities which are not recognized by national regional state legal frameworks and political policies basically considered themselves as part and parcel of the Ethiopian polity in general and the politics of those national regional states under consideration in particular. In other words, in order to correct such legal gaps and practical problems as well as make sure that the government structure should be changed into fully autonomous democratic entities with the principle of implementing the rights of self-government that would contribute to Ethiopia's stability and national unity, there must be an inclusive committed parliament and democratic government in the country.

Besides, legally recognize and politically empower such ethno national minorities living in the two national regional states under discussion is an important precondition to navigate forward, feel free and actively engage in political dialogue with the concerned government institutions of both federal and national regional state governments. This would also make them strong enough to effectively bargain for their socio-economic and political interests, minimize grievances, and inspire their future political situations. As mentioned above the 1995 Ethiopian federal constitution creates a unique kind of federal and democratic state structure and hugely addresses the past injustices by providing different approaches starting from its preamble.

Because of this, its preamble from the very beginning declares that: We, the Nations, Nationalities and Peoples of Ethiopia... in the full exercise of our right to self-determination... and fully cognizant that our common destiny can best be served by rectifying historically unjust relationships...have adopted this Constitution through our duly elected representatives. The FDRE constitution of 1995 further goes on to reconstruct Ethiopia as a federation wherein 'all sovereign power resides', not in the people of Ethiopia collectively rather it resides on and among its diverse 'nations, nationalities and peoples' of the country.<sup>43</sup>

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<sup>43</sup> Article 8 of FDRE constitution of 1995.

The FDRE constitution of 1995 also strongly declares Ethiopia to be a federal polity by establishing nine national regional states basically based on ethno-linguistic patterns.<sup>44</sup> Hence in Ethiopia federalism was also introduced in the present day political system of the country as the culmination to the long-standing 'national question of ethno-national groups, and as a reaction to and result of a long history of a centralist tendency that was pursued harshly by successive monarchical and dictatorial governments of the country.<sup>45</sup> Unlike most constitutions of the world community the FDRE constitution unequivocally recognizes the right to secession and is also the ultimate extension as well as expression of the right to self-determination including the right to self-government.<sup>46</sup>

However, this constitutional commitment of recognizing and guaranteeing of the right to secede makes Article 39 as one of the most controversial provisions of the FDRE constitution of 1995 as many Ethiopian scholars argue that it endangers the unity of nations, nationalities and peoples of Ethiopia.<sup>47</sup> While, as mentioned in chapter four of this dissertation, fulfilled federation is one of the best mechanisms whereby differences are tolerated, fairly accommodated and ethno national minority rights are politically recognized, socially respected and legally protected. But there is fear that, in the present Ethiopian federal context, ethno national minorities in each national regional state may fall under the dictate of the mainstream ethno national group.<sup>48</sup>

Nevertheless, no distinction is made between a nation and the people of the country, rather both are defined as a group sharing a common language, culture, customs, history and identity. All such ethno national groups are also endowed with a corporate right to constitute themselves into a self-governing state or sub-state government within a state. Hence each ethno national group enjoys an unconditional right to self-determination, up to and including the right to secession.<sup>49</sup> Of course the 1995 FDRE constitution has also reflected both a

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<sup>44</sup>Article 46(2) of FDRE constitution states that States shall be delimited on the basis of the settlement pattern, language, identity and consent of the people concerned.

<sup>45</sup> Tsegaye Regassa "State Constitution in Federal Ethiopia; Preliminary Observation" (Paper presented at the Ballagio Conference, 2004).

<sup>46</sup> Article 39 94) of FDRE constitution of 1995

<sup>47</sup>Ameha Wondirad, 'An Overview of the Ethiopian Legal System' (2013), a paper presented to the NZACL 176

<sup>48</sup>Belay Shibeshi, 'Minority Rights Protection in the Amhara National Regional State: The Case of the Kemant People in North Gondar' (LLM Thesis, Addis Ababa University 2010) 1

<sup>49</sup> Article 8 and 39 of FDRE constitution of 1995 respectively.

backlash against the Derg's ethnic violence and Ethiopia's multitude of ethno national groups. Because of this, Ethiopian state adopted a constitution that creates formally a two-tiered federal structure, which, at least in principle, according to the perception of some people more emphasized on the fundamental rights and freedoms of ethno national groups including the right to self-determination. Therefore, Ethiopia's 1995 federal constitution is a direct result of the government pursuing a policy of “ethno national democracy.” As a result, ethnicity serves as the foundation for the current Ethiopia's ethnic based political parties and is what motivates the constitution's two-tiered federal system. In addition to the establishment of federal government, regional states whose borders roughly trace almost under ethno national lines are created by transitional government and later endorsed by the FDRE constitution of 1995.

Because of this, the formal constitutional structure cemented ethnicity and language as the definitive issue in Ethiopian politics. But according to Getachew Assefa Woldemariam currently the Ethiopian federal bargain is not successful as the framers of the same constitution believed and aspired during the drafting and adopting process of the federal constitution that:

[T]he framers of the constitution claimed that the ethnic federal system, along with the guarantee of the right to self-determination to every ethno-linguistic group is one of the key mechanisms to resolve the rights problems that had plagued the country in the last century. It was argued, specifically, that all the national minorities would on an equal basis enjoy self-rule in the areas they inhabit and be equitably represented in the federal and state governments. These self-rule and representational rights were claimed to have been guaranteed in the constitution along with other aspects of self-determination rights without any condition or limitation. I argue that, contrary to the claims made, this constitutional structure not only failed to meaningfully resolve the existing rights problems but also ended up generating new and more serious problems of minority protection in the country.<sup>50</sup>

The FDRE Constitution also creates a unicameral parliamentary system of government although it is consisting of two houses at federal level i.e., the House of People's Representatives, the lower house and ultimate law maker of the country, and the House of Federation which does not actively involve in law making process of the parliament. Even

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<sup>50</sup> Getachew, (n 8) 12-12

though the FDRE constitution clearly stipulates that the House of Federation consists of at least one representative from each “Nation, Nationality and People of Ethiopia,” it does not have veto power to protect the interest of ethno national minority groups. Moreover, the House of Federation by itself is not as such all inclusive representative government institution as millions of the residents of Addis Ababa and Dire Dawa City Governments are not represented in the same institution. Concerning this reality Alem Habtu in his very earliest Article argued that:

But there are some anomalies. First, although the total number of ethnic groups in the country is seventy-nine, according to the latest (1994) census, only sixty-seven ethnic groups are represented in the House of Federation. This means a dozen ethnic groups, small in size but not necessarily the smallest, are not represented in the House of Federation. The smallest ethnic group represented is the 1,526-strong Komo. There are somewhat larger ethnic groups that are not represented in the House of Federation. Second, from Oromia, only the Oromo are represented in the House of Federation, although there are a few million non-Oromo inhabitants in Oromia. Third, the number of Oromo and Amhara is much greater than the number of Harari in the Harari (peoples) regional state. Yet only the Harari ethnic group in the state is represented in the House of Federation.<sup>51</sup>

Of course, the most recent data clearly shows that currently some seventy six nations, nationalities and peoples of Ethiopia are represented in the House of Federation at least by one but still now dozens of ethno national minority groups claim to be recognized as a distinct ethno national group and thereby equitably represented in the same House. As the FDRE constitution of 1995 empowers it, the House of Federation also interprets the constitution and maintains control of issues related to ethno national groups' rights, including “the right to secession”.<sup>52</sup>

Besides, each national regional state maintains its own legislative, executive, and judicial branches. The State Council is the highest authority in each state, and it has the authority to promulgate and amend the state constitution.<sup>53</sup> As mentioned in the previous section the FDRE constitution of 1995 also calls for each State Council to decentralize their administrative

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<sup>51</sup> Alem, (n 10) 330

<sup>52</sup> Article 62 of FDRE constitution of 1995.

<sup>53</sup> Ibid, Article 52 (2 sub b).

structure to the local authorities and currently each national regional state is divided into sub state government units including nationality administrations of certain ethno national groups in some regional states. As noted above according to FDRE constitution of 1995, national regional states are constitutionally empowered to establish a state administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the federal constitution.<sup>54</sup> Moreover, according to Article 50 (4) of the same constitution state government shall be established at state and other administrative levels that they find necessary. And hence adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units. As mentioned above in addition to this Article 88 (1) of FDRE constitution also clearly stipulates that guided by democratic principles, government shall promote and support the people's self-rule at all levels of government institutions.

However, as noted earlier practically there are many legal and practical problems that hinder the genuine recognition, respect and effective legal protection of ethno national minority rights in national regional states under discussion, with regard to the right to self-government and equitable representation. In other words, as we will discuss in detail in the following chapters respectively some national regional states of Ethiopia deny even the very existence of certain ethno national minority groups living in their respective national regional state administrative territory whether they are indigenous to that specific region or not.

## **7.5. Conclusion**

The thorough discussion of this chapter has shown the contents and concerns of the transitional charter and thereby the FDRE constitution of 1995 in relation to the fundamental rights of ethno national minorities and examined the extent of those legal instruments accorded political recognition and legal protection of ethno national minorities of the country. It has also argued that owing to a raft of legal and institutional reasons, these two important legal instruments, claimed by the framers of the same document specially considered as suitable legal instruments from the very beginning for the recognition and legal protection of ethno national minority rights in tandem with their human rights.

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<sup>54</sup> Ibid, Article 52 (2,a).

However, they are not working in reality as expected not only by framers of the constitution but also by many of the political leaders of ethno national minorities. Because there are still certain ethno national minorities in the national regional states under discussion fighting against the domination of their right to be properly recognized as a distinct ethno national group, demanding equitable representation at all levels of government institutions and claim to be allowed to administer themselves. Particularly as Getachew Assefa Woldemariam rightly put it out for ethno national minorities whose number is very small and their political influence is very minimal have no as such comprehensive procedural mechanisms available to them to address their constitutionally guaranteed rights from violation of their fundamental rights including self-government and equitable representation by bigger and politically more powerful ethno national groups.

Yet today, twenty five years after recognition of ethno national minority group rights and the formal establishment of federalism and system of democratic governance in the country, as we have investigated and thereby evaluated the 25 years' experience of its implementation, some important democratic and pluralistic values that informed its architecture have received scant institutional embodiment. In this regard, there are many symptoms of the impoverishment of federalist principles, democratic values and political policies in the Ethiopian state and regional states of the country.

To mention some among the most notorious ones and telling history and records of this reality is the rigid control exerted by the center over the national regional state governments and the same legal and political situation is happening over sub-state administrative units of the Ethiopian federal system in general and in those national regional states under discussion in particular. Hence, as Ethiopia is multi-cultural state having more than 76 officially recognized nationalities and peoples with different origin in terms of ethnicity and recently adopts federal and democratic political system, it must respect and fully recognize at least the very existence of them.

In other words, recognition of ethno national groups of the country should be taken as a first important step by the federal government together with regional states and they must genuinely implement the fundamental rules and principles of federalism and democracy so as to recognize,



respect and legally protect the fundamental rights and freedoms of ethno national minorities in the country in general and in regional states in particular. Because in the present day Ethiopian legal and political framework, administrative structure at least entertain issues of federalism, maintain sustainable peace and order, respecting as well as protecting human and democratic rights. Besides, implementing the principles of federalism and good governance are therefore significant as the country has only emerged out of widespread civil war at the beginning of the 1990s and adopted theoretically a comprehensive as well as modern federal and democratic constitution in 1995 which allows, in principle, to establish a full-fledged federal and democratic state structure.<sup>55</sup> Constitutionally recognizing and practically accommodating fundamental rights and freedoms of the nation-nationalities and peoples of Ethiopia including the rights of ethno national minority groups and individual citizens are also preconditions that would not be ignored so as to respect and protect the rights of minorities in general and ethno national minorities in particular.

In other words, Ethiopia, since the change of the military regime in May 1991, it has acknowledged collective and individual rights alike that are important measures to all human beings living in this country although as mentioned above some argue that it gives more emphasis to group rights of ethno national communities. Moreover, the country has also adopted and ratified major international human rights instruments such as Universal Declaration of Human Rights (UDHR) and the two International Covenants of 1966 which focuses on civil, political, economic, social and cultural rights of the peoples of the world among others.

In theory most federal political systems by their own nature usually facilitate the accommodation of diverse interests of nation-nationalities and peoples in a given country. Because according to Coakley accommodation recognizes and aims to preserve a minority's identity by adjusting a state structure, territorial or otherwise, and by providing 'formal recognition [to] the cultural or ethno national diversity of [a state's people]'.<sup>56</sup>

In other words, the constitutional promise to provide all the ethno national groups of the country with the right of self-government translated into practice in an asymmetrical manner. Thus from

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<sup>55</sup> Article 1 of FDRE Constitution of 1995.

<sup>56</sup>Coakley J, 'The Resolution of Ethnic conflict: Towards a Typology' (1992) Vol. 13 (4), *International Political Science Review* 343 84.

among officially recognized 76 ethno national groups of the country as mentioned elsewhere in this dissertation only five ethno national groups (Tigray, Afar, Amhara, Oromo and Somali) are constitutionally recognized and politically allowed to have their own ethnic based self-governed regional states where they constitute the majority population of the country.

Hence, the Ethiopian government together with its member states should apply fundamental principles of human rights legally recognized by FDRE constitution and best practices of federalism in order to protect and respect the fundamental rights of ethno national minority groups which are part and parcel of the Ethiopian polity in general and the respective national regional states under discussion in particular. In the following respective chapters I shall investigate the legal frameworks, political policies and practical applications of Amhara and Oromia national regional states respectively in general and their similarity and differences in particular.

## **CHAPTER EIGHT**

### **Legal and Practical Responses to the Rights of Ethno national Minorities in Amhara Region**

#### **8.1. Introduction**

This chapter mainly deals with the current legal and political means of accommodation of ethno national minorities of the Amhara national regional state of federal Ethiopia. The chapter will answer the research question framed in the following manner i.e. how does the legal framework and political practices of the Amhara national regional state address the rights of existence, representation and self-government of ethno national minorities? To answer this research question it investigated the revised constitution and practical implementation of Amhara region.

As a result, the investigation of the region's political situation serves as an initial point to grasp and properly capture the fundamental future of legal framework of the region and political policies in relation to treatments of ethno national minorities living in the region. On top of that, it also attempted to find out the practical application of the national regional state government in relation to the rights of historic ethno national minority groups. Accordingly, section two of this chapter mainly discusses about the general remarks of Amhara national regional state.

The political history of the peoples and geographic areas of Amhara region is also entertained under section three. Section four of this chapter mainly deals with legal frameworks of the region and political practices of the national regional state government. Although the revised constitution of Amhara national regional state from the very beginning tries to accommodate the rights of ethnic minorities in general and territorially concentrated historic ethno national minority groups living in the region in particular, there is no as such strong political means which is recognized by sub constitutional laws to accommodate their fundamental rights and socio-economic interests.

However, still there are some practical and political improvements in relation to the basic rights of socio-cultural development, language use in primary education and representation at

all levels of government institutions. To complement this case study, quest for distinct identity recognition, equitable representation and self-government of Kemant community is critically investigated in section five of this chapter. This section also consists of three sub sections i.e historical background of Kemant community and their quest for identity recognition as well as the right to self-government including the responses of both federal and national regional state governments respectively. Finally, section six contains the concluding remarks of this chapter. Accordingly, by way of conclusion this section fundamentally tries to identify the main legal gaps of the region and political policies and practical problems of the same in general and the government of the Amhara national regional state in particular.

## **8.2 General Remarks**

A century old, highly centralized administrative structure of Ethiopia came to an end on 28 May 1991. After the downfall of the *Derg* regime (the military junta which ruled Ethiopia from 1974-1991), a series of political and administrative measures were taken by the Transitional Government of Ethiopia to move away from the highly centralized political system and administrative structure of the country. Besides, the incumbent introduced fundamental political and administrative reforms to the country's system of governance immediately after coming into power, which could be considered by many people as a watershed in the modern political and administrative history of Ethiopia.

Following this political and administrative reform, fourteen autonomous regional administrations were also established during transitional period taking mainly ethno-linguistic identity into account.<sup>1</sup> These positive political, legal and administrative measures were also substantiated by drafting and adopting the FDRE constitution of 1995 and it further strengthened the right to self-government and equitable representation of nations, nationalities and peoples of Ethiopia as has been enshrined under Article 39 of the same constitution.

This legal principle is clearly stated that “every nation, nationality and people in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in the state and

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<sup>1</sup>According to Proclamation No. 7/1992 Oromia, Tigray, Amhara, Ethiopian Somali, Afar and Harari regions are established with the main basis of their dominant ethno-linguistic groups although Harari's case is different.

federal governments respectively.”<sup>2</sup> The FDRE constitution of 1995 also recognizes not only the principles of shared rule for common interests of the Ethiopian peoples but also guarantees the rights of self-government for specific interest of the same in order to strengthen a decentralized form of sub-national governments and encourage direct participation of the peoples of the country. This legal and administrative assertion as well as political commitment of the incumbent in decentralizing government authorities to the grassroots level is sufficiently expressed in the same constitution.<sup>3</sup>

Considering this constitutional guarantee and full measure of self-government rights of nation, nationalities and peoples of Ethiopia, as mentioned elsewhere in this dissertation, almost all regional state constitutions have also acknowledged the aforementioned fundamental constitutional principles of shared rule at federal level for common interest of the country and self-government for specific interest of nations, nationalities and peoples of the country in the same fashion.

This political and administrative commitment can also be considered as an important step to pave the situation towards the future political development of the country. However, one cannot be sure whether minority nation-nationalities and peoples of Ethiopia in general and ethno national minority groups particularly living in national regional states under discussion are effectively utilizing such constitutionally guaranteed autonomous political power and other fundamental rights entrusted to them by both the revised regional state constitutions.<sup>4</sup>

As some body who closely observes the Ethiopian politics can easily understand the right to self-government and recognition of sub-state political autonomy is also one of the fundamental rights and freedoms of human beings in general and nation-nationalities and peoples of the country in particular. This fundamental right includes political powers and

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<sup>2</sup>Article 39 (3) of Federal Democratic Republic of Ethiopian Constitution, 1995.

<sup>3</sup>Ibid, Article 52 (2, a) and Article 89 (1) authorize national regional states to establish local administrations.

<sup>4</sup>Sisay Mengistie Addisu, ‘Autonomy of City/Town Administrations in Ethiopia: Case Study of Amhara Region City Administrations’ in Asnake Kefal and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia*, (2015) 219-220.

liberties that allow members of sub state community to control their socio-economic development and substantial parts of their lives within its framework.<sup>5</sup>

Considering this reality the chapter also discusses the extent of the responses of the national regional state government of Amhara in relation to self-rule, fair and equitable representation of historic ethno national minorities living in the region. Besides, this chapter tries to identify some important legal gaps, political and practical challenges of nationality administrations and other ethno-linguistic groups that are seeking full recognition as a distinct ethno national community and strongly claim to exercise the right to self-government.

Besides, the chapter investigates the guaranteed rights of ethno national groups of the country by assessing both federal and regional state constitutions and political situation of those nationality administrations and supporting by corroborative evidences communicating pertinent persons as a key informants, analyzing relevant documents and using the author's work experience in the same region and personal observation during field work.

### **8.3. Historical Background of Amhara Region**

With the establishment of modern administrative structure in the Ethiopian political system in 1942, territorial administration of the current Amhara national regional state was divided among four provinces (sub regions), which are mainly regarded as places where Amhara people are living. Namely Gondar, Gojam, Wollo and northern part of Shewa a large swath of territory bringing together all the Amharic-speaking provinces.<sup>6</sup> However, in 1987 following the adoption of People's Democratic Republic of Ethiopia (PDRE) constitution of the socialist regime these four larger provinces were also further divided into seven administrative regions.

Nevertheless, since 1992, the Amhara people together with other historic nation-nationalities and peoples of the region have been also brought together into a single national regional state with the considerable political, fiscal and administrative powers of self-government.<sup>7</sup> The current national regional state of Amhara was therefore established by joining and consisting

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<sup>5</sup>Chaim Gans, *The limits of Nationalism* (Cambridge University Press, 2003) 84

<sup>6</sup>Bahru Zewde, *The Quest for Socialist Utopia, The Ethiopian Student Movement c. 1960-174* (James Curry 2014) 191

<sup>7</sup>Proclamation No. 7/1992, the Establishing Proclamation of Regional Administrations, transitional period.

of mainly those seven Amhara dominated administrative regions of the pre-1991 Ethiopian legal and political system, namely north Gondar, south Gondar, west Gojam, east Gojam, south Wollo, north Wollo and north Shewa administrative regions of the country.<sup>8</sup>

Hence currently the Amhara national regional state is one of the nine regional states of Ethiopia established first by proclamation number 7/1992 and later on, by FDRE constitution of 1995. It is also the homeland of the Amhara together with the Agews, the Oromos, the Argobas and the Kemants<sup>9</sup> ethno national groups of Ethiopia. Concerning this reality Donald Levine clearly stipulates that the earliest description of Amhara, from the sixteenth and early seventeenth centuries, refer to a large region including Gondar, Gojam, Wollo and the northern part of Shewa, incorporating several subject provinces, almost all of which predominantly speak the Amharic language.<sup>10</sup>

However, according to James C.N Paul the Amhara epitomize the problems of the concept of ethnicity now enshrined in the federal constitution of 1995. Arguably, they consider themselves more as Ethiopians than as members of a unified ethno national group. Indeed, in the previous times division has often characterized Amharan political culture.<sup>11</sup> The Amhara national regional state is also located in the north western and north central part of Ethiopia and shares administrative and political boundaries with national regional state of Tigray in the north, with Benishangul- Gumuz regional state in the south west, with Oromia national regional state in the south and with Afar region in the east.

The region also shares an international boundary with the Republic of Sudan in the western part of its administrative territory. Currently the Amhara region is divided into five nationality administrations, namely Agew-Awi, Wag Hemera, Oromo, Argoba and Kemant ethno national groups respectively, seven regular Administrative Zones which consists the Amahara

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<sup>8</sup> Sisay, (n 4) 221

<sup>9</sup>Until 2013 the Amhara national regional state government was not as such ready to positively entertain the request of Kemant community and recognize the autonomous existence of the same and its distinct identity markers as well as even the region did not respond the question why the Kemant were erased from the list of statistical data of the country in 2007.

<sup>10</sup>Donald N. Levine, *Greater Ethiopia: The Evolution of a Multiethnic Society*, (University of Chicago Press 1999) 72

<sup>11</sup>James C.N Paul, *Ethnicity and the New Constitutional Order of Ethiopia and Eritrea* (2000)178

nation, and more than one hundred seventy *Wereda*<sup>12</sup> administrations including some forty city/town administrative units whose status depends on the nature, population size, political weight and economic prosperity thereby their positive influence on the governance of the country in general and at regional state level in particular.<sup>13</sup> Moreover, according to the report of the Amhara national regional state Bureau of Finance and Economic Development the region has also a total of one hundred ninety municipalities and three thousand four hundred twenty nine rural *kebele* administrative areas (neighborhoods) which is the lowest administrative units not only in the region but also in the country. The territorial size of Amhara national regional state is estimated 170,752 square kilometers, which also covers about 15 % of the total country size.<sup>14</sup>

According to the 2012, population projection made by the Central Statistical Agency of Ethiopia (CSA), the Amhara national regional state has a total population size of 19,212,000. The figure is, however, still seriously contested.<sup>15</sup> Because the result of the 2007 census unequivocally showed the lowest birth rate of the region (only 1.7%) which was not in the actual socio-cultural situation of the people mainly living in the rural areas of the national regional state of Amhara. As a result, while the final report of the national census was being presented to the federal parliament and the celebration on the same issue was conducted in the house, the representatives of Amhara national regional state in the federal parliament strongly opposed the result of the population and housing census of the region.

Besides, since then the pertinent national regional state government officials were also trying to discuss and negotiate with the concerned authorities of central statistical agency in order to reach at a consensus on the real population number of the national regional state of Amhara.<sup>16</sup> Because of this, five years later, Central Statistical Agency of Ethiopia was obliged

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<sup>12</sup>*Wereda* means District which comprises several administrative units know as *Kebele* in local language.

<sup>13</sup> Sisay Mengistie Addisu (2012), The Rights of National Minorities under Amhara Region Constitution, The National Human Rights System in Ethiopia, School of Law, AAU, Vol. V, p.143.

<sup>14</sup>Development Indicators of Amhara Region (2011/12), Bureau of Finance and Economic Development.

<sup>15</sup>The Amhara people's ratio with the Oromo/Amhara being 29%/28% in 1984 and 32%/30% in 1994. This ratio however showed a precipitous rise in 2007 to 34%/27% which begs a satisfactory explanation that is yet to be provided by the census authorities. For further reading see Professor Berhanu Abegaz's Article Ethiopia: Three Million Amhara Missing?: An Analysis based on the 1994 and 2007 Ethiopian Population Censuses ([nazret.com/blog/index.php/](http://nazret.com/blog/index.php/) 2015)

<sup>16</sup>Interview with Werku Adamu, Member of Amhara Region Council and Secretary of Standing Committee for Constitutional and Regional Affairs, House of Federation, (Addis Ababa, 18 April 2016)



to raise the growth rate for Amhara people from 1.7% to 2.3% and thereby corrected the mistakes made during the 2007 national census and added half a million people to the regional population although in terms of budget the House did not compensate the past injustices.<sup>17</sup> Besides, about 85.52 % of the total population of the region is rural inhabitants, whereas only 14.48% are urban dwellers.<sup>18</sup> In the Amhara national regional state subsistent peasant agriculture is a dominant means of livelihood for more than 85 percent of the regional state population. Moreover, the 12<sup>th</sup> century Rock-Hewn churches of Lalibela, and the Fasil palaces found in Gondar city, the worldly known and formally registered by UNESCO and other historical heritages of the country are also destinations of local and international tourists and currently they become significant sources of income not only for dwellers of such specific tourist destination areas of the region but also for the national regional state and thereby federal government of Ethiopia.<sup>19</sup>

The Amhara national regional state is also relatively homogeneous with 91.48 percentage of the total regional population being ethnic Amhara. Other historic ethno national groups found in the region include the Agew Awi (Gojam Agew), Wollo Oromo, Wag-Hemra (Wollo Agew), Argoba and Kemant nationalities to mention only territorially concentrated historical ethno national minority groups.

The details of the composition of ethno national groups of the region and their percentage of the national regional state population whose number is more than two thousand can be demonstrated in the following tabular expression. In other words, the following table basically tells us that the Amhara national regional state is consisting of different ethno national groups and has a diverse communities although many of them are scattered in their nature and came from different parts of the country in different times.

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<sup>17</sup> Ibid.

<sup>18</sup> Bureau of Finance and Economic Development of Amhara Region, 2015.

<sup>19</sup> Bureau of Culture, Tourism and Parks Development of Amhara Region, 2015.

**Table 1: List of some Ethno-national Groups of Amhara National Regional State**

No.	Nationality	No. of Population	Per cent	Remark
1	Amhara	15,752,992	91.48	2007 Census Report
2	Agew-Awi	595,878	3.46	2007 Census Report
3	Oromo	451,362	2.62	2007 Census Report
4	Agew-Hemra	238,653	1.39	2007 Census Report
5	Kemant	172,327	1.20	1994 Census Report
6	Argoba	70,012	0.41	2007 Census Report
7	Tigre	37,397	0.22	2007 Census Report
8	Gumuz	13,105	0.10	2007 Census Report
9	Anyiwak	6,265	0.04	2007 Census Report
10	Somalie	5,724	0.03	2007 Census Report
11	Berta	5,213	0.03	2007 Census Report
12	Affar	3,321	0.02	2007 Census Report
13	Guragie	3,068	0.02	2007 Census Report
14	Irob	2,125	0.01	2007 Census Report

**Sources: 1994 and 2007 Census Reports of Central Statistical Agency of Ethiopia**

However, as mentioned above in table 1 of remark column, the 1994 national population and housing census conducted by the CSA clearly shows that the Kemant ethno national community regarded themselves as distinct ethnic group of the country in general but

considered themselves as part and parcel of the national regional state of Amhara and living particularly in north Gondar administrative zone. According to the aforementioned data Kemants were also an important elements of the regional population size although they were not even counted as a distinct ethno national group in the 2007 National Population and Housing Census.<sup>20</sup> The reason why they were not separately counted was, according to Molla Jember who is active member of the executive committee of Kemants' indentity recognition and the right to self-government coordination council the nationa regional state officials were reluctant to recognize the very existence of Kemant as a distinct ethno national community considering that they are already assimilated with Amhara nation.<sup>21</sup>

However, from the above tabular expression one can easily understand that the Amhara national regional state has diverse ethno-linguistic groups ranging from tens of thousands to tens of millions. Although most of the aforementioned ethno-linguistic groups are basically considered as historic ethno national minorities in the region they did not have autonomous administrative structure, equitable representation and political power on their specific admistrative areas prior to the issuance of proclamation number 7/1992.

As mentioned above although the Amhara people are by far the largest nation in the country next to Oromo people and a dominant ethno national group in the Amhara region, its revised constitution, political policy of the region and practical application of the national regional state government recognize the very existence and the important role of nation-nationalities and peoples of Ethiopia living in the region including historic ethno-linguistic minorities of the region who are considered themselves as part and parcel of the regional state socio-economic and political life.

The first written constitution of the Amhara national regional state was therefore adopted by the first meeting of the then regional government council on 22 June 1995 following the adoption of the federal constitutionof 1995 and completely revised in 2001. Hence in this specific chapter the researcher is more interested to examine and discuss the principles laid down under the revised constitution of 2001 of Amhara region together with the federal

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<sup>20</sup>Since 1992 some representatives of Kemant Community were claiming to be recognized as a distinct nationality.

<sup>21</sup>Interview with Molla Jember, Activist and member of the executive committee of the council of the quest for Kemant's identity recognition and self-government, (Addis Ababa, 10 June 2016)

constitution in order to see the recent legal and political development of the national regional state's system of governance, particularly in accommodating the very important interests, fundamental rights and freedoms of such diverse ethno national groups listed above in general and the right to equitable representation and self-rule of historic ethno national minorities in particular living within the national regional state administrative boundary. The following is the political and administrative map of Ethiopia showing the regional state border lines which the political and administrative map of the Amhara national regional state is painted by red color.

In other words, the Amhara national regional state is getting its own political and administrative shape consisting of different ethno national groups of the region following the adoption of proclamation number 7/1992. This political and legal situation was also supported by FDRE constitution of 1995 and the regional state revised constitution of June 1995 as completely revised by 2001 which is the very important juncture of the region in its political history.

**Map 2: Political and Administrative Map of Ethiopia that Indicates Amhara Region**



Source:<https://www.google.at/search?q=map+Amhara+region,+Ethiopia> Accessed on 24/05/2017

#### **8.4. Legal Framework and Political Practices of Amhara National Regional State**

As mentioned above, the Amhara national regional state has promulgated its own written constitution for the first time in 1995 following the adoption of FDRE constitution and substantially revised it in 2001. The regional state revised constitution also recognizes the very existence and other fundamental rights of ethno national minorities living in the region like that of the federal constitution of 1995. In other words, the Amhara national regional state revised constitution of 2001 is not only the one among national regional state constitutions that recognizes the fundamental rights and freedoms of ethno-national minorities in their respective administrative territories but also it accommodates all ethnic groups living in the region.

Hence the revised constitution of the Amhara national regional state in its preamble clearly stipulates the following comprehensive statement that includes almost all ethno-linguistic groups living in the region by stipulating that “we, the peoples of the Amhara National Regional State.” Thus, following the establishment of the national regional state Agew-Awi,

Oromo and Wag-Hemra Nationality Administrations were established by the decision of the regional state legislative council relatively as an autonomous legal entity.

The main purpose of establishing such nationality administrations was to empower such historic ethno national minority groups and thereby to allow exercising the right to self-government including preserving and developing their own culture, language, and other important identity markers as well as social values of their own in their respective territorial administrations.<sup>22</sup> However, as mentioned above this chapter mainly examines the 2001 revised constitution of the national regional state of Amhara in order to see the recent developments in the legal and political system of the region particularly in recognizing the very existence of different ethno linguistic-minorities of the same.

Besides, the chapter discusses how the region is legally accommodating such diverse ethno-linguistic groups. Accordingly the preamble of the 2001 revised constitution of the Amhara national regional state as mentioned above clearly starts with the phrase ‘we, the peoples of the Amhara National Regional State’ and unequivocally indicates that all nations, nationalities and peoples living in its administrative territory are constitutionally recognized unlike its nomenclature and some other national regional state revised constitutions.<sup>23</sup> This political commitment and legal recognition is further strengthened by the following comprehensive but more inclusive constitutional statement that:

having firmly believed that, we, the peoples, settling in the Amhara National Regional State, would be able to attain rapid economic growth, durable peace and full-fledged democracy, only when we do manage to possess our own constitution founded on the spirit of the constitution of Federal Democratic Republic of Ethiopia, taking into account the concrete circumstances of our regional state and thereby enabling us to exercise our constitutional rights duly respected thereto fully and unrestrictedly.<sup>24</sup>

Moreover, Article 8 of the revised constitution of the Amhara national regional state strongly confirms the proper recognition of nations, nationalities and peoples living in the region that

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<sup>22</sup> Article 73 of the revised constitution of the Amhara Region of 2001.

<sup>23</sup>For instance the Oromia national regional state constitution can be taken as a typical example that exclusively claims that the national regional state is for the Oromo nation by denying even the mere existence of ethnic minorities including the indigenous people of Zay in the same region.

<sup>24</sup> Paragraph four of the preamble of the revised constitution of Amhara National Regional State, 2001.

are giving equal opportunity and securing administrative power of the national regional state of Amhara in order to control the regional state's over all political system. This specific constitutional provision clearly refers that 'the supreme power of the national regional state resides in and belongs to the peoples of the Amhara region'. Besides, as mentioned above, the 2001 revised constitution of the Amhara national regional state also formally created a special territorial political entity, locally known as Nationality Administrations.<sup>25</sup>

Considering these general introductory remarks the following section is going to critically examine and seriously evaluate the legal frameworks and practical responses accorded to ethno national minorities living in the region by the national regional state government of Amhara in relation to protecting and accommodating the basic interests and fundamental rights and freedoms of ethno national minority groups including the right to existence, self-government and equitable representation of the same at all levels of government institutions of the region.

## **8.5. Constitutional Guarantee of Ethno National Minorities in Amhara Region**

### **8.5.1. Introduction**

As stated in the introductory remarks of this chapter, the revised constitution of Amhara national regional state recognizes not only the very existence of nation-nationalities and peoples of Ethiopia living in the region but also it grants relatively proper political space to those historic ethno national minorities that are territorially grouped/concentrated and culturally distinct. Concerning this issue the revised constitution of the same region clearly stipulates that "being duly convinced of the fact that we had for long been victims of an unbearable harm caused to us directly or indirectly to an atrocious national oppression which had to be committed in the past on and against the majority's nations, nationalities and peoples, and henceforth needs to be corrected and rectified hereafter."<sup>26</sup>

As noted above, based on the 2007 National Population and Housing Census conducted by the CSA, the major ethno national composition of Amhara national region that was presented in table 1 of the previous section clearly provides us some important hint to analyze how the

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<sup>25</sup> Article 73 (1) of the revised constitution of Amhara Region, 2001.

<sup>26</sup> Paragraph two of the 2001 Revised Constitution of Amhara National Regional State.

revised constitution of the Amhara national regional state is formulated and the national regional state government is established in order to accommodate the diverse interests and fundamental rights of such historic ethno-linguistic communities living in the region.

### **8.5.2. The Right to Exercise the Principle of Self-Determination**

As mentioned in chapter seven, the right to self-determination including the right to self-government was recognized by the Transitional Period Charter for the first time in the Ethiopian legal system and political history. Following this political environment, proclamation number 7/1992 and FDRE constitution of 1995 makes it a permanent part of the fundamental rights and freedoms under its Bills of Rights (chapter three) of the same constitution respectively. According to FDRE constitution of 1995 the right to self-determination basically includes the right to speak and develop one's own language, to express and promote one's own culture and history, the right to self-administration within one's own particular administrative territory, the right to fair and equitable representation as well as active political participation at all levels of government institutions.<sup>27</sup> However, the right to self-determination of nations, nationalities and peoples in federal political system can be realized if and only if the national regional state constitutions not only politically but also legally recognize this very important right and develop the necessary implementation mechanisms in their fundamental constitutional provisions, other sub constitutional laws, political policies and practical applications of the same.

Considering the aforementioned fundamental principles the right to self-determination is also incorporated in a similar way in the revised constitution of the Amhara national regional state of 2001. For instance, Article 39 of the same constitution devotes to recognize and protect the rights of ethno national minorities in general and the rights of self-determination of the same in particular. The national regional state revised constitution of 2001 strongly stipulates that the unconditional right of the peoples of the Amhara national regional state to self-determination including and up to secession as has been enshrined in the constitution of the

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<sup>27</sup> Article 39 (2 and 3) of Federal Democratic Republic of Ethiopian constitution of 1995.



Federal Democratic Republic of Ethiopia is, in any way, guaranteed and protected without any form of restriction.<sup>28</sup>

The Ethiopian concept of secession and its member states therefore shares the theories that are developed by Allen Buchanan and mentioned in chapter three of this dissertation as Article 39 of both federal and Amhara national regional state revised constitutions adopt on the one hand by making secession right unconditional (Article 39 (1) of FDRE constitution and on the other hand by incorporating some restrictive requirements under Article 39 (4) of almost all regional state revised constitutions of 2001 and onwards.

Hence the aforestated constitutional statement that clearly stipulated in the same constitution seems more open and lenient to allow self-determination including and up to secession. However, it is not as such free from certain conditions that restricts this right and practical problems of the regional government political and administrative measures. As mentioned above Article 39 (4) of the regional state constitution incorporated some restrictive conditions to the right to self-determination including and up to secession in the region unlike the principles laid down under Article 39 (1) of FDRE constitution and the opening paragraph of Article 39 of the national regional state revised constitution of 2001. In other words, to exercise the right to self-determination including and up to secession in this particular region, there must be some political and legal conditions to be observed and thereby strictly fulfilled by ethno national minority groups.

According to, the 2001 revised constitution of Amhara national regional state “where it is of the opinion that the rights mentioned under sub-articles.1-3 of this Article hereof have been suspended, abrogated or abridged and hence could no longer be rectified under the circumstances, while in unity, it shall exercise its right of self-determination up to secession in accordance with the provisions of Article 39 of the constitution of Federal Democratic Republic of Ethiopia.”<sup>29</sup>

To the strong conviction of the researcher of this dissertation, this constitutional provision contains two self-contradictory ideas i.e., if we simply consider the last phrase of the

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<sup>28</sup> The first paragraph of Article 39 of Amhara region revised constitution.

<sup>29</sup> Article 39 (4) of the Revised Constitution of Amhara National Regional State of 2001.

aforementioned constitutional statement; i.e., in accordance with the provisions of Article 39 of the federal constitution, it looked consistent and harmoniously go together with the fundamental principle of self-determination laid down under Article 39 (1) of the FDRE constitution of 1995.

Nevertheless, when we seriously examine the introductory statement of the same provision which clearly states that where it is of the opinion that the rights mentioned under sub-Articles 1-3 of this Article hereof have been suspended, abrogated or abridged and hence could no longer be rectified under unity clearly showing that ethno national minority groups living in Amhara national regional state could not and cannot exercise the constitutionally entrenched right to self-determination including and up to secession.

In other words, unless and otherwise such ethno national minorities demonstrate the aforementioned conditions which is not part and parcel of Article 39 (1) of FDRE constitution of 1995 they could not exercise the right to secede. Therefore, we can safely conclude that the Amhara national regional state revised constitution of 2001 incorporates additional requirements, which to a certain extent, restrict the right to self-determination including and up to secession and thereby contradicts with the principles laid down in federal constitution unlike the very spirit of Article 39 (1) of the federal constitution. The conditions that are laid down under the Amhara national regional state revised constitution unlike the FDRE constitution are mainly the right to preserve national identity, utilization and enhancement of language, determine on one's own affairs and exercise self-government including establishment of governmental institutions within one's own geographical areas<sup>30</sup> have been suspended, abrogated or abridged and hence could no longer be rectified under the circumstances, while in unity.

However, these restrictive constitutional conditions listed down under Article 39 (4) of the revised constitution of the Amhara national regional state are not consistent with the very spirit and fundamental principles of Article 39 (1) of FDRE constitution in general and even the opening paragraph as well as sub Article 1 of Article 39 of the revised constitution of Amhara region in particular and hence clearly contradicts with the principle of the rights of

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<sup>30</sup> Ibid, Sub-Articles. 1-3 of Article 39.

self-determination including and up secession unequivocally incorporated under the federal constitution which is also considered as supreme law of the land.<sup>31</sup>

In this regard Christophe Van der Beken who wrote about Ethiopian regional state constitutions argues that the conditionality included in the regional constitution would prevent the concerned ethno national group from exercising its unconditional right to secession as granted by the federal constitution. The conclusion is that the regional constitutions that allow a right to secession to different ethno national groups cannot lower the standard of human rights protection offered in the federal constitution by making the right to secession conditional.<sup>32</sup>

Because as one can easily assert that Article 39 (1) of FDRE constitution clearly states that ‘every nation, nationality and people in Ethiopia has an unconditional right to self-determination including and up to the right to secession.’ So if we strictly interpret and playnley implement Article 39 (4) of the Amhara national regional state revised constitution as it is, without considering the above clearly stated basic principle in federal constitution, it highly restricts the secession rights of ethno-national minorities in the name of avoiding unnecessary potential claim it may be raised from ethnic entrepreneurs of such historic nation-nationalities and peoples of Ethiopia living in Amhara region. That means the nations, nationalities and peoples living in the same region may be allowed to exercise their right to secession if and only if they fulfill such restrictive conditions clearly stated under Article 39 (4) of the revised constitution of the same region.

Regarding the incorporation of these restrictive conditions in the revised constitution of Amhara national regional state the researcher asked the then chief Administrator of the regional state government and the legal advisor of the same in order to check their perception towards these restrictive requirements listed down in the revised constitution of the regional state. According to the former Chief Administrator (otherwise president) of the Amhara national regional state together with some of his legal advisors and other socio-legal experts

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<sup>31</sup> Article 9 (1) of FDRE constitution of 1995.

<sup>32</sup>Christophe Van der Beken, *Completing the Constitutional Architecture: A Comparative Analysis of Sub-national Constitutions in Ethiopia*, (forthcoming publication 2016) 77

who were active participants in constitutional revision process, they were aware of the implications of those restrictive conditions.<sup>33</sup>

Accordingly, the former chief administrator in his response tried to justify the reason that the incorporation of these restrictive conditions would help to minimize unnecessary claims of the rights to secession raised by some secessionist political groups otherwise called ethnic entrepreneurs. But according to him they were not as such conscious of its contradiction with the fundamental principle of self-determination stated under FDRE constitution and even in the opening paragraph of Article 39 of the Amhara national regional state revised constitution.<sup>34</sup>

The legal advisor to the chief administrator of the regional state government also asserts this political position of the regional state executive and considers such additional conditions as a ‘constructive inclusion’ in order to maintain the unity of the peoples of the country in general and the unity of the national regional state of Amhara in particular. According to the legal advisor of the president (chief administrator) of the Amhara national regional state interpreting these conditions as restrictions that could negatively affect the rights to self-determination of ethno-national minorities living in the region and considering them as contrary to the general principle of the FDRE constitution is not as such plausible.<sup>35</sup> Moreover, not only the concerned nations, nationalities and peoples living in the region but also the active political leaders and government officials of the same were not conscious during that specific time. This ignorance towards their right to secession is continues until now since they are not as aware of such restrictive legal and political conditions as well as their implications up on their rights to self-determination including and up to secession although the fundamental principle of self-determination is put under FDRE constitution of 1995 without any condition.<sup>36</sup>

In other words, the ethno national communities of those nationality administrations and the political leadership of the same are not still aware of such political reality and restrictive legal

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<sup>33</sup>Interview with Yosef Reta, former Chief Administrator of the Amhara Region, (Bahir Dar, 15 June 2015)

<sup>34</sup> Ibid,

<sup>35</sup>Interview with Merhatsidik Mekonen, Legal Advisor to President of Amhara Region (Bahir Dar, 13 June 2015)

<sup>36</sup>Interview with Mulugeta Debasu, former Chief Administrator of Agew Awi NA, (Injibara, 10 June 2015)

framework. Because of this, even they do not want to raise fundamental questions related to this important right although currently they become more assertive and are trying to exercise the right to self-government in their administrative territory somehow in a limited manner. Even though the aforementioned legal and political barriers (limitations) which restricted the rights of historic ethno national minorities living in the region are identified through the critical examination of the researcher and their legal and political implication has its own negative influence, the regional state government officials as well as their legal advisors are not willing to recognize and thereby correct such previously made political and legal problems.

In other words, the 2001 revised constitution of Amhara national regional state restricts the right to secession of ethno national minorities and it has also its own negative impact on the exercise the right to secede. Besides, the political representatives of such ethno national minorities are not as such ready to recognize this fundamental legal and political error and practical weaknesses they made during the drafting and adopting process of the 2001 revised constitution of the national regional state of Amhara and thereby to correct this contradictory constitutional statement.

To put this in other way, government officials and party leaders of the national regional state of Amhara in general and those nationality administrations found in the region in particular are not as such politically sensitive to recognize this legal and practical gap and thereby committed to struggle towards its achievement so as to correct this unconstitutional provision.

### **8.5.3. The Right to Self-Government**

Self-government right is one of the fundamental rights of political minorities in general and ethno-national minorities in particular. It also includes powers and liberties that allow members of ethno national groups to control their culture and substantial parts of their lives within its framework.<sup>37</sup> Accepting to this general principle and considering other socio-economic and legal conditions as well as the politico-cultural situations of the current international arena including the national political condition, the Amhara national regional state revised constitution of 2001 empowers the regional state council to promulgate

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<sup>37</sup>Chaim Gans, *The Limits of Nationalism*, (Cambridge University Press, 2003) 83-84

legislations that recognize the right to self-government for ethno national minorities of the national region.<sup>38</sup>

Because of this, the national regional state council promulgated sub constitutional law that establishes Argoba special *Wereda* and paragraph two of the preamble of the establishment proclamation of Argoba nationality administration of the Amhara national regional state strongly states that “it has become necessary to establish the Nationality *Wereda* having self-governance authority, in order to recognize the identity of members of the Argoba Nationality and to preserve culture, tradition, language and history of same respectively.”<sup>39</sup>

Of course as mentioned in the previous section of this chapter, Agew-Awi, Wag Hemera and Oromo Nationality Administrations were established as a separate legal entity during the transitional period in their specific geographical areas and they have been also re-established by the 2001 revised constitution of the Amhara national regional state in order to strengthen their political power and properly administer themselves as well as exercise their self-government rights in their respective administrative territories.

In other words, the revised constitution of the Amhara national regional state stipulates that “there is hereby established, a nationality administration in those geographical areas of the National Regional State inhabited by the Himra, Awi and Oromo peoples, pursuant to the provisions of Article 39 sub-Article 6 and Article 45 sub-Article 2 of the Amhara national regional state constitution.”<sup>40</sup> Following this constitutional recognition as a distinct ethno national minority groups and extended legal guarantee to administer their affairs, nationality administrations established their own nationality and administrative councils respectively in their respective administrative territories so as to fully exercise their legitimate political powers and thereby to administer themselves within the regional political set up.

According to the revised constitution of Amhara national regional state, ‘nationality administrations are the ultimate bearers of supreme political authority on behalf of their respective ethno national groups’. Although it gives very limited legislative and executive

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<sup>38</sup>Sisay Mengistie Addisu, ‘Responses to the Rights of Ethno-national Minorities in Amhara National Regional State: An Inter-State Comparison’(MA Thesis, Ethiopian Civil Service College 2010) 51

<sup>39</sup> Proclamation No, 130/2006, A Proclamation to Establish Argoba Nationality *Woreda*(2006)

<sup>40</sup> Article 73 (1) of the Amhara National Regional State revised constitution of 2001.

powers to the nationality and administrative councils of such nationality administrations the following decisive legal and political powers are reserved to them:

Determine the working language to be used by the Nationality Administration concerned, ensure the protection of the rights which the nationality has with respect to speak and write in its own tongue, develop, preserve, express, enhance and promote its own language as well as maintain and extend due care to its own history, designate the speaker, deputy speaker and the chief administrator of the nationality administration by election from among the members of nationality council, consider and approve the proposed appointment of the Deputy Chief Administrator and other members of the administrative council of the nationality administration submitted to it by the chief administrator, call for questioning the Chief Administrator and other officials of the nationality administration as well as investigate into the workings of its executive body thereof.<sup>41</sup>

This constitutionally entrenched political and administrative power of nationality administrations differs from other regular administrative zones that are mainly considered as branches of regional government and its respective bureaus established at regional state level. The aforestated legal and political powers given to nationality administrations which have been constitutionally guaranteed are also more strengthened by other sub constitutional laws that determine the organization, powers and duties of the national regional state executive bodies and the establishment proclamations of Argoba and Kemant special *Wereda* administrative units respectively. Because of this, one of the aforestated proclamations clearly stipulates that the nationality administrations found in the region shall, pursuant to the powers vested in them by the revised constitution of the national region, have rights to establish executive body, departments or offices respectively that are necessary for multipurpose development and government services of their own.<sup>42</sup> However, the main objective of the establishment of the aforementioned special *Weredas* is to consider the fundamental questions of the right to be recognized as a distinct ethno national group and thereby to exercise the right to self-government raised by the respective ethno national groups of Argoba and Kemant communities following the downfall of the Derg regime.

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<sup>41</sup> Ibid, Art.74 sub.2 and 3.

<sup>42</sup> Article 30 (2) of Proclamation No.120/2006, A Proclamation that establish executive of Amhara region (2006)

Accordingly, as mentioned above the Argoba Nationality Special *Wereda* was established by proclamation No.130/2006 and the Kemant Nationality Special *Wereda* has been established by proclamation No. 229/2015 as an autonomous self-governance entity having their own legal and judicial personality although the latter has not yet started its proper function.<sup>43</sup> That is why Article 4 of proclamation No.130/2006 for instance clearly states that the main objective of this proclamation is to enable self-governance of the Argoba Nationality by respecting the right to self-determination of nation-nationalities and peoples which is granted by the revised constitution of the Amhara national regional state.

Nevertheless, according to my informants from Argoba nationality most of the cabinet members of Argoba special *Wereda* including the chief administrator of the same are Amharas by ethno national group. Because of this, although Argoba special *Wereda* is established recognizing the right to self-government of Argoba ethno national group, we could not confidently believe that currently this special *Wereda* is led and administered by the children of Argobans themselves.<sup>44</sup>

Besides, Article 4 of proclamation No. 229/2015 too unequivocally stipulates in the same manner that the main objective of this proclamation is to enable self-governance of Kemant nationality by ensuring the right to self-governance of nation-nationalities and peoples of the Amhara region, which is granted by the revised constitution of the same. However, as noted above the Kemant special *Wereda* is not practically established yet due to disagreement created between the community and government officials of the regional state. The reason why the Kemant special *Wereda* is not functional since the proclamation 229/2015 legally established the same on the one hand Aykel town which is considered as seat for their political and religious leader called *Wenber* is not included in the special *Wereda* and on the other hand some other *kebeles* who clearly identified themselves as part of Kemant community are excluded in the newly established special *Wereda* of Kemant nationality.<sup>45</sup>

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<sup>43</sup> Ibid, Articles .....

<sup>44</sup> Interview with Sheik Yesuf Abdulsemed, member of Amhara Region Legislative Council representing Argoba Nationality Special *Wereda*, (Bahir Dar, 10 June 2017, Bahir Dar

<sup>45</sup> Interview with anonymous member of Kemant community, (Addis Ababa, 13 April 2016)



Although the aforementioned legal and practical problems are still there, the powers given to nationality administrations listed in the above stated constitutional statement are also regarded as the powers of the Argoba and Kemant Nationality special *Wereda* councils respectively.<sup>46</sup> On the face of it, the reference to certain ethno national minority groups regarded as 'nationality administrations' of the region suggests that these legal and political entities are more autonomous from the national regional state government day to day activities than regular administrative zones that are created by the decision of administrative council of the region and directly accountable to the chief administrator of the regional state and that they have more political power over local affairs than regular administrative units do.<sup>47</sup>

However, in practice the Amhara national regional state government officials and political leaders of the governing party treat sub regional administrative units including the nationality administrations alike. Because practically the regional state officials, unlike the constitutional status of such nationality administrations, give them the same political and administrative weight like that of regular administrative zones established by sub constitutional laws and regular *Wereda* administrations considered as local government unit and because of this they do not strictly observe and respect the constitutionally entrenched political and administrative power of nationality administrations, which is inconsistent with those specific constitutional provisions, that empower them.<sup>48</sup> Although Article 73 (2) of the revised constitution of the Amhara national regional state considers the judiciary as one of the three principal organs of nationality administration, based on the relevant provision of federal constitution,<sup>49</sup> the national regional state constitution denies the power of not only appointment but also removal of judges of their own administrative territory by the subsequent constitutional provision and as the same time restricts the power of nationality administrations to give only their mere suggestions upon the proposed judges. This half-hearted constitutional position clearly shows that the ruling party of the region and the national regional state government officials who

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<sup>46</sup> Article 10 (2) of Proclamation No.120/2006, (n 42)

<sup>47</sup> Because Nationality Administrations have additional responsibility given by the regional state constitution to preserve, develop and promote languages, cultures and other important identity markers of their own.

<sup>48</sup> Interview with Nibret Fentahun, former Speaker of Agew Awi Nationality Admn, (Injibara 14 June 2015)

<sup>49</sup> Article 81(5) of FDRE constitution says that judges of state first-instance courts shall, upon recommendation by the state judicial administration council, be appointed by the state council.

were active in revising the regional state constitution were reluctant towards recognizing and respecting of the full exercise of the rights of self government of same.

This restrictive constitutional statement has been also incorporated under Article 74 (3) (g) of the same constitution, which clearly contradicts with the fundamental principles of the right to self-government enshrined under the federal constitution of 1995. This Article clearly states that the regional council has a power to appoint judges of both high and *Wereda* courts of not only those regular administrative zones and *Weredas* respectively but also nationality administrations which their existence is guaranteed by the constitution considering their prior opinion to the regional council as regards the proposed appointment of High and First Instance Court judges of the nationality administrations including the Nationality Special *Wereda* administrative units contrary to Article 73 of the revised constitution of the region.<sup>50</sup>

Concerning this contradictory ideas the researcher also asked the legal advisor to both the former and the current chief administrators of the regional state why the power of appointment and removal of judges who are going to work or serve the peoples of nationality administrations is given to the regional legislative council. He replied that during that specific time there was a tendency to consolidate the power of the judiciary of the national regional state by centralizing the power of appointment and removal of judges at all levels of regional state government institutions instead of allowing this political power to the nationality administrations and special *Weredas*.<sup>51</sup> In other words, according to the then regional state politicians and higher government officials of the same the leadership of these nationality administrations were not only capable enough to take this huge legal and political responsibility but also they were not responsible to fully exercise this important political power. For instance according to them Wag Hemera nationality administration was already trying to abuse its political power of appointment and removal of judges of its own before the revised constitution came into effect.<sup>52</sup> Even this nominal, but constitutional, power is often violated by the president of the regional state Supreme Court and chair person of judicial administration commission of the national regional state as he was often proposing judges of

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<sup>50</sup> Article 74 (3) g. of the Amhara Region Revised Constitution of 2001

<sup>51</sup> Interview with Merhatsidik Mekonen, (n 35)

<sup>52</sup> According to the Legal advisor of the chief administrator of the region around 2000 the Wag Hemera nationality administration tried to remove some High Court judges without following due process of law.

nationality administrative units directly to the regional council assembly without formally and sufficiently consulting and thereby securing the prior opinion of nationality councils although he was clearly instructed by regional state revised constitution of 2001.<sup>53</sup>

In this regard, the researcher also observed the aforesaid breaches of constitutional provisions that are talking about appointment and removal of *Wereda* and High Court judges of nationality administrations of the region respectively while he was working as member of judicial administration council in the same national regional state. Besides, the researcher has also his own ample experience on this irregular activities made by the president of the regional state supreme court and could witness the aforementioned practical problems of violation of constitutionally guaranteed political and administrative powers of nationality administrations at one time as he was also member of regional state legislative council for ten consecutive years.

Moreover, there is also practical problem in the political attitudes of both regional state and nationality administration government officials which negatively affects the full enjoyment of the principle of self-government in the regional state polity in general and at nationality administrations level in particular. For instance, both national regional state and nationality administrations government officials and leaders of the governing party of the region believe that these nationality administrations' administrative and political status is equivalent with other regular administrative zones which do not have constitutionally guaranteed existence as well as legislative and political power.<sup>54</sup> In addition to the aforementioned attitudinal problems there is also another practical violation of constitutional powers of nationality councils in relation to budget approval of their own.<sup>55</sup> Although the 2001 revised constitution of the region confers the power of budget approval to the nationality councils by stating that having recourse to the national regional plan and budget approved in advance by the regional

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<sup>53</sup> Interview with Mulugeta Debasu, (n 36)

<sup>54</sup> Interview with Assefa Belay, Director General, Directorate for Strategic Leadership Support Providing to the Chief Administrator of Amhara region, (Bahir Dar, 13 June 2015)

<sup>55</sup> Interview with Mesrak Tefera, chair person of Amhara Region Budget and Public Finance Affairs Standing Committee, (Bahir Dar, 13 June 2017) According to Mesrak Tefera, the regional state was assuming that equitable budget share must be reached at those regular weredas found under nationality administration although in principle this power should be devolved to nationality administrations,

council, issue, examine and approve the plan and budget of the area concerned.<sup>56</sup> However, practically their annual fiscal plan and specific monetary budget is always approved by the executive body of the region and thereby regional council in advance respectively without considering their prior agreement and special condition as well as leaving any room not only to nationality administration councils but also nationality legislative councils of the same.<sup>57</sup>

There is also another important legal and practical problem pertaining to drafting and adoption of sub constitutional laws which are very essential to establish and strengthen their own administrative institutions and exercise legislative as well as administrative powers within their administrative territory by exercising their constitutionally recognized and guaranteed political power. According to the revised constitution of the Amhara national regional state nationality legislative councils have only a limited power to issue and implement their own specific guidelines to be applied within their own territorial administration.<sup>58</sup>

Whereas, city/town administrations of the same regional state in general and some of them that are found under the nationality administrations accountable to the same in particular are fully empowered to issue their own policies and regulations<sup>59</sup> although their political and administrative status is below or inferior to the latter. In other words, towns which are found under the supervision of those nationality administrations have a power to formulate and issue as well as implement their own policies and regulations in the area of their specific town administrations. For instance Kemisie in Oromo, Sekota in Wag-Hemra and Injibara in Agew-Awi nationality administrations respectively are among those legally empowered city/town administrations to issue policies and enact regulations with regard to their territorial administrations respectively.<sup>60</sup> Generally, the writer of this dissertation believes that there is a good political environment in recognizing, respecting and protecting the fundamental rights

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<sup>56</sup>Article 74(3) (d) of Amhara Region Revised Constitution of 2001.

<sup>57</sup>The writer of this paper observed this reality upon the budget approval of 2009/2010.and the nationality administration officials feel in such a way, particularly woredas' budget approval is usually made by the regional council although the revised constitution of the region makes it under their local jurisdiction.

<sup>58</sup>Article 74 (3) (c) of Amhara Region Revised Constitution of 2001.

<sup>59</sup>Article 8 (1).of Proclamation No. 91/1996, A Proclamation to Determine the Establishment, Organization and Functions of the towns of Amhara Region.

<sup>60</sup>Interview with Worksemu Mamo and Araya Selassie, Deputy Speaker to the regional council and Chairperson of Amhara Region Council Legal, Justice and Administrative Affairs Standing Committee respectively, (Bahir Dar, 13 June 2015) These people also fairly shares this idea and strongly asserts the presence of certain legal problems and constitutional restriction comparing with the powers of city administrations established by sub constitutional law

and freedoms of historic ethno-national minorities living in this national regional state, particularly concerning the right to exercise self-government within the same region.

However, as we have observed in the aforementioned paragraphs serious legal gaps, practical problems and administrative obstacles are clearly identified. In other words, there is an opportunity in this national region for historic ethno national minorities at least to exercise the rights of self-rule by strengthening the political involvement of nationality administrations at national, regional as well as local levels of administrative units. Because as mentioned above and also will be explained in the subsequent sections theoretically the nationality administration and thereby its legislative council has a number of powers enabling it to protect both the language and cultural rights of the titular ethno national group.

These legislative and political powers are not provided to the regular zones established by sub constitutional laws, since the latter are merely set up for administrative purposes representing the chief administrator of the national regional state. Besides, although its power is limited the nationality council at least approves its own physical plan and budget, whereas the regular zone administrations simply implement the physical plan and financial budget approved at national regional state level.

However, at the present time nationality administration officials become more assertive and aware of their autonomy and political status that differs from other regular administrative units of the region and have started to challenge the regional government by claiming their real political weight. But according to respondents coming from nationality administrations the regional state officials often fails to positively reply their demands.<sup>61</sup> Because of this, recently the speakers of the nationality councils and members of regional legislative council representing nationality administrations of the region are seriously raising the issue of their legal and political status with its corresponding socio-economic and political benefits that should be accorded to nationality administrations.

This claim includes institutional and individual benefits to the officials of nationality administrations including civil servants as well as professional employees who are committed to serve their nationality accepting the difficulties they face due to their special decision

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<sup>61</sup>Interview with Lijalem Weldie, Speaker of Wag Hemera Nationality Council, (Bahir Dar 11 June 2015)

comparing with that of civil servants and professional workers who are working in other regular administrative zones and *Weredas* relatively comfortable to live. Therefore, according to informants there must be some constitutional and pragmatic adjustments in order to correct such legal and practical limitations mentioned above and empower the nationality administrations.

#### **8.5.4. The Right to Representation**

In the contemporary world fair and equitable representation as well as active political participation of minorities in general and ethno national minority groups in particular at central and regional state legislative and executive bodies is one way of the manifestation of democratic system of governance. For this reason the choice of electoral system or setting constitutional guarantee for fair and equitable representation of ethno national minorities living in the regional states is an important precondition to ensure parliamentary representation and active political participation of their representatives at all levels of government institutions.

Concerning this conceptual issue Yonatan Tesfaye further elaborates in an extended manner by mentioning some three well experienced federal state practices of fair and equitable representation of different ethno national groups in the government institutions of the same states. To explain this reality he cited scholarly works of Peeters (1994), Schmitt (2005) and Keating (2001). According to the aforementioned writers as quoted by Yonatan Tesfaye:

In Canada, conventionally, it has always been considered important that the Cabinet reflect some degree of balance with ‘credible team of ministers’ coming from Quebec. Switzerland’s executive is, on the other hand, constitutionally structured as a seven–member Federal Council. The Constitution mandates the Federal Council to represent the country’s geographic and linguistic diversity. In Belgium, the Cabinet is constitutionally mandated to be composed of equal numbers of Flemish and Francophone ministers.<sup>62</sup>

Yonatan Tesfaye further explains the Nigerian experience of political representation by mentioning Suberu’s work of 2004 and clearly states that Nigerian constitutional principle

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<sup>62</sup>Yonatan Tesfaye Fisseha, ‘Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia’(PhD Dissertation, University of the Western Cape 2008) 139

requires the composition and conduct of public institutions to reflect the country's ethnic, religious, regional and related diversities. Besides, the president of Nigeria must win regionally dispersed support, not just a simple national majority. This means the president can be elected only on obtaining a plurality of voters plus at least a quarter of the votes in two thirds of the states. The principle also requires the appointment of at least one minister from each state and stresses that the minister should be an 'indigene' of such state.<sup>63</sup>

However, the existing electoral system of federal Ethiopia is not as such inclusive to secure/insure fair and equitable representation and to encourage proper political participation of minorities in general and ethno-national minority groups in particular. Because the Ethiopian electoral system established mainly based on First-Past-The Post (FPTP) election system although practically both federal and regional state governments, to a certain extent, are trying to facilitate nation-nationalities and peoples of the country to become more active political participants in the administrative and political activities of not only in their own system of local governance but also at regional and federal government levels.

According to Yonatan Tesfaye, the extensive movement of citizens across internal borders also contributes to the rarity of an ethnically pure political unit. Intra-sub state minorities are therefore present in most, if not all, federated units. The 2001 revised constitution of Amhara national regional state clearly stipulates that the peoples of the Amhara national regional state have the right to the final determination of their own political affairs, exercise self-government as well as enjoy an effective participation in the system of the federal government in a free, non-discriminatory, appropriate, fair and equitable means of representation.<sup>64</sup> As mentioned above, even though the Ethiopian electoral system is highly criticized because of its production of least representative result for political minorities, it also considers the reservation of certain parliamentary seats to ethno-linguistic minorities whose number is very few and under the minimum limit of the population number of electoral districts.

In other words, practically the electoral law of the country tries to enable numerically few ethno national minorities in order to participate through their representatives in decision making process not only at the regional state level but also in the organs of federal

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<sup>63</sup> Ibid, p.140

<sup>64</sup> Art.39 (2) of Amhara National regional State Revised Constitution of 2001

government.<sup>65</sup> Considering this political reality of the country, the Amhara national regional state revised constitution also underlines that “Members of Regional Council shall be elected in an electoral system, whereby a candidate with the majority votes wins, amongst candidates within one electoral district. The minority of nationalities and peoples that are believed to deserve special representation shall be represented in the council through an election.”<sup>66</sup>

As noted above, this specific constitutional provision unequivocally allows special representation for ethno national minority groups although the electoral system of the country is not proportional election system in its nature. As a result, even though the required political participation of ethno national minorities and the need to have additional reserved seats are not legally guaranteed by the national regional state revised constitutions of 2001 under discussion, in the Amhara national regional state legislative council such historic ethno national minorities settled in the region have practically secured their representation in regional council.

Because of this seventeen (17) seats are designated for Agew Awi, eight (8) seats for Wag Hemera, eight (8) seats for Oromos, one (1) seat for Argoba ethnic groups respectively. However, until recently no seat is designated yet for Kemant community although the same people is recognized as a distinct ethnic group and indirectly represented by regular *Wereda* representatives of certain areas of north Gondar administrative zone.<sup>67</sup> In addition to the aforementioned constitutional statement that stipulates about ethno national minorities special representation, the revised constitution of the Amhara national regional state also guarantees the nations, nationalities and peoples political representation in the constitutional interpretation commission of the regional state.

Accordingly, the Amhara national regional state revised constitution of 2001 clearly stipulates that “there is hereby established and designated, by this constitution, a Constitutional Interpretation Commission, whose members are to be drawn by way of representation, from each and every nationality and *Wereda* councils found throughout the national regional state.”<sup>68</sup>

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<sup>65</sup> Fasil Nahum, *Constitution for A Nation of Nations: The Ethiopian Prospect*(Red Sea Printing Press 1997) 68

<sup>66</sup> Article 48 (2) of Amhara National Regional State Revised constitution of 2001.

<sup>67</sup> Interview with Alelegn Yehuala, Legal advisor to the Speaker of Amhara Region Council, (Bahir Daar, 10 June 2015)

<sup>68</sup> Ibid, Article 70 (1).



However, there is no such kind of provision in the revised constitution of the Amhara national regional state that clearly talks about equitable representation and active political participation of such ethno-national minorities found in the national regional state executive including state civil service and the judiciary.

Because of this, representation in the administrative council of regional government including the civil service and state judiciary is at the discretionary power of the Chief Administrator of the national regional state and the president of the supreme court of the national regional state respectively. In other words, representation and participation of nation-nationalities and peoples in the regional state executive body including the civil service and the judiciary of the regional state is not guaranteed by the revised constitution and other sub-constitutional laws of the national regional state of the same.

Moreover, for instance the Kemant community is not until now formally represented in the legislative council of Amhara region and any governmental institutions of the same although it is legally recognized and politically allowed to be represented in the House of Federation since March 2015.<sup>69</sup> Besides, the rights of dispersed minorities living in the region are not legally protected and represented in all organs of government institutions of the region.

Considering the aforementioned arguments we can safely conclude that the Amhara national regional state constitution tries, to a certain extent, to recognize minorities in general and guarantee the accommodation of historic ethno national minorities and goes to facilitating fair and equitable representation as well as political participation of such historic ethno-national minorities living in the region although there is no political and legal mechanism which recognizes cultural autonomy of dispersed ethno national minority groups.

#### **8.5.5. The Right to existence and Preserve One's Own Identity**

Preserving one's own identity includes ethno national markers such as language, culture and religion among others. Hence the right to preserve one's own identity is one of the basic rights that are guaranteed by both federal and national regional state revised constitutions respectively. As individual persons belonging to a minority should be also allowed to uphold

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<sup>69</sup>Interview with Araya Selasie, Chair person of Legal, Justice and Administrative Affairs Committee of the region (Bahir Dar, 13 June 2017)

their ethno national, linguistic, cultural or religious characteristics, they have to be recognized by law as a group.<sup>70</sup> Concerning this concept some writers also clearly stipulates that different communities need also to be able to foster their identities with regard to education, religion, communication, media, social networks, etc.

However, they can only foster their identities through autonomy and self-rule. Multi-ethnic polities need to provide autonomy with regard to those vital issues that foster local identities and then to build on a common identity.<sup>71</sup> Considering the above noted important principles related to accommodation of distinct identities, the Amhara national regional state revised constitution guarantees the right to self-government to territorially concentrated ethno national minorities in order to develop as well as preserve their own existence, distinct identity and further stipulates that the people of the regional state have the right to preserve their own national identity and strive towards their due respect, maintain, enrich and care for their legacy and history as well as utilize and enhance their own language, assert their own culture, develop and promote same.<sup>72</sup>

In addition to the aforementioned general principle incorporated in the revised constitution of the region, the same constitution gives a power to nationality administrations under Article 74 (3) (b) to ensure the protection of the rights which the nationality has with respect to speak and write in its own tongue, develop, preserve, express, enhance and promote its own language as well as maintain and extend due care to its own history. This constitutional guarantee further enables such ethno-national minorities living in the national regional state of Amhara not only to preserve their own distinct identity but also it helps to defend themselves from any types of forced assimilation or acts of elimination of their distinctive identity markers.

Considering the aforementioned constitutional foundation, the Amhara national regional state government is also taking some important positive legal, administrative and political measures towards preserving the distinct identities of ethno-national minorities living in the region. For

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<sup>70</sup>Abera Dagafa, 'The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia' (2008) Vol. 1 Ethiopian Constitutional Law Series, Addis Ababa University 54

<sup>71</sup>Ronald L. Watts and Rupak Chattopadhyay, *Unity in Diversity, Learning from each Other*, Vol 4 (2008) 4

<sup>72</sup> Article 39 (1) of Amhara Region Revised Constitution of 2001

instance, currently the Oromo Nationality Administration uses its own language, Afan Oromo, in all aspects of its administrative activities and political life. That means the working language of this particular nationality administration within Amhara region is Afan Oromo and hence the people of the same can express their political view and any feeling concerning their interest using their own mother tongue within its nationality administration.<sup>73</sup>

Moreover, they go to the extent of using Afan Oromo during the regional council's assembly held at the capital city of the regional state, Bahir Dar. However, there is a certain practical problem in the implementation mechanism installed in the same region of this constitutional guaranteed right of all ethno national minorities in the assembly of regional council. Besides, students of Oromo Nationality administration in the elementary schools were performing the Regional Anthem of Amhara not only in Amharic language but also the phrase which clearly says 'honor to Amhara nation'.

Later on this situation created unexpected sense of resentment against it and practical problem up on the same students who are learning using their own mother tongue, Afan Oromo. This practical problem, however, until now is not properly understood and politically recognized by both regional state government officials and most of nationality administration politicians, as it is not only the problem of Oromo nationality administration elementary school students rather it is a shared problem of all students of elementary schools found in nationality administrations of the region. Because of this reality the students of Oromo nationality keep silent during the performance of singing of the regional Anthem when they arrive at that specific phrase which clearly says honor of Amhara nation.<sup>74</sup> Considering this practical problem such students who are living in the nationality administration of Oromo of Amhara region are forced to give up the performance of the regional state Anthem and instead opt to perform the National Anthem of Ethiopia.<sup>75</sup>

Furthermore, currently the government of Amhara region has established some three teachers' educational colleges in the centers of nationality administration of the region in order to

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<sup>73</sup> Interview with Shimelis Nigusie, Member of Amhara Region Council, (Bahir Dar, 12 June 2015)

<sup>74</sup> Interview with Legese Tulu, former Chief Administrator of Oromo Nationality Admn., (Bahir Dar, 12 June 2015)

<sup>75</sup> Ibid

develop and properly use the languages of these historic ethno national minority groups.<sup>76</sup> Even though until these days both Agew-Awi and Wag-Hemra nationality administrations are not yet able to use their languages for their day today political life, currently they are also using their mother tongue in elementary schools for only educational purpose. And the Amhara Mass Media Agency has also its own programs in transmitting news and other special programs using the languages of those nationality administrations which are an important step towards developing the languages of the same ethnic groups and encourage speakers of languages of the concerned nationalities.<sup>77</sup>

Moreover, cultural centers are very important institutions to preserve, develop and maintain one's own identity markers. Considering this reality, nationality administrations of the Amhara national regional state are also preparing themselves to establish their own cultural centers in their respective administrative capitals.<sup>78</sup> In other words, they are working on some important preconditions to develop their financial capacity in order to construct cultural centers by organizing symposiums, workshops and preparing cultural shows including festivals and trade fairs in their respective administrative centers. However, there are no as such strong activities towards development of all inclusive cultural centers due to lack of proper attention from the side of nationality administration government officials and sufficient budgetary support from the regional state government.<sup>79</sup> That means according to the representatives of those nationality administrative councils there is no special financial support from the national regional state government of Amhara considering their political arrangement and special need in developing their culture, language, societal values and other identity markers of their ethno national groups.

Rather the region is simply allocating the normal annual budget for recurrent programs and capital budget for projects identified to be constructed or developed like that of regular administrative units which do not have special interest with regard to development of

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<sup>76</sup> Interview with Tefera Feyisa, former Chief Administrator of Oromia Nationality Admn., (Bahir Dar, 12 June 2015)

<sup>77</sup> Interview with Seidu Eshetie, former Manager of Amhara Mass Media Agency, (Bahir Dar, 12 June 2015)

<sup>78</sup> Interview with Mulugeta Debasu and Lijalem Weldie, (n 38 and 63)

<sup>79</sup> The Kemant's identity recognition and self-government claim Committee document prepared in 2004 EC 6

language and other identity markers. With regard to use of language in education, there is also another important example in Wag-Hemera Nationality Administration of Amhara region.

In this regard Department of Education of the Wag-Hemera nationality administration in consultation with the Education Bureau of Amhara region has established four elementary schools that are dedicated to teach children of Tigrigna speaking people by their own vernacular in certain *Kebele* administrative units of Abergele *Wereda* of Wag Hemera nationality administration.<sup>80</sup>

## **8.6. The Case of Kemant Community**

### **8.6.1. Historical Background of Kemant Community**

Historically, the Kemant community considers itself as part and parcel of the Agew nationality and the people are principally located in the western part of north Gondar administrative zone of Amhara Region. Even though there is no definite and strong agreement on the origin and history of Kemant community, most writers including the Kemant scholars agree that the Kemants are considered as the original inhabitants of north-central-Ethiopia and they are one of the historic ethno national minority groups in the Amhara national regional state.

As frequently cited by the committee of Kemants identity recognition and the right to self government Fredric Gamst, an American anthropologist, in his book entitled “The Qemant: A Pagan-Hebraic Peasantry of Ethiopia” clearly described that the Kemants are the original inhabitants of the north western Ethiopia in general and the area of north Gondar administration in particular. Their historical homeland stretched from the area around north of Lake Tana, which is the origin of Abay River (Blue Nile), to rural areas around Gondar town.<sup>81</sup>

Furthermore, according to the myth of Kemant community they came from Israel, during the time when the Canaan land in Middle East, which is located in today’s Israel, faced drought

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<sup>80</sup>Interview with Metiku Beyene, former chief administrator of Wag Hemera Nationality Administration, (Addis Ababa, 16 April 2016) According to Metiku Beyene recently there are four schools in Adgenet, Bahila, Zalay and Aresege Kebele administrative units of Abergele *Wereda* of Wag Hemera Nationality Administrative territory.

<sup>81</sup> Ibid,

and hunger, because of this Aynar (the first father of the Kemant) and his families came to Ethiopia.<sup>82</sup> In this regard Yeshiwas Degu states that most elderly people of the Kemant community assumed that their name is derived from their terminology “Kemä-ent”, literally which means “You Kam or Kamatic.” In this sense, they associated their common ancestor with the son of Noh (i.e. Kam) and consider themselves as part of the people of “Kam” descents. This historical situation implies that there is strong ethnographic self-identification as descendent of ancient Israel.<sup>83</sup>

Currently the Kemant people live mainly along an axis stretching from Ayikel town in Chilga *Wereda* to Kerakir north to Lake Tana region specifically in the *Weredas* of Chilga, Lay Armachiho, Quara, certain part of Dembiya, Metemma, Gondar Zuria and Wegera of north Gondar administrative zone of Amhara region.<sup>84</sup> However, speakers of the Kemantney language, although their number is very few, are found closer to Ayikel town the seat of their religious and political leader called Wenber.<sup>85</sup> According to members of the Kemant identity recognition and the right to self-government coordination council, among the aforementioned seven *Weredas*, Chilga and Lay Armacheho have been taken as places where the Kemant people live contiguously and constitute a majority in the *Kebeles* of the same. In the remaining *Weredas*, particularly in certain *kebeles* of Gondar Zuriya, Wegera, Quara and Metema, the Kemant people are found as numerical minority. Like any other historic ethno national minorities of the country, the Kemant people have also experienced serious prejudice and stereotype for many centuries.<sup>86</sup> In further discussion of their socio-political situation, the researcher’s sources too unequivocally stated that many Amharas living in and around Gondar city identify the Kemant in demeaning terms.

As findings in other studies show, this research also found that the worst epithets by which Kemant are labelled as “born of wood” and considered as “wood worshippers” because of

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<sup>82</sup>Interview with Nega Gete, one of the earlier political activists; a pioneer person who wrote a booklet about the history of Kemant community in 1993 and fought against the dominance of the incumbent party since 1992, (Gonder, 8 July 2015)

<sup>83</sup>Yeshiwas Degu Belay, ‘From “Melting Pot” to Quest for Recognition: The Kemant People in Ethiopia’ (MA Thesis, International Institute of Social Studies 2013) 15

<sup>84</sup> Interview with anonymus members of identity recognition and the right to self-government coordination council of Kemant community, (Gonder, 8 July 2015)

<sup>85</sup>The seat of Political and Religious Leaders of the Kemant Community is Ikel Town

<sup>86</sup> Interview with Nega Gete, (n 80)

their associations as carriers of wood for residents of Gondar town.<sup>87</sup> This harsh social and political environment forced some members of the community even to deny their original identity and make bogus identity pronouncement. Because of this, until now it is also a normal action that not to talk the Kemant language and they continue to face difficulties in manifesting identity markers.<sup>88</sup>

Besides, the Kemant community traditionally practised an ancient Hebrew religion; majority members of the community however claim that the Kemant people are distinct from the peoples of Bete Israel (Jewish people living in Ethiopia) in performing the religious practices and respecting the Old Testaments despite the historic relationship and strong tie between the two communities. According to the 1984 and the 1994 Population and Housing Censuses conducted by CSA the population number of the Kemant community were 169,169 and 172,327 respectively.

However, according to informants of the researcher this number does not seem to reflect the precise and real population size of Kemant community since at that time only certain members of Kemant community have courageously declared themselves as Kemant nationality.<sup>89</sup> Even worse, the 2007 national census conducted by the same authority did not even list the Kemant community as a separate ethno national group in the country in general and in Amhara region in particular. With regard to the existence of Kemantney language and the people who can speak it, the Kemant community identity recognition and the right to self-government coordination council has conducted a survey in 2003 in 18 *Kebeles* of Chilga, Lay Armachiho and Metema *Weredas* and the report clearly indicates that there are actually more than 6600 people who speak Kemantney language.

In general according to the report of the identity recognition and the right to self-government coordination council although it is not as such exhaustive in addressing all *Weredas* where the Kemant live, their number is estimated more than 10,000.<sup>90</sup> Most of the children of the

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<sup>87</sup>Yeshiwas, (n 83) and for further understanding see also Quirin, 1998: 217; Zelalem, 2003:46-51.

<sup>88</sup> Ibid,

<sup>89</sup>Interview with Belay Shibeshi, Lecturer, Faculty of Law, University of Gondar and member of the Kemant community identity recognition coordinating council, (Gonder, 8 July 2015)

<sup>90</sup>The Kemant's identity recognition and the right to self-government Committee document, (n 80)

Kemant community, however, speak and learn Amharic language starting from the pre elementary school level.

Because of this the language of Kemant community is hence considered to be one of the endangered languages of Ethiopia. Likewise, adherence to the traditional religion has dropped substantially, as most of the population has over the years being converted to Orthodox Christianity.<sup>91</sup> According to Zelalem Leyew after the restoration of the ‘Solomonic Dynasty’ around 1270 until the coming to power of the Derg in 1974, the Kemant people passed through different phases of stigma, exclusion and forced assimilation by the neighboring ethno national group , mainly by Amhara nation.<sup>92</sup>

In other words, only during the reign of Tewodros II did this forced assimilation stop and this was also because *Quaregnaw* Kassa Hailu (later Emperor Tewodros II) received strong support from the Kemant community when he spent a long period of time in *Weredas* of Quara, Chilga and Lay Armachiho where the majority members of Kemant community live. During that specific time he is said to have strong contact with not only political and religious leaders of Kemants but also the whole community at large.<sup>93</sup>

The military regime, which replaced the monarchy, at least officially recognized the mere existence of the Kemant community as a distinct ethno national group. In this regard as mentioned above for instance the Kemant was registered as a distinct ethno national community in the 1984 national population and housing census conducted by Central Statistical Agency.<sup>94</sup> The *Derg* regime however took no practical measure to protect the fundamental rights and freedoms of the same community and further promote and develop the community’s distinct language, religion and culture.

Because of this, in 1991, at the time of ethno national self-determination was declared in the Ethiopian political system, the presence of Kemant community in the country as a distinct ethno national group was little notable.<sup>95</sup> Although it was champion in recognition and

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<sup>91</sup> Ibid,

<sup>92</sup> Zelalem Leyew, ‘The Kemantney Language: A Sociolinguistic and Grammatical Study of Language Replacement’ (PhD Dissertation, Addis Ababa University 2000) 30

<sup>93</sup> Ibid,

<sup>94</sup> The Report of 1987 Census conducted by Central Statistics Authority (CSA)

<sup>95</sup> Interview with Mola Jember, member and activist of Kemant community, (Addis Ababa, 10 June 2016)



accommodation of ethno national minority groups of the country, according to representatives of Kemants community the Transitional Government of Ethiopia mainly led by EPRDF did not include the Kemant community among the ethno national minority groups eligible to establish regional/local self-government in their respective territory.<sup>96</sup>

To Ato Nega Gete who is an activist of the same during the time of post-war peace and democratic negotiations in 1991, a very few Kemant political activists attempted to attain a place, in the name of their ethno national group, in the new democratic political map that would be organized based on the principle of self-determination of nations, nationalities and peoples of Ethiopia.

However, despite their anticipations from the new regime, the Transitional Period Charter (1991-1995), which laid down the basic framework for proclamation No. 7/1992 and the 1995 FDRE constitution denied the very existence as well as the right to equitable representation and self-government of Kemant community as a distinct ethno national group. Although the 1994 population census counted the Kemant community as distinct ethnic group, their language, religion and other important social values were not legally recognized.

This has been seen as the first post Dergue “historical” and institutional injustice made against the Kemant people.<sup>97</sup> In other words, the transitional government led by EPRDF in general and the the ruling party of Amhara region in particular was not ready to recognize the separate existence as distinct ethnic group and thereby empower this community independently.

### **8.6.2. The Quest for Identity Recognition and the Right to Self-governmet**

Following the denial of proclamation number 7/1992, the Kemants were totally left behind the curtail and the 2007 Population and Housing Census reaffirmed such legal and political denial as the name Kemant by itself erased and the people of Kemant community were not counted as a separate ethno national group while CSA did count eighty five ethno national groups in the country.<sup>98</sup> Hence the result of the 2007 Populationa nd Housing Census helped the elites

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<sup>96</sup> Proclamation No. 7/1992, a proclamation which established regional self-governments of Ethiopia

<sup>97</sup> Yeshiwas, (n 81) 19

<sup>98</sup> Belay Shibeshi, ‘Minority Rights Protection in the Amhara National Regional State: The Case of Kemant People in North Gondar’ (LL.M Thesis, Addis Ababa University 2010) 10

and activists of Kemant community to mobilize the Kemant people at large and to redefine as well as articulate the actual socio-political demands of the Kemants for recognition as distinct ethno national group.

Here one can reasonably argue that the 2007 population and housing census result became a hallmark for the beginning of strong and politically organized mass mobilization of the Kemant community. As a result, since 2007 “institutional deprivation” of the very existence of Kemant community as a distinct ethno national group in the country in general and in the Amhara national regional state in particular made the Kemant elites more aware of the result and forced them to courageously promote Kemant ethnicity as a distinct ethno national group and their consciousness towards Kemant identity has become solid.

In this regard, Yeshiwas Degu in his research work clearly stipulates that I would assert that the 2007 population and housing census result has created a “political opportunity” for activists of Kemant community to “radicalize” their demand for recognition by stirring it to the level of self-determination, which can be defined as “people’s quest for freedom and desire to determine their own political, economic, and social life.”<sup>99</sup> In fact the majority people who identify themselves as Kemant ethno national group still now neither use Kemantney language nor follow Hege-Lebona religion which certainly make them a distinct ethno national group. This socio-cultural and religious situation implicates that language and religion are not the necessarily accounts for ethno national belongingness and crucial unifying elements, while they have historically been fundamental identity markers.<sup>100</sup>

By citing Andrew J. Carlson Belay Shibeshi on his part clearly stipulates that although language and religion are the main elements and important markers of ethnicity, the members of Kemant community give more emphasis to their common ancestral bondages. He further elaborates this idea that as Kemant people have strong ancestral relationship among themselves, they are still distinct from others, for “traditional Kemants.”<sup>101</sup>

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<sup>99</sup>Yeshiwas Degu Belay, (n 83) 27 and for further understanding see Mancini (2008) “Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism, and the Right of Minorities to Self-Determination”, INT’L J. CONST. L., 6(3) 553-584

<sup>100</sup>Ibid, pp. 17-18

<sup>101</sup>Belay, (n 96) 13

Concerning this conception of separate existence of Kemant community, there is also a confusion that even certain members of Kemant community do not promote themselves as members of a distinct ethno national group and thereby promoting their identity markers that make them distinct from Amhara ethnicity. Plethoric factors contributed to the development of this kind of socio-cultural and political attitude among the members of the same community. According to some close observers of the Kemant ethno national group, these socio-political factors can be with the slightest modification summarized in the following way:-<sup>102</sup>

- (a) Their educated children's interest in socialist ideology and strong affiliation with parties promoting socio-economic integration of the country based on socialist ideologies,
- (b) Reluctance to come out publicly as members of Kemant community because of present stigma and exclusion attached to the same community,
- (c) Linguistic and cultural weakness or having, to a certain extent, similar culture and religion (Christian and Muslim) with the neighboring Amhara people and,
- (d) The Ethiopian Peoples Revolutionary Democratic Front's preoccupation mostly with language aspects by ignoring other identity markers of ethno national groups that makes certain ethno national groups distinct from other nation-nationalities of the country.

However, some members of the Kemant community strongly believe and further argue that the Kemant people have been ethnically, religiously and linguistically distinct from Amhara ethnicity and other neighboring nation-nationalities and peoples of Ethiopia although there is undeniable similarities in religion and culture of the same societies. Because according to these people numerous concerned members of Kemant community preserve their unique identity markers for a long period of time and because of this distinction as mentioned above however they have been victims of stigma, exclusion and marginalization for the last seven centuries.<sup>103</sup>

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<sup>102</sup>Worku Berihu, 'Agaw-Kemant of Ethiopia, Gondar Quest for Recognition' (2010) Tigray Online. Accessed on 15 June 2015 and some members of the Kemant's identity recognition and the right to self-government coordination council explain to the researcher the critical situation the area when this interview was conducted at Gondar town.

<sup>103</sup> Belay, (n 98) 14

Nevertheless, their mere existence as a distinct ethno national group was officially disclosed in 1994 National Housing and Population Census conducted by Central Statistical Authority (CSA). As noted above during this time 172,327 members of the Kemant community were formally registered as Kemant and considered themselves as members of a distinct ethno national group as well as this number put the Kemant ethno national group in the tenth position among nations, nationalities and peoples of Ethiopia formally counted by CSA.

But, some close observers of Kemant community estimate this figure just only 17% of the total number of Kemant people. As a result the Kemant's separate existence as a distinct ethno national community was totally denied in 2007 National Housing and Population Census.<sup>104</sup> According to strong allegation of the representatives of Kemant community, during that time the Amhara national regional state government officials were not as such willing to include the Kemant community in the list of distinct ethno national groups living in the region although the representatives of Kemant community tried to make aware of the denial of Kemant community.

The representatives of Kemant community have also tried to communicate with government officials of the Amhara national regional state in order to consider the consequence of this total denial and even directly asked the branch office for Gonder and the surrounding areas of Central Statistical Authority of Ethiopia why it denied the separate existence of Kemant ethno national group. However, the government officials of the national regional state of Amhara were reluctant to consider this claim as valid and even they were not ready to receive application letters of the Kemants and properly entertain the same case.<sup>105</sup>

On the other hand, according to the House Speaker of the Regional Council of Amhara and Strategic Leadership Support Providing Directorate Director at that time the national regional state political leadership strongly believed that members of the Kemant community have been totally assimilated with the Amhara nation and because of this until recently no body in the

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<sup>104</sup>Interview with Belay Shibeshi, (n 8789)

<sup>105</sup>Interview with Melkamu Sisay, Lecturer, Faculty of Law, University of Gonder and Legal Advisor to identity recognition and the right to self-government council of Kemant community, (Addis Ababa, 15 April 2016)

regional state was interested to hear and consider the complaints of the so-called representatives of Kemant community.<sup>106</sup>

This firm political position of government officials of the national regional state further fueled the political mobilization of the Kemant. However, in the 2007 Housing and Population Census conducted by the same authority the members of Kemant community have been instructed to be registered as part of Amhara nation or others. As a result there was a clear controversy among the community members and the peoples of the surrounding areas including local government officials of the governing party (ANDM).

Considering this social and political situation of the region active members of the Kemant community were pushing ahead to make the long standing claims of Kemant people by avoiding the existing silence and controversy about the very existence of their distinct identity markers and thereby formally started to strongly claim a full-fledged recognition, constitutional guarantee, protection of their fundamental rights and the right to self-government. With regard to the starting time of their organized movement Belay Shibeshi has strongly stipulated that:

Since 1991, there has been an effort by (some) groups belonging to the (same) ethnic community for recognition and self-governance in an intermittent way. In a renewed way, they lodged an application (letter) in 2007 to the Regional state but no response had been obtained, and as a result, they applied to the House of Federation last year. It is pending in the House of Federation, and the people seem to have started organizing themselves in unprecedented way. Particularly, the declaration of the result of the 2007 Population and Housing Census accelerated the pace of the (organized) movement of the people. In May 2009, the movement established 'Provisional Committee of Kemant Identity and Self-Governance Claims Council.'<sup>107</sup>

Besides, according to close observers of the community's movement for identity recognition and the right to self-government, this socio-political situation also created strong disappointment in the Kemant community as a whole, including members of the Amhara National Democratic Movement (ANDM), the governing party of Amhara region. Then, at the

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<sup>106</sup>Interview with Yalew Abate, House Speaker of Amhara Region Council, (at Bahir Dar, 13 June 2015)

<sup>107</sup> Belay, (n 96) 19

beginning both ANDM members and non-members of Kemants moved together by forming a coordination council to investigate the incident such as who decided it and for what purpose.<sup>108</sup>

However, after a thorough discussion at a meeting held in Gondar town, the members of the coordination council decided not waste unnecessary time in the inquiry of the source of the incident of erasing the Kemant community in the list of nation-nationalities of the country rather agreed to push ahead with quest for the right to recognition and self-government based on the existing constitutional principles incorporated in FDRE constitution of 1995.<sup>109</sup>

At this point, the demand of identity recognition and the right to self-government which has informally started in 1992 and 1993 seemingly revived and secured huge popular support virtually from all sectors of the Kemant community. Following this critical discussion and successful political mobilization, a council consisting of 120 members was established by the representatives of the community on 24 May 2009 as a main coordination body and also made its headquarter in Gondar City and on 7 June 2009 the council formally started its function by electing some 12 executive committee members to carry out the aforementioned responsibility.<sup>110</sup>

According to members of the executive committee of the coordination council the main objective of establishing this council was to negotiate with the government officials of Amhara national regional state, conduct survey and comprehensive study about the Kemants' legal and political history, current socio-cultural and political situation as well as oversee the whole process of the claim of identity recognition as a distinct ethno national group and thereby to secure the right to self-government. At the same time sub committees were also established at Wereda and Kebele levels so as to mobilize and move forward the Kemant community for the achievement of its presented distinct identity claim as well as the right to self-government.

Subsequent to consultation made with rural community of the Kemant people, the request for the recognition of the Kemant community as a distinct ethno national group and its right to

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<sup>108</sup> Interview with Belay Shibeshi, (n 87)

<sup>109</sup> Interview with some committee members who do not want to be mentioned their name, (Gonder, 8 July 2015)

<sup>110</sup> A document prepared by Kemant recognition committee and submitted to the House of Federation.

self-government was formally submitted (presented) to the then chief administrator of the national regional state of Amhara, on 22 June 2009 comprising the petition of some 18,584 Kemant people.<sup>111</sup>

However, due to the reluctant nature of the government officials of Amhara region and other socio-cultural and political reasons until mid 2015 the Kemant ethno national group remained unrecognized and henceforth has been denied the opportunity to exercise their fundamental rights and freedoms including the right to self-rule enshrined in the Article 39 (3) of FDRE constitution of 1995. Besides, their official recognition of the very existence as a distinct ethno national group basically was highly dependent upon the good will of the national regional state government officials.<sup>112</sup>

Generally someone may ask that why the claim of Kemant identity recognition as a distinct ethnic group and the right to self-government for their contiguous territory was raised at this juncture? The answer for this question is so complex but can be summarized in the following statement among others. Even in the present socio-political situation of the region the fundamental rights and freedoms of Kemant community is not properly recognized and legally protected like that of other nation-nationalities and peoples of the country. Besides, the existence and history of Kemant community as a distinct ethnic group is totally denied by the incumbent party.

Following this firm political position of the incumbent as noted above in the 2007 population and housing census conducted by Central Statistics Authority (CSA) the Kemant community was totally erased from the list of nations and nationalities of Ethiopia. This critical incident created serious grievance and strong emotion up on the Kemants in general and elites of the community in particular and hence they regarded the government's act as a silent identity genocide committed against them.

And although it is not as such serious like that of the past, in the area where Kemants live there is still a sign and practices of stigma and exclusion up on certain members of Kemant community. Because of this, according to scholars of Kemant community the very existence

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<sup>111</sup>Interview with Molla Jember, member of the Kemant identity recognition committee (Addis Ababa, 13 April 2016)

<sup>112</sup>Yeshiwas, (n 83) 3

and history of Kemant community as a distinct ethno national group is denied by the officials of incumbent. Hence they became solid political body towards their fundamental rights of self-determination and strongly demanded it now by averting the existing legal, political and cultural domination and political marginalization against the same community.

### **8.6.3. Responses of Federal and Regional State Governments**

According to some members of the identity recognition and the right to self-government coordination council of Kemant community during the submission of their formal request to the officials of regional state government the then chief administrator of the region was positive on the same issue and only sought a certain time to consult with his cabinet members, legal advisors as well as the heads of the most concerned government institutions of the region. Then consensus was reached between the chief administrator of the region and the representatives of Kemants' identity recognition and the right to self-government coordination council to further discuss the matter in the next regular Assembly of Regional Council.

However, according to members of the Kemants identity recognition and the right to self-government coordination council, the then House Speaker of the Regional Council failed to make the Kemant's formal request for identity recognition and the right to self-government as part of the agenda of the Regional Council's regular Assembly. After realizing this reluctance of the regional state political leadership the executive committee of the coordination council then took the matter and formally submitted to the House of Federation on 22 July 2010 in the form of appeal based on the procedural law of proclamation No. 251/2001 and the principles of FDRE constitution of 1995.<sup>113</sup> Nevertheless, some members in the House of Federation, mainly who came from Amhara region representing the governing party, were also of the view that the matter needed to be seen first at the regional state level before it formally brought to the House of Federation.<sup>114</sup>

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<sup>113</sup>Zinabu Yirga, 'Practices and Challenges of House of Federation in Resolving Identity Claims: Case Study of Kemant Community in Amhara National Regional State' (MA Thesis, Addis Ababa University 2016) 58

<sup>114</sup>Interview with Daniel Demissie and, Secretary of Standing Committee for Constitutional and Regional affairs of House of Federation, (Addis Ababa, 15 October 2015) and Alelegn Yehuala, Legal Advisor to the Speaker of Amhara Region Council, (Bahir Dar, 15 June 2015)



In this regard some members of the executive committee of coordination council strongly assert that although the House of Federation has legal power to give a final verdict in speedy and fair manner on the present case of Kemant community, it instead referred the request to Amhara national regional state and thereby created back and forth bureaucratic situation between itself and the Amhara national regional state.<sup>115</sup> This back and forth bureaucratic process also created an extra delay in the resolution of the matter within relatively the expected time frame.

Following this difficult socio-political environment of the Amhara national regional state, the Kemant community activists raised the issue at the ANDM organizational conference held in Bahir Dar seeking strong reasons for such extra delay and the encroachment of the rights of certain members of the Kemant's identity recognition and the right to self-government coordination council by labeling different names.

The participants of ANDM top leaders including the Amhara national regional state pertinent government officials replied that they will consider the issue and promised to the proper implementation of the principle of self-determination of nation-nationalities and peoples of Ethiopia incorporated under the federal constitution of 1995.<sup>116</sup> According to some executive committee members of Kemant's identity recognition and the right to self-government coordination council, most government officials of not only the region but also federal government were positive in their approach and they further expressed their sympathy for the legitimate claims of Kemants by condemning such back and forth bureaucratic process as well as undue delay even pointing out the accountability to the concerned institutions of the national regional state government of Amhara. Some members of the coordination council further assert that those government officials promised that the Kemant's quest for identity recognition as a distinct ethnic group and the right to self-government will be properly addressed when the next newly elected government assumes political power and administrative responsibility following the 2010 national election.<sup>117</sup>

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<sup>115</sup> Interview with Melkamu Sisay, (n 103)

<sup>116</sup> Interview with Molla Jember, (n 109)

<sup>117</sup> For example Belay Shibeshi and some others told this reality to the researcher in June 2015 when the researcher was collecting data about Kemants claim and other related issues.

While dealing with regional and federal authorities, as mentioned elsewhere in this section the branches of the coordination council have been reestablished at *Wereda* and *Kebele* levels and the members of the executive committee and the council were consulting with the general public to resecure genuine and strong support on the same issue. In this aspect, the result was highly successful within short period of time. Let us see some two very important examples occurred in Chilga *Wereda* of Aykel town, the seat of Wenber, the religious and political leader of Kemant community, about 60 kms away from Gondar town and Lay Armachiho *Wereda's* administrative center, called Tikledengay town some 30 kms away from Gondar city respectively.

Subsequently, only in Aykel town more than 4,000 members of Kemant community participated at the meeting held in September 2014 just few hours after the meeting was announced using a simple microphone. Besides, in Lay Armachiho *Wereda* about 8,000 people nearly twice of Aykel's population size that attended the meeting and peaceful demonstration arranged by the committee members Kemant identity recognition coordination council.

According to the committee members the next consultative public meeting and peaceful demonstration was also planned to be called and expected to be held in the administrative capitals of Metema Yohannes and Quara *Weredas* of north Gondar administrative zone respectively. However, the plan that was expected to gather the peoples of certain *Kebeles* of both Metema and Quara *Weredas* failed due to the strong resistance of some members including the team leader of the study committee coming from Bahir Dar representing the regional state executive body and local government officials who strongly supported the regional state's political position.<sup>118</sup> In the meantime, many of the members of the Kemant community were anxious to hear the status of their case and the regional state's legal and political response. As a result they frequently and strongly asked hard questions to find out sufficient reason for the delay of the response and badly demanded convincing explanation for such unnecessary extra delay in positively entertaining and responding to their legitimate question.

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<sup>118</sup> Interview with Belay Shibeshi (n 87)

Following this socio-political situation of the region in general and the local administrations of north Gondar administrative zone in particular not only some active members of Kemant community who live in the rural areas but also many members of the community have started to blame the higher officials of the regional state government including the pertinent leaders of the ruling party, ANDM. Their blaming was not limited to regional state government officials and leaders of the ruling party of the region rather it extended to the officials of House of Federation for such unnecessary delay of the response but also complained against the mistreatment of officials of the local governments including chief administrator of north Gondar administrative zone.<sup>119</sup>

In this regard, one of the sources told the researcher that while the House of Federation started to examine the Kemant's claim by sending its members and certain experts to the area concerned, some members of Kemants' identity recognition and the right to self-government coordination council on February 2013, were made in jail and taken by security forces of the region to Debarq prison center which is 160 kilo meter far from their locality.<sup>120</sup> On the contrary, according to key informants the members of Kemants' identity recognition and the right to self-government coordination council tried to advise the Kemant people to be patient.

And certain members of the executive committee of identity recognition and the right to self-government coordination council replied that "although the regional state government officials actually did not yet positively respond to our quest for identity recognition and thereby allow the right to self-government, some of the regional state government officials and political leaders of its governing party are still willing and ready to respond to our question."<sup>121</sup> The same public gathering was also held in other *Weredas* of north Gondar administrative zone where the members of the Kemant community reside and reportedly there was overwhelming support for Kemant community's quest for identity recognition and the right to self-government.<sup>122</sup> As mentioned in the introduction of this section, according to the members of the identity recognition and the right to self-government coordination council, places characterized themselves as Kemant are mainly Chilga and Lay Armachiho almost in

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<sup>119</sup> Interview with Melkamu Sisay, (n 103)

<sup>120</sup> Interview with Abayneh Zewudu, member and lawyer of the community, (Gonder, 8 June 2015)

<sup>121</sup> Worku, (n 100)

<sup>122</sup> Ibid

full and one fourth of Gondar Zuriya *Wereda*, certain portions of Quara, Metema, Wegera and Dembiya *Weredas* respectively.

Considering this socio-political reality the executive committee of the coordination council further provided a list of 126 *kebele* administrative units to be included in the future Kemant nationality administration. Because of such extra delay and the disagreement created between the identity recognition coordination council and the government officials of the Amhara national regional state in October 2015 destructive conflict was happened between the members of Kemant community and special security forces of the region in the area concerned, irrespective of the existing accommodative constitutional and legal system of the country.

This critical political and administrative situation of the country consequently created a tension among the community members in general and brings frustration not only amongst rural population of the Kemant community but also on activists including the executive committee members of the coordination council of Kemant community as some of them were actually persecuted and imprisoned by the regional state police and local government officials.

However, before resolving this disagreement and reach at a consensus with members of the coordination council, the Amhara national regional state legislative council enacted a proclamation in which it recognizes only 42 *kebele* administrative units out of the presented list of 126 *Kebeles* as belonging to the Kemant community and established special *Wereda* mainly consisting of the majority *kebele* administrative units of Lay Armachiho (25 neighbors) and Chilga (17 neighbors) into account.<sup>123</sup>

In this regard when we examine the gist of the decision of Amhara region council on the same issue, although there was undue delay because of its back and forth bureaucratic process, regrettably it admits such back and forth bureaucratic process and unnecessary delay unlike its past decision against the same issue and further explains that the Kemant community resides in a certain *Weredas* of north Gondar administrative zone of Amhara national regional state and the Kemant community has its own distinct culture and history.

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<sup>123</sup> Proclamation No. 229/2015, A Proclamation to establish Kemant Special *Wereda* of Amhara Region (2015)

According to the decision of the regional council due to different reasons the language of Kemant community is, however, endangered and as its culture is almost similar with Amhara people, currently it is difficult to differentiate the culture of Amhara nation and members of Kemant community. Nevertheless, to preserve and develop its endangered culture, language and distinct identity the Kemant community submitted its strong claim of identity recognition and the right to self-government to the national regional state.

Based on their request the Amhara national regional state government has also conducted a study and submitted its findings to the regional council in July 2013 and the council discussed the matter as well as passed a resolution up on it that the claim of their identity recognition has already got acceptance. However, according to the strong belief of the regional state government the question of the right to self-government of the community could not fulfill the requirements incorporated in the constitution and hence the regional council could not consider and allow their issue of self-government. Meanwhile, it has decided that there should be, however, a further study to develop the language of Kemant community.

Although during that specific time the national regional state legislative council has decided on the issue submitted to it based on principally language requirement that leads to reach the otherwise decision, it becomes necessary to reinvestigate the same matter and finally reach at a consensus towards accepting the request. Eventhough to the strong belief of the members of regional council, the majority members of Kemant community do not communicate each other by their language, there is a clearly observed common psychological makeup and strong belief of being Kemant among the whole community members.

It is revealed that they also live in a contiguous territory and the question of self-government of the community is not only the issue of certain individuals who want to capture political power or some people who try to make the same issue political instrument to secure their group interest rather it is equally the genuine question of the majority of the Kemant community and currently it also becomes part of the problem of good governance in the region.

Hence, considering this strong belief of Kemant community, until recently the regional government tried to resolve the outstanding problems and address the same issue through

arranging open discussion with the people concerned although it does not create satisfaction on the community. According to the decision of the regional council the thorough discussion held with majority members of the community in their contiguous locality including members of *Kebele* councils who believe by being Kemant was very convincing and reached at a consensus among the concerned ones as well as confirmed that there is no any different view with regard to the claim of recognition of distinct identity and the question of the right to self-government of the Kemant community as far as there is no other people living between or among Kemant people.

Considering this socio-political situation 42 *Kebele* councils principally located in Chilga and Lay Armachiho *Weredas* of north Gondar administrative zone have decided that the regional state should give a positive answer to the legitimate question of self-government of Kemant community. After realizing this political situation and securing the consensus of the community in those 42 *Kebele* administrative units the Amhara region legislative council 14<sup>th</sup> regular assembly held in March 2015 at Bahir Dar has seriously discussed the matter and finally decided in a positive way to establish their own self-administration in the form of special *Wereda*.<sup>124</sup>

#### **8.6.4. Outstanding Issues of Kemant Community**

As mentioned above, although the Amhara national regional state government tried to entertain the Kemant's quest for identity recognition and the right to self-government, to a certain extent, in a positive manner, the regional state legislative council's final decision excluded Aykel town i.e. regarded as the center of the same community from the newly established special *Wereda*. This situation by itself creates another serious grievance not only among the coordination committee members but also on the majority members of the community. Because according to majority members of the coordination committee Aykel town is considered by most of the members of Kemant community as a symbol and part of Chilga *Wereda* administration. As a result, the decision of the regional state government and thereby the regional council was/is not as such inclusive of the question of the community and

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<sup>124</sup> A report prepared in 2015 by Amhara region council and has been sent to the House of Federation.

lacks acceptance not only from members of the coordination council but also from most members of the Kemant community.

As a result, until recently this problem is not yet fully resolved by the decision of Amhara region council in a manner the Kemant community presented their fundamental question; because of this, it caused for some serious destructive conflicts between government special security forces and residents of Aykel town as well as the surrounding areas of the community. Consequently, according to the report of Ethiopian Human Rights Commission during that destructive conflict happened between certain members of the Kemant community and the special security force of the Amhara national regional state 97 people were killed including some elders, very young people and women as well as 86 people were seriously injured.<sup>125</sup>

The same source unequivocally declares that significant amount of public and private properties were damaged and burnt. Besides, to this source between Metema and Quara *Weredas* 50 kms far from Genda Wuha particularly in Shinfa town an illegal demonstration was held against Kemants and Tigreans by emototionally charged with ethnic hatreded Amharas of the surrounding areas including certain government officials and party members of ANDM. This illegal demonstration highly affected members of Kemant community living there, Tigreans engaged in trading activities and even some members of Amhara nation.

Because of this, in Shinfa town 58 shops whose owners are mainly Tigreans were burnt. Generally only in Shinfa town of Quara *Wereda* the Amharas, Kemants and Tigreans whose number is 235 people's property was burnt and robbed by some of those illegal demonstrators.<sup>126</sup> According to sources this illegal demonstration was supported not only by armed militias of the surrounding areas but also even by government officials of north Gonder administration. Besides, the police force of the region were not as such in a position to stop and prectect the lives of the victims of such illegal demonstration including their property. Due to such illegal demonstration as well as strong agitation orchestrated by members of Welkayt's Amhara identity claim coordination committee with strong support of the people of Gonder and middle echolen government officials of the region as well as leaders of the ruling

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<sup>125</sup>Ethiopian Human Rights Commission: An Investigative Report on Oromia and Amhara Conflict, June 2016, p. 81

<sup>126</sup> Ibid,

party of north Gonder, more than 8000 Tigreans who were living in north Gonder administrative zone, Bahir Dar city and Chagni town of Agew Awi nationality administration were evicted.

In other words, unlike the longstanding smooth relationship among Amharas, Kemants and Tigreans, certain emotionally charged with ethnic hatreded groups of Amhara society living in and around Gonder city including some members of the ruling party have been engaged in burning their properties and evicting Tigreans from their home and work place. As mentioned elsewhere in this section the Kemant population resides in a contiguous geographic area and biologically, psychologically, culturally as well as historically they consider themselves as distinct ethno national group and regarded Aykel town their religious and political center.

However, they equally recognizes that majority of members of Kemant community lost their traditional religion and language under the centuries of systems of repressive regimes of the country. Nevertheless, the Kemant people's desire to be recognized as a distinct ethno national group is very strong and their demand to be represented at all levels of government institutions and secure the right to self-government in its own contiguous territory appears apparently very important. Moreover, majority Kemant population likes to maintain Orthodox Christianity while rehabilitating the culture and language that makes them distinct from others but which is in the process of extinction.

Generally members of the Kemant community living in Gondar city and its surrounding rural *Weredas* demanded genuine recognition as a distinct ethno national group and wants to exercise the right to self-government in their contiguous administrative territory they are living and claiming for. But, the Amhara national regional state government officials, particularly those who were chief administrator of north Gondar administrative zone and their colleagues at both zonal and *Wereda* levels, including certain elites of Amhara nation living in and surrounding areas of Gondar town bitterly opposed this legitimate question of identity recognition as a distinct ethno national group and thereby the right to self-government of Kemant community and these people were/are also making the process more difficult as well as complicated. Nevertheless, currently the issue ended up at regional government level which ruled to a certain extent in favor of Kemant people's request for particularly identity



recognition in full and the right to self-government inpartiall. Although the identity recognition and the right to self-government coordination council of Kemant community strongly belief that the regional council's decion does not fully address the legitimate claim of the community, as it has already decided to establish special *Wereda* for Kemants in their contiguous territory recognizing only up to 42 *Kebele* administrative units.

That is why most members of Kemant community raise the question that limiting Kemants' request to only 42 *Kebeles* is redicules, how somebody can stand on only a single leg? What is the fate of other *Kebele* administrations where members of Kemant community live? After raising these important questions they also recommend pertinent solution that to resolve this problem and genuinely respond to Kemants' legitimate question of self-government the House of Federation together with the federal government must intervene and handle the case. According to members of the Kemant community the last resolt will be conducting referendum in those *Kebele* administrative units where the majority of Kemant community live although the regional government officials are not as such willing to do so.

In other words, as mentioned above even though the regional council's final decision did not fully address the question of the Kemants' right to self-government, it recognizes at least their distinct identity as a separate ethno national group and in principle allows self-government rights of the community. Besides, currently the pertinent government officials of the regional stae try to open up their eyes and start discussing with members of Kemant community at regional and zonal level so as to establish and make functional at least such legally recognized special *Wereda* of Kemant Community and further accommodate other *Kebeles* situation.

On the contrary according to some members of the identity recognition and the right to self-government coordination council the majority of Kemant community is not as such comfortable by the decision of the regional council and thereby ready to negotiate and accept as well as establish such legally recognized Kemant Special *Wereda* consisting of only 42 *Kebele* administrative units unless otherwise the remaining *Kebeles* where members of the Kemant community predominantly reside are included in the nationality administration of Kemant. As clearly noted above, although Kemant special *Wereda* is not yet formally established and entered into functional administrative activities due to such incomplete and

problematic decision of the regional council, generally as we have seen earlier even though the process was very complicated, time taking as well as invited serious allegations and harassment towards members of the coordination council, the Kemant community's quest for identity recognition as a distinct ethno national group and the right to self-government has been positively answered.

However, serious intimidation and killing of certain members of the community by the special security forces of the region as well as destructions upon public and private properties were the main characteristics of the process. Although the final decision of the regional state legislative council, to a certain extent, recognizes the very existence of Kemant community as a distinct ethno national group and thereby legally establishes special *Wereda* administration for the same community, the process was very cumbersome on the vanguard members of the community in general and executive committee members of the identity recognition council in particular.

Besides, currently the national regional state government officials of the region and political leaders of the governing party of the same have showed their positive stand and commitment to discuss with the aggrieved members of the coordination council and the community at large to consider the remaining unaddressed issues and unresolved political as well as administrative problems of the Kemant nationality. In this regard to show their political commitment towards the treatment of Kemants we can pick up the chief administrator of the Amhara national regional state's response to the question of ATV's journalist and put here as follows:

*The question of Kemant community identity recognition and the right to self-government as well as the problem of border issue in some area of north Gondar administrative zone with that of Tigray region could be easily handled and resolved if the leadership of the region has been ready to properly understand the magnitude of the question as well as the associated problems of the Kemant community. However, the leadership of the regional state and north Gondar administrative zone could not carry out its responsibility and because of this political situation instability, lack of peace and deadly conflict have been observed in the same area. As*

*a result, several people died and injured, many public and private properties were damaged and burnt.*<sup>127</sup>

Substantiating the aforementioned strong statement made by the chief administrator of Amhara region, Ato Addisu Legesse on his part explains the current political situation of the region that although the question raised by Kemants community is fundamental to their entire life, the leadership of Amhara national regional state could easily resolve the issue like that of Agew Awi, Agew Hemera, Wollo Oromo and Argoba ethno national minority groups. According to Addisu the raised issue of recognition and the right to self-government by Kemant community was not as such serious to lead to the conflict.

He further explains that as ANDM is not strange for entertaining such kinds of claims on identity recognition and the right to self-government the party leadership could also democratically handle the case by conducting deep and holistic study on the matter. However, due to the problem of the two parties (both the Kemant identity recognition coordination council and the leadership of the Amhara national regional state) it took very long time and as a result invited unnecessary conflict between members of the community and special security forces of Amhara region.<sup>128</sup>

As a matter of fact, the right of self-government of an ethno national minority groups emanates first from the political willingness of the governing party and legal recognition of the government of a given country or politically autonomous regional state. In other words, in the absence of political recognition by governing party and thereby the constitution and other sub constitutional laws of the concerned country or regional state, any ethno national community cannot have even a legitimate claim to existence, active political participation including the right to self-government and related fundamental rights and freedoms of such distinct ethno national groups.

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<sup>127</sup>Gedu Andargachew, Chief Administrator of Amhara region, Airedon Amhara Television (14/11/2016 at 8:45 pm).

<sup>128</sup>Taken from Addisu Legesse's interview with Weyen Megazine 41th year, number 54, p. 48. As one can recall Ato Addisu Legesse was one of the founding members and chair of ANDM, Deputy Prime Minister of the country and vice charman of EPRDF, chief Administrator of Amhara region and currently member of ANDM's central committee.

The same holds true about equitable and fair representation at different levels of government institutions, particularly in the legislative and executive including the civil service and the judiciary. As a result, Argoba and Kemant community who had never exercised the right to self-government as a distinct ethno national group before 2006 and 2015 respectively as well as equitably represented in government institutions of the country have failed to make use of the right to self-government and equitable representation.

Accordingly in the discourse of ethno national minority groups and their fundamental rights and freedoms that may come first is their recognition as distinct ethnic community. In legal terms, it is also the recognition that gives personality to a group to avail ethno national minority rights protection. The Kemant for example, like many other ethno national groups of the country, had been denied of their fundamental rights and freedoms of using and developing their own culture, language, religion and history.

What makes the Kemant community unique is that every one of the community member has been victims for a very long period of time, i.e., more than seven centuries, and the fact that even until recently they are not yet beneficiaries of the protection of minority rights as enshrined in the FDRE constitution of 1995 and the 2001 revised constitution of Amhara national regional state respectively.<sup>129</sup> In other words, even after 25 years experience of ethnic based federalism Kemants are not yet legally secured the right to exercise self-government in their own locality.

## **8.7. Conclusion**

As mentioned in the introductory part of this chapter, despite its relative ethnic homogeneity, the Amhara national regional state contains sizeable historic ethno national minority groups as well as both Agews and Oromos being relatively the largest minority ethno national communities in Amhara national regional state followed by Kemant and Argoba nationalities respectively. According to the 2007 Housing and Population census Agews (both Gojam and Wollo) made up nearly 5 percent and Oromo nationality (mainly in the former Wollo province) 3 per cent of the total population of the Amhara national regional state.

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<sup>129</sup> Belay, (n 96) 5

As a result, in Amhara region there was not only the ‘Agews and the Oromos nationalities question’ but also it was the questions of the historic ‘Argoba and Kemant ethno national minority groups’ of the region respectively. The former, relatively larger minority ethno national communities have certainly received proper attention of political leaders of the governing party of the region and government officials of the same from the very beginning in the transitional period and established their own nationality administrations in 1994.

While the latter ethno national minority groups did not receive proper attention until 2006 and 2015 respectively from the political leaders of the ruling party and government officials of the regional state of Amhara. Besides, although the Amhara national regional state is claimed by some people to be an exemplary in response to the questions of ethno-national minorities and the protection of the same community in the country, there were also serious legal and political problems in implementing the constitutional principles in relation to ethno national minority rights in general and the right to representation and self-government of the same in particular.

In this regard, as mentioned above for instance Argoba and Kemant ethno national minorities did not receive proper attention even to get the official recognition as a distinct ethno national group from the concerned national regional state government institutions nor allowed the right to self-rule by the government of the national regional state of Amhara until 2006 and 2015 respectively. Besides, as noted above although the Amhara national regional state has also highlighted by certain writers that its legal and political treatment of ethno national minorities is relatively good compared with that of its counter parts such as Oromia and Ethiopian Somali national regional states. However, for the past twenty five years it was also reluctant to entertain and timely respond the persistent claims of Kemant community.

To put it other way, in the last more than two decades the Amhara national regional state government officials and the political leadership of its ruling party ANDM did not positively entertain the Kemants’ quest for recognition and the right to self-government based on the principles of federalism and constitutional provisions of both federal and the national regional state itself. The reason why they were not as such receptive of the claim of Kemant

community was mainly the significance of language as the only requirement to consider and positively entertain a certain community as a distinct ethno national marker.

In other words, according to the government officials and political leaders of the ruling party of the region, language is an important and decisive factor to recognize certain community as a distinct ethno national group and thereby to guarantee the right to representation and self-government. Nevertheless, this political attitude was interpreted by such historic ethno national minorities as an important barrier which could potentially lead to deny the very existence of Kemant community and to reject the longstanding claims of the right to be recognized as a distinct ethno national community and thereby to exercise the right to self-government in their contiguous territory and achieve equitable representation at all levels of government organs.

An analysis of ethno national minority rights approach within a democratic framework does not however consist only of legal mechanisms but also of a political culture which respects diversity. Considering this reality, collective rights as the only way to protect some ethno national minority groups has recently been put on the forefront agenda of the political community, especially in the countries with high diversities like Ethiopia. This issue has also greater relevance to the current political situation of the Amhara national regional state and thereby the Kemant communities, who are mostly concentrated in the north western part of Amhara region, particularly in western areas of north Gondar administrative zone.

Hence Kemants seriously demanded various forms of collective rights since 1991 including recognition for its separate existence as a distinct ethnic group, equitable representation and the right to self-government. In the case of the persistent claims of Kemant community, as has been analyzed in the aforementioned section, first a group of some Kemant community elites put forward the right to recognition as a distinct ethno national community and impose strong pressure up on national regional state government in order to have territorial autonomy which has been opposed not only by the majority Amhara elites living nearby and the surrounding areas of Gondar city and the officials of regional state government but also by some active

members of the Kemant community who are engaged in the regional polity being member and government officials of ANDM and the regional state of Amhara respectively.<sup>130</sup>

Because as mentioned elsewhere in this chapter the Amhara national regional state government officials and the political leaders of the governing party firstly assumed that members of Kemant community were effectively assimilated with the Amhara people. As a result, according to them they have already given sufficient space and opportunity in the form of democratic and human rights that acknowledge the right of each individual belonging to the majority Amhara people to be educated in their own language and provided sufficient state financial support for their educational and cultural organizations of the same and equitably represented.<sup>131</sup>

The Kemant identity recognition and the right to self-government coordination council, however, consistently worded its strong claim to such imposition of Amhara people's culture and language up on the Kemant community by certain Amhara elites who totally control the national regional state polity. As noted in the aforementioned section of this chapter, the identity recognition and the right to self-government coordination council of Kemant community further called the Kemant people to protest this cultural and linguistic imposition and forced acculturation through forceful assimilation as well as demanded legal and political protection from the incumbent government officials of abuse of power.

The members of the identity recognition and the right to self-government coordination council also strongly claim the right to equitable representation and self-government like that of other nations, nationalities and peoples of Ethiopia living in the region. Although the coordination council continued to exist as a vibrant socio-political group and push up the genuine claims of the community, as mentioned above in the early times of the claim some of its active members shifted their attention to the incumbent's political position and even some of them were fighting against the claims of their own community representing the incumbent.

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<sup>130</sup> Interview with Belay Shibeshi, (n 89) and in this regard for instance Ato Nega Gete was the one among those vanguard peoples who tried to compile and publish a booklet about the history of Kemant community since 1992 and officially claim the right to recognition as a distinct ethnic group from the government

<sup>131</sup> Interview with Amare Sete, Deputy Chief Administrator of North Gondar, (Bahir Dar, 10 June 2015)

Nevertheless, according to some members of the coordination council this position should not be perceived negatively in terms of there being a lack of genuine interest in the issue rather fearing the consequence of democratic centralism which the governing party, ANDM and its sister organizations is strictly following as a party principle. As already noted above, the question of identity recognition and the right to self-government was also firstly seen by the regional government officials even as a destabilizing issue by making some committee members to the extent as anti peace agent and highly associated with the opposition parties who are already declared by the Ethiopian federal parliament as terrorist political group. But the identity recognition and the right to self-government coordination council on the other hand claimed that Kemant community was highly suppressed during the past regimes and even it still faces ethno national suppression as well as has been denied its separate existence as a distinct ethno national community and thereby exercise the right to representation and self-government.

This political and administrative situation of the region led them to strongly demand not only separate existence as a distinct ethno national community but also the right to self-government in their administrative territory since the aftermath of the 2007 national population and housing census. This claim was also forwarded to the national regional state government of Amhara based on the existing constitutional provisions of both FDRE and Amhara national regional state.<sup>132</sup> Consequently in 2009 they formally established a coordination council for identity recognition and the right to self-rule to pursue their legitimate claim of identity recognition and the right to self-government.

The members of the coordination council of Kemant community were also responsible to secure the genuine willingness of the majority members of the same through political negotiation and legal bargain so as to confidently let the council challenge the incumbent government of the regional state with a strong demand for the right to recognition, self-government and equitable representation at all levels of government institutions. Finally the identity recognition and self-government coordination council looked for the strong support

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<sup>132</sup> Interview with Belay Shibeshi, (n 87)



of the Kemant community and as noted above immediately it received a critical mass support from majority members of the Kemant community.<sup>133</sup>

Therefore, the claims of Kemant community's political, administrative and cultural autonomy can best be understood through the genuine demands which this ethno national minority group form a coordination committee in early 2009 to make their claim formal and strongly continue their political struggle against the domination of certain Amhara elites led national regional state government as well as recently they have already achieved mainly their important political goal on the question of identity recognition although some of them are still claiming that the response is not as such comprehensive and needs further negotiation with the political leaders of the governing party of the Amhara national regional state to achieve the final goal i.e. the right to self-government.

In other words, although the Amhara national regional state has been considered as a better national regional state in terms of recognizing and accommodating historic ethno national minority communities living in the region, it does not have a clear and unequivocal political policies and legal frameworks about the treatment of dispersed ethno national minority groups.

Besides, as mentioned in the previous respective sections I have also identified serious legal gaps and practical problems particularly in entertaining the questions of certain historic ethno national minority groups residing in the region alike. As we have seen in the previous sections even the Amhara national regional state revised constitution of 2001 and practical implementation of the regional state government is not fully recognizing the legislative and executive powers of nationality administrations that are constitutionally established.

In other words, the constitutional establishment as an autonomous independent legal entity of nationality administrations having legislative, executive and judicial power is not properly implemented by the regional state government officials. Moreover, dispersed ethno national minorities living in the region are not legally, politically and administratively protected at least their cultural autonomy as a social group although individual rights of members of such

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<sup>133</sup> Interview with Abayneh Zewudu, (n 118)

ethno national communities are constitutionally guaranteed like that of indigenous peoples of the region.

## **CHAPTER NINE**

### **Legal and Practical Responses to the Rights of Ethno national Minorities in Oromia Region**

#### **9.1. Introduction**

This chapter mainly deals with the current legal, political and practical means of accommodation of ethno national minorities of Oromia national regional state. The chapter as part of case study of this dissertation examines the revised constitution of Oromia national regional state so as to answer the research question of how does the legal framework and political practices of Oromia national regional state address the rights of existence, representation and self-government of ethno national minorities living in the region? This approach mainly serves as an initial point to grasp the nature of the regional state revised constitution, laws and political policies in relation to treatment and accommodation of non-Oromo ethno national minorities living in the region.

It also attempts to critically investigate the practical application of the regional state government authorities in relation to the rights of non-Oromo ethno national minorities residing in the region. Therefore, the chapter generally contains some six sections starting from general remarks about the region including this introduction which basically discusses with the political and legal background of Oromia national regional state and in the next section i.e. section three examines the legal and political framework as well as practical implementation of the government of the national regional state of Oromia in relation to accommodation of non Oromo ethnic groups.

Section four investigates sub constitutional laws of the national regional state of Oromia in relation to the status of fundamental rights and freedoms of the non-Oromo ethno national minority groups residing in the region. That means the revised constitution of Oromia national regional state from the very beginning does not provide any space to non-Oromo ethnic groups so as to recognize the existence of such non-Oromo ethnic groups and accommodate the rights of the same living in the region. However, there are certain sub constitutional laws and practical measures taken by the regional state government that are trying to positively treat certain interests of non-Oromo ethno national minorities living in the region.

Particularly in relation to language use in primary education and representation of non-Oromo ethno national minority groups in certain city administrations of the region. Among such non-omoro ethno national minorities, the quest for identity recognition, equitable representation and the right to self-government of Zay community is also investigated separately in section five of this chapter. This section by itself consists of three sub sections that deal with historical background of Zay community, Zay's quest for recognition, the responses of both federal and regional state governments and outstanding issues of the same respectively.

And finally, conclusion of the chapter has been drawn in section six. Hence by way of conclusion this section attempted to identify the main legal gaps and political problems of the regional state in general and it also clearly illustrates to show the half-hearted practical implementation mechanisms of the government of Oromia region towards this issue. In other words, the researcher may put his strong critique on the concluding remarks of this chapter.

## **9.2 General Remarks about Oromia Region**

In Ethiopia, the Oromo nation constitute about 30 million people out of the 90 million inhabitants of the country. In fact, the Oromo ethnic group is one of the most numerous ethno national groups in the eastern part of Africa in general and the highest populous ethnic group in Ethiopia in particular which basically shares a common language family, and once it also shared religious as well as traditional way of life and democratic system of governance called Gada system. In this regard Martial De Salviac rightly pointed out that:

The Oromo (ethno national group) constitute a homogenous race, from the same blood and the same ethnic group (although arguable interms of blood relationship), slightly varied due to nuances resulting from the differences in climate and from rare cross breeding. The multitude of the tribe speak only one language: made supremely remarkable in Africa and above all in the Nile basin where a pleiade of nations, several of which are no more than 20,000 subjects, are juxtaposed and intermingled in the checker pattern, presenting an equal diversity of language.<sup>1</sup>

Cocerning this issu unlike the aforemention conclusive statement John Markakis clearly stated that “the Oromo comprised a nation of many tribes, each of whom oprated quite independent

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<sup>1</sup>Martial De Salviac,(1901), *An Ancient People in the State of Menelik: The Oromo, Great African Nation* (Ayalew Kanno tr, (2005) 12-13

of the rest and could strike out entirely on its own. This segmented structure of Oromo organization divided the Oromo ethnic group into numerous independent tribes given to inter-tribal warfare”.<sup>2</sup> Although the majority members of the Oromo ethnic group have been situated economically in the fertile central, south-western and south-eastern parts of Ethiopia, they had been also historically marginalized in cultural, political, and economic relationships within the highland empire, especially it became worsen from the mid-nineteenth century and onwards.

According to some writers, a plethora of important social, cultural and political factors in recent times the Oromo people have developed their own sense of harmony, called Oromummaa. The term ‘Oromummaa’, as an element of culture, nationalism, and political vision of the people of Oromo at large, has the power to serve as a manifestation of the collective identity of the Ethiopian Oromo national movement.<sup>3</sup> According to Assafa Jalata, the foundation of ‘Oromummaa’ must be also built on overarching principles that are embedded within the Oromo traditions as well as culture and, at the same time, have universal relevance for all oppressed peoples of the country and its neighboring nations.

He further strongly argues that the prejudices and stereotypes towards the Oromo people consciously or unconsciously have influenced Ethiopians and Ethiopian studies. According to him, Ethiopians, and particularly those Ethiopian scholars and Ethiopianists who have been influenced by these racist assumptions and stereotypes, have never respected the Oromo people’s tradition, culture as well as social norms and thereby have opposed the Oromo political struggle for social justice democracy, and human rights under a variety of different pretexts.<sup>4</sup>

During their long political and legal history, the Oromo people have also developed their own traditional administration and system of governance known as the Gada system. In other words, the Oromo nationalism has been developed in the form of Gada system based on a common political history and a unique age based administrative structure that engulf even

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<sup>2</sup>John Markakis, *Ethiopia: Anatomy of a Traditional Polity* (Shama Books Addis Ababa 2006) 31

<sup>3</sup>Assafa Jalata , ‘Being in and out of Africa: The Impact of Duality of Ethiopianism’ (2009)Vol. 40 *Journal of Black Studies* 205-209

<sup>4</sup>Ibid, pp. 205-206

other nation-nationalities and peoples of Ethiopia, a social stratification partly based on an eight-year cycle of age sets of the Oromo people.<sup>5</sup> That means the Gada generational sets of the Oromo administrative structure move from one level to another after each cycle for a 40-year period until completion at the Luba level, an adult male suffrage membership. At each stage, Gada members receive education about the history of Oromo people, military strategy, legal tradition, and democratic system of governance.<sup>6</sup>

It also serves as a democratic institution which also encourages the genuine participations of all segments of the Oromo society and further accommodates the interests of the peoples of the Oromo tribes. In this regard, a writer properly pointed out and precisely summarizes the current legal and political situation of the Oromo Gada system of governance as follows:

Most often mentioned in the recent literature is the case of the Oromo people, the largest ethnic group or nation in Ethiopia, with a long and rich historical tradition. Their age-grading and generation-set system called gaadaa is a case in point. Particularly the Guji and the Borana Oromo still practice it to this day, though most other Oromo groups abandoned it during their development of indigenous states (the Ghibe region kingdoms) in the 19th century and during the process of partial integration into a wider Ethiopian highland society.<sup>7</sup>

According to Assafa Jalata, Gada system of governance included the fundamental principles of checks and balances (through periodic succession of every 8 years), division of power and balanced opposition groups as well as allowing power sharing between higher and lower administrative organs to prevent political power and administrative responsibility from falling into the hands of despots.<sup>8</sup>

Besides, other fundamental principles of the Gada system of governance included balanced representation of all Oromo branches, lineages, regions, and confederacies; accountability of leaders; and the settlement of disputes through amicable reconciliation and the respect for fundamental rights and liberties of the Oromo people.<sup>9</sup> Gadaa Melbaa on his part strongly

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<sup>5</sup> Ibid,

<sup>6</sup> Saheed A. Adejumobi, 'The History of Ethiopia' in Frank W. Thackeray and John E. Findling, Series (eds), *The Greenwood Histories of the Modern Nations* (Greenwood Press 2007) 111

<sup>7</sup> Jon Abbink, 'Ethnicity and Constitutionalism in Contemporary Ethiopia' (1997) Vol. 41, *Journal of African Law* 161

<sup>8</sup> Assafa, (n 3) 208

<sup>9</sup> Ibid

argued that the Oromo Gada system is an indigenous democratic system of governance almost similar to the Grecian Polls in which elected officials including the Abba Gada (President), the Abba Dula (Commander-in-chief of the Army), the Abba Hori (Chief of the Treasury), and nine Hayyuus (Higher Judges of the Gada system) assumed public office for non-renewable 8 year terms. And hence according to him it is a uniquely democratic political and social institution that governed the life of every individual in the Oromo society from birth to death.<sup>10</sup>

According to Assefa Jalata and Gadaa Melbaa's assertion the Gada system of governance was also a highly developed home grown and self-sufficient political system which has influenced every aspects of the people of Oromo life. In other words, it is a democratic system of governance that organizes the Oromo society into different age groups or sets (about 7-11) that assume different political and social responsibilities in the society every eight years.

Moreover, the Gada system has also guided the religious, social, political and economic life of the Oromo people for last many years, and it also shapes the Oromo people's philosophy, art, history and method of time-keeping. In the end, the Gada system is considered as basic law of the Oromo society, a democratic system of governance by which people administer themselves in their own localities, defend their territory and fundamental rights and freedoms of the people of the Oromo nation, maintained and guard their cultural values, social norms and socio-economic activities through which all their visions and aspirations are fulfilled.<sup>11</sup>

The Oromo Gada system of governance has also served as the basis of democratic and egalitarian political rhetoric among the Oromo people. Under it the power to administer the affairs of the Oromo people and the legislative power that empower to make laws and regulations basically belong to the same people. On top of that, every male member of the society who is of age and of Gada grade has full right to elect and to be elected even though this approach is criticized by female activists from the same ethnic group. Moreover, all the people of the Oromo nation including women have the right to air out their socio-political views and opinions in any public gathering without fear and reservation.<sup>12</sup> However, in the

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<sup>10</sup>Gadaa Melbaa, *Oromia, an Introduction to the History of the Oromo People*(1988)

<sup>11</sup> Ibid,

<sup>12</sup>Interview with Alemayehu Haile, researcher, Oromo Cultural Center, (Addis Ababa, 21 June 2016)

last hundred years the Gada system of governance and the Oromo's administrative and political role become less visible and its positive contribution among the Oromo people was not taken seriously by the successive central governments of Ethiopia although recently the regional state of Oromia tries to consolidate the Gada system and appreciates its positive contribution in maintaining law and order as well as containing conflicts. Such and other social, economic and political factors, lead the Oromo resistance to become visible over time that included the Oromo Independence Movement of 1936; in the same year a confederation of Oromos from Hararge, Shoa, Jimma, and Ilubabor came together under the umbrella of the Western Oromo Confederation although the country was under the occupation of Italian enveders.<sup>13</sup>

According to Alemayehu Haile this political group had sent an appeal to the League of Nations in 1936 based on the basis of the right to self-determination. Besides, the Bale rebellion of 1964–1970 was also one of the recognized opposition movements in the Oromo political history.<sup>14</sup> According to some prominent Oromo scholars, the Oromo rebels also exploited Islam as a nationalist ideology for their nationalist projects. Besides, by the mid-1960s, the Oromo nationalism was also dominated by the Mecha-Tulema socio-economic organization, a self-help development association with strong political motive and cultural attributes led by the dominant figure, General Tadesse Biru, whose influence and nationalist movements culminated in his arrest by the order of Emperor Haile Selassie's government in 1966.<sup>15</sup>

Moreover, in the Bale Province, Wako Gutu, a local leader, emerged as the most important foe of what was considered a battle for Oromo's liberation from the Amhara domination. His armed resistance began in the 1940s and hence since then the Oromo people of the area became more militant than the previous once and because of this in 1973 the Oromo elites established a political organization called Oromo Liberation Front (OLF), with the clarion call of "total liberation (independence) of the entire Oromo nation from Ethiopian colonialism."<sup>16</sup> Nevertheless, the current national regional state of Oromia is established relatively in recent

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<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Adejumobi, (n 6) 112

<sup>16</sup> Ibid, p. 126



times i.e., before 25 years, particularly during transitional period following the adoption of the transitional period charter of Ethiopia by the peace and democracy conference of party representatives in 1991. Although the general recognition was granted to all ethno national groups by the transitional period charter, until proclamation No. 7/1992 become fully effective there was no a unified and strongly consolidated national regional state which administer the areas where the Oromo people live contiguously and actively participating in the country's political system representing the Oromo nation as a whole.

However, since 1992 the Oromo people established its own national regional state like that of other regional states of Ethiopia consisting of places mainly and predominantly where the people of the Oromo nation live in a contiguous geographic area. And hence currently the national regional state of Oromia shares an internal boundary with almost all regional states of Ethiopia except the national regional state of Tigray which the Amhara region curtailed as well as it also shares an international boundary with Kenya to the south and the Sudan to the west.<sup>17</sup>

The following map is the political and administrative map of Ethiopia which clearly shows its internal administrative divisions and border lines of the same. In this political and administrative map of the country the national regional state of Oromia is found mostly at the heart of Ethiopia and covers vast areas of the country. The Oromia national regional state political and administrative area is as clearly indicated in the following map mainly painted by red color.

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<sup>17</sup> Article 2 (1) of the 2001 revised constitution of Oromia Region.

### 3: Political and Administrative Map of Ethiopia that indicates Oromia Region



Source:<https://www.google.at/search?q=map+of+Oromia+region,+Ethiopia>, Accessed 24/05/2017

### 9.3. Legal Framework and Political Practices of Oromia Region

As mentioned above following the adoption of the Transitional Period Charter of Ethiopia, the legislative council of Oromia national regional state government promulgated its own regional state constitution for the first time in January 1993 even before the FDRE constitution of 1995 became into picture and then amended the same constitution on 27 October 2001 in order to determine separation of power among state organs, strengthen the national regional state's legislative and political power as well as to reorganize the administrative structure of the region and thereby enhance good governance in the national regional state of Oromia.<sup>18</sup>

Because of this, the 2001 revised constitution of the national regional state of Oromia exclusively recognizes and thereby institutionally organizes three major government organs of

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<sup>18</sup> Paragraph three of the revised constitution of Oromia national regional state.

the region, namely the legislative council (Cafee in Afan Oromo), the executive body and the judiciary unlike the previous ones.<sup>19</sup> Because in the first written constitution of Oromia national regional state almost all government organs of the region were under the control of a single individual and his/her close supervision, i.e the president of the national regional state of Oromia was serving not only as chief executive branch of the regional government but also he was the speaker (chairperson) of the legislative council of the region and symbolically he also was president of the regional state.

Later on when the 1993 constitution of the regional state was revised in 2001 with the purpose of incorporating the fundamental principles of separation of power and thereby strengthen checks and balances among and between organs of the regional state government as well as to fully exercise the basic principles of transparency and accountability, the office of the Speaker of the national regional state legislative council known as Caffee in Afan Oromo has been established.<sup>20</sup>

Although Article 2 (1) of the 2001 revised constitution of Oromia region clearly stipulates that the Oromia national regional state is the uninterrupted territory inhabited by the people of the Oromo nation and other peoples who made a choice to live in the region, the first paragraph of the preamble and Article 39 of the national regional state of Oromia revised constitution exclusively recognizes the existence of the Oromo nation. And thereby the revised constitution of the same gives all political and administrative powers to only this specific national group without taking the existence, important roles and fundamental rights and freedoms of millions of non-Oromo nations, nationalities and peoples of Ethiopia settling in the region into account.

From the very beginning, the 2001 revised constitution of Oromia national regional state does not provide serious concern to non-Oromo ethno-linguistic groups living in the region and did not leave any space to such nations, nationalities and peoples of Ethiopia who are considering themselves as part and parcel of the region even though some of them have identified

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<sup>19</sup> Ibid, Article 46.

<sup>20</sup> See also paragraph three of the preamble of the 2001 revised Constitution of national Regional State of Oromia.

themselves as indigenous or native people to the national regional state of Oromia.<sup>21</sup> In other words, unlike the aforementioned seemingly inclusive provision Article 8 of the revised constitution of Oromia national regional state exclusively grants sovereign power to the 'People of the Oromo Nation' by stipulating that the supreme power of Oromia region resides to the People of Oromo. Besides, under Article 39 of the same constitution preserves the right to self-determination including and up to secession to the people of the Oromo Nation. This strong constitutional assertion and firm political stand of the government officials of national regional state of Oromia as well as the political leaders of the governing party of the region, OPDO, suggests that the right to exercise self-determination including the right to self-government, as provided by the regional constitution, is reserved only to the people of Oromo nation.

Because of this, the same constitutional provision totally excludes the large number of not only non-indigenous ethno national minorities to the regional state of Oromia but also some of indigenous ethno-linguistic minority groups such as Zay community of the region from the constitutional promise of the right to self-determination.<sup>22</sup> In this regard, Tokuma Dhaba strongly argues that the Oromia national regional state has been alleged to be inhabited homogenously by Oromo people. That is why the 2001 revised constitution of Oromia region has reinforced only the sovereignty of Oromo people.

According to Tokuma the fundamental cause for the denial of the existence of such non-Oromo ethno national minority groups in Oromia revised constitution is therefore attributed to the narrow minded general definition of nations, nationalities and peoples of Ethiopia and hence according to him the wrong assumption comes not only from the law makers of Oromia

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<sup>21</sup>The interviewees of the members of the community strongly asserted that although Zaye and Garo communities are identified themselves as indigenous nation-nationalities to the region, the 2001 revised constitution of Oromia national regional state and practical application of the same regional government do not recognize and thereby give any political space to these and other indigenous communities of the region.

<sup>22</sup>Christophe Van Der Beken and Yonatan Tesfaye Fisseha, 'Empowerment and Exclusion: The Legal Protection of Internal Minorities in Ethiopia' in Asnake Kefele and Assefa Fisseha (eds), *Federalism and Local Government in Ethiopia*, (2015) 62

national regional state and thereby the revised constitution of Oromia region but also it mainly comes from the framing of federal constitution of 1995.<sup>23</sup>

Even though the revised constitution of the national regional state of Oromia slightly mention the presence of non-Oromo ethnic groups by stipulating that other peoples living in Oromia region, as an instance, it unequivocally declares the national regional state of Oromia is owned and governed exclusively by the Oromo nation.<sup>24</sup> Moreover, the national regional state revised constitution of Oromia simply states that “the people of Oromo nation shall have the right to maintain their distinct 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.”<sup>25</sup> However, nothing is provided as to the rights of non-Oromo nations, nationalities and peoples of the country living in the region including the aforementioned indigenous ethno national group who desperately demanded to preserve their culture and language and exercise the fundamental rights of self-determination including the right to self-government.

Because of this reality, some constitutional lawyers strongly believe that the 2001 Oromia national regional state revised constitution and other sub constitutional laws disregard the very existence, fundamental rights and freedoms of millions of nations, nationalities and peoples of Ethiopia living in the same region who are however regarded as non-Oromo ethno national minority groups.

And this harsh legal, political and administrative measures of the national regional state government of Oromia against those non-Oromo ethno national minority groups clearly violates not only the aforementioned fundamental rights and freedoms of the same but also the principles of accommodating diversities laid down under the federal constitution of Ethiopia that governs all regional state governments alike and international human rights instruments which Ethiopia is a party. Concerning this issue Getachew Assefa Wolde Mariam wrote that:

In Oromia, all types of minorities are not recognized. Non-territorial minorities (and all other types of new minorities) beyond the preview of the law, are exposed to

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<sup>23</sup>Tokuma Daba, ‘Legal and Practical Responses to the Rights of Minorities in Oromia Region’(LL.M Thesis, Addis Ababa University 2010) 86

<sup>24</sup> Article 2 of the Revised Constitution of Oromia Region, 2001.

<sup>25</sup> Ibid, Article 39 (1)

violations both their basic human and minority-specific group rights. The total de Jure neglect of their existence in the region has paved the way for the violations of rights and made it extremely difficult, if not impossible, for the victims to seek redress for rights violations.<sup>26</sup>

With regard to persistent conflict and violations of minority rights in Oromia national regional state citing Tesfaye Tafese's research paper presented at the Ethiopian Studies conference held in Norway (2006) Assefa Fiseha also wrote that in 2002, as a result of mobilization orchestrated by local political elites, a large number of Amharas were evicted from the southwest Oromia to the Amhara region, and their quest to return remains an unsettled issue.<sup>27</sup> Getachew Assefa Wolde Mariam on his part further explains the important reason why the Oromia national regional state government officials and the governing party politicians made this consciously and clearly states that the root cause of these violations of the rights of non-Oromo ethno national minority groups is the sentiment strongly held by the Oromo political elite—who were part and parcel of the national political elite that framed the federal constitution—that Oromia belongs to only the Oromo people and that other ethno national groups, especially the Amhara, do not belong there.<sup>28</sup>

Since Article 8 of the Oromia national regional state revised constitution of 2001 does not share sovereign power to those non-Oromo ethnic groups of Ethiopia living in the region, they could not and cannot exercise their right to equitable representation and active political participation in the overall affairs of the national regional state of Oromia let alone to claim the right of self-government for territorially concentrated ethnic groups of the same national regional state.

Therefore, many ethno national groups of Ethiopia who are identified as non-Oromos to the national regional state of Oromia have no constitutional guarantee to claim the legal recognition and thereby protection of their fundamental rights and freedoms which are essential to their day to day socio-economic and political life within the same national

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<sup>26</sup>Getachew Assefa Woldemariam, 'Constitutional Protection of Human and Minority Rights in Ethiopia: Myth v. Reality' (PhD Dissertation, Melborn Law School 2014) 111

<sup>27</sup>Assefa Fiseha, 'Intra-Unit Minorities in the Context of Ethno-National Federalism in Ethiopia'(2016)Vol. 3 *Ethiopian Journal of Federal Studies* 53

<sup>28</sup>Getachew, (n 26) 112.

regional state nor accommodative political policy and administrative arrangement implemented in the region.

Moreover, although many of the national regional state constitutions of federal Ethiopia provide special representation arrangement for ethno national minorities in the form of quota system in their respective regional councils,<sup>29</sup> on the contrary the Oromia national regional state revised constitution of 2001 unequivocally denies even the very existence of not only non-indigenous but also the indigenous ethno national minorities as well as their fundamental rights and freedoms let alone adopting and thereby applying the special arrangement of quota system in order to engage such non-Oromo ethno national minorities living in its administrative territory. As one can easily understand from the following table, in Oromia national regional state there are many ethno national minority groups (among these some of them are listed down in the subsequent table), who are non-Oromos but considering their whole life as part and parcel of the polity of such particular national regional state. However, as noted above they are not properly recognized by the revised constitution of the region and thereby treated by officials of the government of the same although their total number accounts more than 3 million.<sup>30</sup>

**Table 2. Lists of Some non-Oromo Nation-nationalities and peoples residing in Oromia Region**

No.	Nation/Nationality	No. of population	Coverage by per cent
1	Amhara	1,961,277	7.22 %
2	Guragie	251,453	0.93 %
3	Gedeo	245,160	0.90 %
4	Somali	89,793	0.33 %
5	Yem	84,607	0.31 %
6	Welaita	64,552	0.24 %

<sup>29</sup>Article 45 (3) of Amhara, Article 48 (2) of Benshangul Gumuz, Article 50 (2) of Gambella and Article 50 (2) of Southern national regional state revised constitutions respectively allow such kind of political arrangement.

<sup>30</sup>The 2007 Population and Housing Census Report clearly shows that in Oromia region there are several nation, nationalities and peoples of Ethiopia whose number accounts more than 3 million.

7	Tigray	61,805	0.23 %
8	Hadia	52,813	0.19 %
9	Sidama	52,604	0.19 %
10	Siltie	50,216	0.18 %
11	Dawuro	45,351	0.17 %
12	Kembata	41,838	0.15 %
13	Keficho	36,027	0.13 %
14	Konso	31,085	0.11 %
15	Argoba	30,832	0.11 %
16	Mao	24, 272	0.09%
17	Alaba (Halaba)	16,904	0.07%
Total	Seventeen ethnic groups	3,140,589	11.44%

**Source: the 2007 Population and Housing Census Report, published in December 2008.**

Accordingly, in Oromia national regional state numerically the most important ethno national minority group is the Amhara people, who currently constitutes more than two million people which also covers about 7.22% of the total population of the region. Nevertheless, the Oromia national regional state revised constitution of 2001 does not make any reference in relation to the fundamental rights and freedoms of nations, nationalities and peoples living in the region in relation to the right to existence, representation and self-government of the same.

Concerning this issue Tokuma Dhaba also in his research finding asserts this reality that the revised constitution of Oromia national regional state clearly stipulates nothing as to legally guaranteed representation of ethno national minorities. As a group in this national regional state ethno national minorities have rare opportunity to be represented at *Caffee Oromia*.<sup>31</sup> As mentioned above the preamble of the Oromia national regional state revised constitution

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<sup>31</sup> Tokuma, (n 233) 99-100



stipulates in the same manner that ‘we the People of Oromo’ instead of saying that we the peoples of Oromia region that may include all ethnic groups living in the region.

This kind of constitutional expression clearly excludes non-Oromo nation-nationalities and peoples of Ethiopia who are living in the region from the polity of the same. Moreover, this policy of denial and discriminatory legal approach is also strongly expressed in the definitional part of the revised constitution of the region by clearly stipulating that “the people of the 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 in a contiguous territory of the regional state”.<sup>32</sup> And the definition of Oromia national regional state revised constitution of 2001 even disregards the existence of Oromos who are living outside of Oromia region, for instance that of the Oromo community of Amhara, Benshangul Gumuz, Raya Oromo of Tigray region, Southern nations, nationalities and peoples and Ethiopian Somali national regional states. The indigenous community of Zay to Oromia national regional state that is strongly claiming its distinct identity and thereby the right to self-government since 1991, it is not mentioned even in the preamble as well as subsequent provisions of the 2001 revised constitution of Oromia region.

Besides, in north Shewa administrative zone of Oromia region specifically in Grar Jarso *Wereda* there are at least seven *Kebele* administrative units territorially contiguous whose residents are Amhara by nationality but indigenous to that location. The residents of the aforementioned *Kebele* administrative units are formally represented in Grar Jarso *Wereda* council, however, they do not have any socio-political role in decision making process of the same council since they do not listen and speak Afan Oromo, the working language of Oromia national regional state and as the result they are not represented at both *Wereda* administration legislative council as well as Chafee Oromia.<sup>33</sup>

Such discriminatory approach towards those non-Oromo nations, nationalities and peoples of Ethiopia who believe that their political life is highly associated with this particular region, are

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<sup>32</sup>Article 2 of the 2001 Revised Constitution of Oromia Region.

<sup>33</sup>Kasaye Shimelis, ‘The Accommodation of Minority Rights in Oromia National Regional State: A Case Study of Grar Jarso Wereda’(MA Thesis, Addis Ababa University 2016) 59-60

excluded from the polity of Oromia national regional state. Hence in Oromia region, all non-Oromo nations, nationalities and peoples are regarded as non-indigenous ethno national groups considering that they have been moved to Oromia region in the recent past and can therefore only be seen as internal migrants who come from other regional states for the very purpose of economic gain by employing their labor or know-how.<sup>34</sup> In other words, there are many ethno national minority groups who are non-Oromo but mainly reside for long period of time in the region due to historical facts, resettlement programs arranged and took place during the era of the Derg regime and recently exercising their constitutional right to freedom of movement enshrined in the FDRE constitution of 1995.<sup>35</sup> The result of such narrow nationalist attitude of the political leaders of the governing party of the region towards the non-Oromo ethno national minority groups living in the region particularly against the Amhara people, who are the larger ethno national minorities of the region, the Oromia national regional state government does not entirely recognize the right to existence, fair and equitable representation at all levels of government institutions of the region except in the first and second grade city councils found in the region.<sup>36</sup>

According to Getachew Assefa Welde Mmariam, even though political practices shown that cities in Oromia region are totally controlled and run by Oromos irrespective of their number, since 2003 it also become more legal to support by setting false threshold.<sup>37</sup> Because of this proclamation No. 65/2003 was enacted and thereby reserved 30% of the seats of urban council for ethnic Oromos and 5% seat for the same ethno national group in rural *Kebele* administrative units surrounding urban centers of the region recognized by the law of the regional state as 1<sup>st</sup> and 2<sup>nd</sup> grade cities.<sup>38</sup>

Besides, to strengthen the political dominance of the Oromo nation in urban centers and make it legally legitimate the predominant control of 1<sup>st</sup> and 2<sup>nd</sup> grade cities, the Oromia national

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<sup>34</sup>Christophe Van der Beken, 'Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level' (2007) Vol. 20*Africa Focus* 125

<sup>35</sup> Article 32 of FDRE constitution.

<sup>36</sup>Although their representation is not proportional to their number, in metropolitan cities of Oromia region there is an arrangement to be represented in the council of such cities who are considered as 1<sup>st</sup> and 2<sup>nd</sup> grade (50% for city dwellers of Oromo nation, 30% for rural dwellers of Oromo nation but included to city/town administrations and 20% for city/town residents who are considered as non Oromo nations and nationalities).

<sup>37</sup>Getachew, (n 266) 115

<sup>38</sup>Article 13 (3 and 4) of Urban Local Government of Oromia National Regional State Proclamation No. 65/2003.

regional state government also amended proclamation No. 65/2003 in 2006 followed the 2005 national election whose political effect was loosening such urban areas and introduced new threshold by favoring the members of Oromo ethno national group living in urban centers.

According to the amended proclamation of the same regional state, the seats of rural *Kebeles* that surrounded urban centers not only has been raised to 50% and 20% reservation respectively but also the 50% reservation for Oromos of city dwellers has been applicable in the same manner to the rural *Kebele* councils of the same.<sup>39</sup> In this regard, Tokuma Dhaba further explains the existing strong tension between the Oromo nation and other nationalities and peoples of Ethiopia, particularly between the Oromo nation and the people of Amhara ethno national group living in the regional state of Oromia. According to Tokuma Dhaba “while the latter strongly claims that they are demographically legitimate to control and establish city administration in the region, the former strictly claims that they are politically legitimate owners of the region as significant number of Amhara ethno national group came to towns of Oromia region by evicting native/ indigenous people of the Oromo nation. Particularly, the Oromos forward historical justification and raise affirmative action as a defense.”<sup>40</sup>

Concerning this Christove Van Der Beken and Yonatan Tesfaye also strongly suggest that the Oromia regional state constitution considers only one ethno national group the Oromo-indigenous people to the region; so that the indigenous group at city level can be no other than the Oromo nation. According to these writers Article 13 (3) of proclamation No. 65/2003, the Oromia city administration establishment proclamation therefore states that “where the Oromo are a minority in a given city, the regional executive council may reserve up to 30 percent of the seats for the Oromos.”<sup>41</sup>

Moreover, Proclamation No. 113/2006 repealed this provision and increased the percentage of seats in city councils that could be reserved for the Oromo to 50 percent. The aforementioned proclamation is not only an instrument to encroach the fundamental rights of ethno national minorities living in Oromia region but also it empowers the executive branch of the national

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<sup>39</sup>Article 2 (4 and 5) of Urban Local Government of Oromia National Regional State Proclamation No. 116/2006.

<sup>40</sup> Tokuma, (n 233) 7

<sup>41</sup>Beken and Yonatan Tesfaye Fisha, (n 222) 74

regional state government to decide on the amount of threshold whenever it finds necessary. In this regard Tokuma Dhaba also strongly argues in favor of the existence of the aforementioned legal provisions and the total control of the Oromo people regarding city administrations and the introduction of new threshold, he further explains his justification that:

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 be deprived of the right to have full control over those cities in their region.<sup>42</sup>

Furthermore, Tokuma argues that Article 33 of the revised constitution of Oromia region is 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 sector provided s/he speaks the working language of the region.<sup>43</sup> However, as mentioned above this provision requires ability to speak Afan Oromo, the working language of the region, to be treated equally whenever the employment opportunity is found in the region.

The same provision clearly puts the regional government's political orientation and legal position that any Ethiopian citizen who lives in the region and understands the working language of the national regional state has the right to work in any of the region's public or governmental employment positions to be obtained either through election or placement procedures.<sup>44</sup>

Moreover, according to the aforementioned constitutional provision individual citizens that are residing in Oromia regional state are also legible to be elected if s/he speaks the working language of the region. On the other hand, the constitution of Oromia national regional state clearly said nothing related to the guaranteed representation of ethno national minorities who are considered by politicians of Oromia region as non-Oromo.

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<sup>42</sup> Tokuma, (n 233) 92

<sup>43</sup> Ibid, pp. 87-88.

<sup>44</sup> Article 33 of the 2001 revised constitution of Oromia national regional state.

As a group ethno national minorities have therefore rare opportunity to be represented at Caffee Oromia since ethno national minorities may not win election when they compete with the majority Oromo people of the specific electoral constituency.<sup>45</sup> Here one can ask why the revised constitution of Oromia national regional state becomes as such ignorant of the existence as well as fundamental rights and freedoms of non-Oromo ethno national minority groups living in theregion? According to some Oromo scholars and more close observers of the national regional state political situation although physically it was not there as an active political organization, the influence of the Oromo Liberation Front (OLF) narrow nationalist sentiment was very strong to make the subsequent laws of the regional state of Oromia including the revised constitution of 2001 and some political as well as cultural policies of the Oromia national regional state government non-inclusive by their very nature.<sup>46</sup>

Unlike the aforementioned constitutional set up of the national regional state of Oromia which denies even the very existence of not only non Oromo nations, nationalities and peoples of Ethiopia who came from other regional states and are living in this region but also the indigenous ethno national group i.e. Zay community as well as political and administrative policies they are practicing in the same region.

Nevertheless, currently the national regional state government of Oromia takes some positive political and administrative measures towards language and representation rights of those non-Oromo nations, nationalities and peoples of Ethiopia living in mostly urban areas of the region mainly considered as 1<sup>st</sup> and 2<sup>nd</sup> grade cities and towns that are legally established as an autonomous administrative units.

In other words, although the Oromia national regional state revised constitution of 2001 does not have any room to acknowledge and guarantee the fundamental rights of non-Oromo ethno national minority groups living in the region, in the last ten years the officials of the regional state government become positive towards the representation of non-Oromo ethno national

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<sup>45</sup>Guta Balcha, 'Minority Rights Protection in Oromia National Regional State: A Case Study of the Zay People' (MA Thesis, Addis Ababa University 2016) 55

<sup>46</sup>Interview with Milkesa Midega, Lecturer, Dire Dawa University and PhD candidate in Federalism and Governance Studies, Addis Ababa University, (Addis Ababa, 5 November 2016) and Melese Abayneh, former Head, legal and Administrative Affairs Standing Committee of Chafe Oromia, (Addis Ababa, 17 November 2016)

minority groups in city administrations and thereby trying to, a certain extent, accommodate cultural and language rights of these ethno national minorities.

#### **9.4. Sub Constitutional Laws of the Region and the Rights of Ethnic Groups**

Despite the preamble, Article 8 and Article 39 of the 2001 revised constitution of the national regional state of Oromia wherein sovereign power resides only in the Oromo nation and the right to self-determination including and up to secession is reserved to the same people, the right to be elected and to elect is equally guaranteed to all residents of the national regional state of Oromia.<sup>47</sup> According to Tokuma Dhaba, for a close observer of Oromia region members of Caffee Oromia, to a certain extent, represent the non-Oromo nation-nationalities and peoples indirectly as they are elected by all residents of the region including those non-Oromo ethno national groups although the sovereign power which is exercisable by delegating power to the Caffee resides only in the hands of Oromo people.<sup>48</sup> However, according to sources of the researcher the existing experience shows the reality of the region that until now Caffee Oromia has no any representatives from non-Oromo ethno national minority groups living in the region.

This is due to the very reason that the governing party, Oromo People Democratic Organization (OPDO) is always proposing only members of Oromo nation even to be elected as representatives of both the House of Federation and the House of Peoples' Representatives at federal level even though there are some non-Oromo peoples who speak Afan Oromo being members of the governing party. In this regard, Tokuma Dahaba further argues that if we plainly follow the revised constitution of the region other than Oromos, no ethno national group that has legitimate claim to have a seat even in the City Councils of 1<sup>st</sup> and 2<sup>nd</sup> grade urban centers of the region.

According to Tokuma this legal and practical treatment and accommodative approach clearly indicates that the proclamation that established city councils of the aforementioned urban areas gives better protection and opportunity for non-Oromos as the same proclamation at

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<sup>47</sup> Article 38 (1) of Oromia revised constitution of 2001.

<sup>48</sup> Tokuma, (n 233) 82

least legally recognizes not only the very existence of non-Oromos but also to a certain extent guarantees the rights of participation and representation in most city councils of the region.<sup>49</sup>

Furthermore, Ato Issa Boru member of Chafee Oromia strongly argues and justifies that Amharic being considered as a federal language has also a certain share in Oromia Radio and Television broadcast and particularly serves as a medium of instruction at primary education level in certain urban areas and some rural localities where the numbers of Amharic speaking people become important is also offered in Amharic language.<sup>50</sup> Because of this, currently (2016/2017) there are 376,798 students who are attending their primary education through Amharic language in 1027 elementary schools of the region although most of them are located in urban areas and covers only 5% of the total student population of the region.<sup>51</sup> This practical, but positive political and administrative, measure taken by the regional government of Oromia, to a certain extent, indicates that in Oromia national regional state the practice by far extends better recognition and protection to Amharic speaking ethno national minority groups than the constitutional framework of the region.

That is why some Oromo scholars strongly argue that language and cultural rights of ethno national minority groups living in Oromia region in general and the Amhara ethno national group in particular are, to a certain extent, politically recognized, socially respected and legally protected. Because according to this scholar 7.8 % of primary schools in the region are using Amharic language as a medium of instruction in the region.<sup>52</sup> In this regard, Guta Balcha also strongly argued and asserted that the Amhara people living in Oromia region have been practically enjoying some minority rights which are not stated in the 2001 national regional state revised constitution.

Concerning this reality Guta further stipulated that there is undeniable fact that all ethno national minority groups in Oromia are not treated and represented alike since significant members of Amhara ethno national group are relatively more privileged in using their

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<sup>49</sup> Ibid, p. 83

<sup>50</sup> Interview with Issa Boru Tola, chairperson of Legal and Administrative Affairs Standing Committee of Chafee Oromia, (Addis Ababa/Finfine, 1 November 2016)

<sup>51</sup> Interview with Teferi Habtamu, Oromia Region Education Bureau Data Administration Officer, (Addis Ababa, 1 November 2016)

<sup>52</sup> For instance Milkessa Midega, (n 466)

language and culture than other ethnic groups.<sup>53</sup> According to Guta the members of Amhara people at least can send their children to the regional government financed elementary schools where education in primary school is offered in Amharic language.

In other words, according to Issa and Guta's strong conviction and justification despite the constitutional arrangement of the region, the practice of the government of Oromia national regional state somehow provides positive treatment towards the Amharic speaking people living in the region and to a certain extent guarantees the rights of ethno national minorities who can speak and use Amharic language which is not formally acknowledged in the revised constitution of Oromia national regional state and other subsequent political policies of the region. However, Yared Legesse contrarily argues that in Oromia national regional state where Afan Oromo is the official language of the regional government, a large portion of people belonging to other "nations, nationalities or peoples" were shut off from the political process because they do not have Oromo blood.<sup>54</sup>

Besides, although before 1999 the regional government's education policy was not as such accommodative of languages, it does not mean that all nations, nationalities and peoples living in the region were totally denied or allowed to exercise their right to use and develop their own language that is considered as part of a fundamental rights and freedoms of ethno national minorities.<sup>55</sup> Of course according to Alan Patten and Will Kymlicka mother-tongue instruction is surely as relevant for the effectiveness of the right to education as receiving an education enabling a person to master (one of) the official language(s) of the state concerned.<sup>56</sup>

Moreover, in the instructional process, when mother tongue is used as a medium of instruction for at least 6-8 years old children, the results are impressively positive enhanced self-

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<sup>53</sup>Guta, (n 455) 68

<sup>54</sup>Yared Legesse Mengistu, 'Protection of National Minorities in Multinational Federations: A Comparative Analysis' (PhD Dissertation, Central European University 2010) 31

<sup>55</sup>Currently in almost all rural and many urban areas of Oromia region, non-Oromoparents are forced to send their children to schools whose medium of instruction is 'Afan Oromo'; some others preferred to stay their children at home or forced to send to cities that their distance is far from their residential area and face unnecessary cost. However, this cumbersome condition has been, to a certain extent, rectified since 1999 mainly in first and second grade cities of the region as well as in certain rural areas where substantial number of Amharic speaking people live together.

<sup>56</sup>Alan Patten & Will Kymlicka, 'Introduction: Language Rights and Political Theory: Context, Issues and Approaches' in Alan Patten & Will Kymlicka (eds), *Language Rights and Political Theory* (2003) 20



confidence, self-esteem and classroom participation of every child, lower dropout rates, higher levels of academic achievements, stay longer periods in school, shows better performance in tests and enhance greater fluency and literacy abilities for minority children.<sup>57</sup>

In this regard, by interviewing the head of education Bureau of Oromia national regional state Guta Balcha also stipulated that in the majority of towns and cities of Oromia region there is Amharic speaking schools which are financed by the regional government. In fact, in this region ethno national groups other than Oromo and Amhara have no chance to teach their children by their own mother tongue (vernacular). Because of insufficient number of these ethno national groups and economic constraints of the region, according to the Bureau head it is difficult to establish elementary schools across the regional state to provide primary education through the mother tongue of every ethno national group living in the region.<sup>58</sup> Nevertheless, when we examine the history of Oromos neglect and exclusion of non-Oromo nations, nationalities and peoples is not the main feature of the Oromo social as well as political culture rather it is known by smooth assimilation and socialization process using its Mogassa system of accommodation unlike some nation-nationalities of Ethiopia did in the past political history of the country.<sup>59</sup>

Concerning this concept Donald N. Levine also clearly stipulates that “the Galla experienced comparable accommodation and acculturation in relation to their enemies in the southwest. I have already mentioned the convention whereby hostilities were renounced when Galla tribesmen attended markets in the Gurage region, and the existence trade and ritual relationships which different Galla tribes established with both the Konso and the Derasa”.<sup>60</sup>

Of course for dispersed ethno national minorities living in the region, it is appropriate securing legal and political recognition as well as practical protection of their fundamental

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<sup>57</sup>For further reading see study reports of UNESCO, Improving the Quality of mother tongue-based literacy and learning: case studies from Asia, Africa and South America (2008) as well as Global Monitoring, Teaching and Learning (2014) respectively.

<sup>58</sup>Guta, (n 455) 52

<sup>59</sup>Mogasa system is an institutional response to make non-Oromo individuals part and parcel of the people of Oromo and allow to exercise fundamental rights equally with that of members of the Oromo nation. Hence the history of Oromo movement clearly indicates that the people of Oromo adopted other nationalities who were under the control of its administration and gradually assimilated them in smooth manner (Taken from Alemayehu Haile's statement when the interview was conducted with him in his office).

<sup>60</sup>Donald N. Levine, *Greater Ethiopia: The Evolution of a Multiethnic Society*, (University of Chicago Press, 1999 81

rights and freedoms through providing proportional electoral system or guaranteed at least certain seat in the parliaments of all levels of legislative and executive branches of the region. Moreover, installing comprehensive human rights schemes like that of other multicultural countries is an important condition to accommodate such minorities.

There should be also an opportunity to learn the language of the majority in order to compete for employment and assumption of political and administrative authority without denying them cultural rights.<sup>61</sup> Therefore, the protection of ethno national minorities and their fundamental rights as well as freedoms largely depend upon the federal and regional state governments respectively. The government law enforcing agencies of the national regional state of Oromia, ranging from the office of the chief administrator of the regional state otherwise called the president and local administrative officials of the national regional state of Oromia government, are therefore supposed to follow up the federal constitution human rights principles and other political policies as well as imperatives of the wellbeing of nations, nationalities and peoples of Ethiopia including non-Oromo ethno national minorities living in Oromia region.

However, according to the strong opinions of my respondents political leaders of the governing party (OPDO) and officials of the national regional state government of Oromia did not as such respect fundamental legal and political imperatives incorporated in federal constitutions and thereby international human rights regimes so as to accommodate non-Oromo ethnic groups living in the region. Because of this currently the non-Oromo ethno national minority groups living in Oromia national regional state suffers from a lack of political representation and cultural autonomy, with the exception of few municipalities in the region, such as Adama, Jimma, Shashemeni, Nekemt, Assela, Ambo, Metu, Ziway, Fiche, Burayu, Sebeta and Bishoftu to mention some are not represented in both regional council and executive branch of the region.

The important reason for this political situation is either the federal government of Ethiopia or the national regional state of Oromia does not have minority specific electoral laws to ensure

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<sup>61</sup> For example in South Tyrol autonomous province of Italy, Italian speaking people and the indigenous Ladin ethnic group should learn Germany and Italy and vice versa without denying the cultural right of Ladin ethnic community.

their fair and equitable representation as the FDRE constitution reserves only at federal level some 20 seats for ethno national minorities, whose number is very few. Of course, most legal and political measures to hinder minority representation and participation do not take the form of explicit bans or restrictions, but rather express themselves through a number of political and practical obstacles, which sometimes inadvertently and, at another times intentionally, seek to preclude or reduce minority representation in the politics of Oromia national regional state.<sup>62</sup> Nevertheless, in this region as mentioned above it is obvious that denying the fundamental rights and freedoms of non-Oromo ethno national minorities living in the region seems intentional. Because with respect to the rights of non-Oromo ethno national minority groups the revised constitution of the regional state of Oromia and practical application of the government of the same clearly shows their conscious decisions. In addition to constitutional denial of such ethno national minorities, a common tool that has been employed in this region has been the ethnic gerrymandering, i.e. creating electoral units in certain urban areas which tried to reduce the representation of ethno national minorities in the councils of 1<sup>st</sup> and 2<sup>nd</sup> grade municipalities including the surrounding rural *Kebele* administrative units of the region. Similarly, the size of constituencies has been used as an important tool to disadvantage such ethno national minorities living in the region.

However, ethno-linguistic minorities living in Oromia national regional state mentioned above hoped that the regional state government would allow them to develop their own political and cultural autonomy and continue developing and cherishing their distinct culture and that in the region they would strengthen the very existence of ethno national minorities of the same. Nevertheless, the reality on the ground is on the contrary, because the revised constitution of Oromia national regional state and practical application of the government of the region mainly follows policy of denial and discrimination with regard to non-Oromo ethnic groups.

Because of this, although there are some constitutional provisions which strongly deal with the recognition and guarantee of the rights of ethno national minorities at federal level, the protection of ethno national minority rights and freedoms practically could not be fully recognized and thereby guaranteed by the regional state revised constitution in general and in

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<sup>62</sup>For further understanding see Proclamation No. 65/2003 as amended by proclamation number 113/2006 which established first and second grade city councils of Oromia national regional state.

the Oromia national regional state government institutions in particular. Concerning this political and legal situation of the same region Assefa Fiseha on his part clearly stipulates that:

The constitution of the Oromia regional state is peculiar in this respect. Both its preamble and the provision on sovereignty declare that ‘the Oromo nation’ is the owner of the constitution and the region Oromia, with such ownership *expressly* excluding non-Oromos residing in the regional state. Yet Oromia state has close to two million Amharas, 250,000 Gedeo and Guraghe each, 53,000 Hadiya, 45,000 Dawuro and 42,000 Kambata intra-unit minorities. There are no express clauses for minorities’ representation in the regional state institutions such as the legislature, judiciary and the executive nor does the constitution provide for territorial or non-territorial autonomy for non-Oromos.<sup>63</sup>

Therefore, leaving ethno national minority protection to such a body as well as the right to denying recognition to the very existence of non-Oromo ethno national minority groups, equitable representation and the right to self-government puts such ethno national minorities in a vulnerable position in their respective regional state where they are perceived as privileged and overprotected at the expense of the majority. Moreover, as those non-Oromo ethno national minority groups are part and parcel of the peoples of the national regional state of Oromia, the protection of their rights falls within the regional state government responsibility.

If the national regional state government of Oromia fails to recognize and guarantee the fundamental rights and freedoms of such ethno-national minorities in its constitutional responsibility, political and administrative obligations, the federal government is the one that is constitutionally authorized to issue laws to the regional state or to the extent it can take some serious political and administrative measures over its administration.<sup>64</sup>

In this regard the federal constitution of 1995 in its specific provision clearly states that “it shall, on its own initiative, request a joint session of the House of the Federation and of the House of Peoples Representatives’ to take appropriate measures when state authorities unable

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<sup>63</sup> Assefa, (n 277) 52-53

<sup>64</sup> Article 51(14) of FDRE Constitution of 1995

to arrest violations of human rights within their jurisdiction. It shall, on the basis of the joint decision of the House, give directives to the concerned state authorities.”<sup>65</sup>

Because the ‘total domination’ of one ethno national group over the resources and institutions of government administrative agencies and denial approach of the same is the result of the exclusion of national communities, which generates dangerous tendencies in the building project of federal political system in the country. Therefore, it is only the balanced political participation of the non-Oromo ethno national minorities such as Amhara, Gedeo, Guraghe, Hadiya, Dawuro, Kambata and Tigray among others are well accommodated in the structures of political and administrative power, based on the principles of both ‘proportionality and mixed approach’, which has a potential to positively change the present dynamicsituation of the region.

Besides, the home states of those nations, nationalities and peoples of Ethiopia need to have not only the opportunity but also the responsibility to negotiate and seriously discuss about the fate of their ethnic groups with the regional state concerned government institutions and even question the federal government in order to exercise such unavoidable interventions. On the other hand, the federal government needs to maintain a strict vigilance over such kind of state to prevent their direct or indirect indulgence in the violation of minority fundamental rights and freedoms in general and ethno national minority groups in particular.

Hence, concerning this political situation the Ethiopian federal system requires serious reform of the protection of ethno national minorities not only from the domination of majority ethno national group but also from the imposition of regional state governments, if the federal government feels the pain of ethno national groups and is to adhere to constitutionalism. Because having fundamental rights and freedoms is very much interconnected with achieving the very existence of distinct identity which equates with the fundamental rights of self-determination including and up to secession.

Therefore, to enjoy the right to equitable representation and self-government of ethno national minorities of the country for the non-Oromo ethno national minority groups in every political decision of the national regional state and the right to use and develop their own language and

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<sup>65</sup>Ibid, Article 55 (16).

thereby to preserve their own identity markers such as language, culture and important social norms through developing their own cultural values, there must be constitutional recognition, legal guarantee, strong and genuine political support as well as practical treatment not only from the federal government but also from the national regional state government of Oromia.

It is also submitted that in order to protect the interests of non-Oromo ethno national minorities living in the region against majority decisions and to promote inter-ethnic cooperation at regional and sub-regional levels particularly in towns, better legal mechanisms that accommodate non-Oromo ethno national groups must be developed and some political measures should be taken. Such mechanisms could also take the form of representation of non-Oromo internal minorities in regional and sub-regional parliaments and institutions responsible for constitutional interpretation.<sup>66</sup> Considering the over all legal and political situation of the national regional state of Oromia currently members of Zay community become more aware and assertive of their distinct identity and starting to claim in an organized manner for identity recognition and thereby seeking political and legal support to ensue the right to self-government although officials of the government of Oromia national regional state have not yet given a positive response to their political and legal claim.<sup>67</sup>

## **9.5. The Case of Zay Community**

### **9.5.1. Introduction**

As mentioned above, Oromia national regional state is composed of many ethno national groups although the regional state revised constitution of 2001 and practical application of its government deny not only equitable representation and political participation of them but also the very existence of the same. Because of this, some of the aforementioned indigenous ethno national groups raise quest for the right to recognition as a distinct ethno-national community and thereby claim to exercise the right to political representation through actively participating in the national regional state polity and cultural autonomy in their own localities.

Moreover, some of them which are territorially concentrated ethno national groups further claim to exercise the right to self-government and equitable representation in the national

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<sup>66</sup>Beken and Yonatan Tesfaye Fesseha, (n 222) 72

<sup>67</sup>Interview with Alemayehu Haile, (n 12) and Muluye Welelaw, Constitutional Interpretation and Constitutional Rights Case Flow Manager, House of Federation, (Addis Ababa, 27 April 2016)

regional state government institutions by establishing their own territorial administration within the same national regional state political set up. However, the Oromia national regional state government officials and political leaders of the governing party of the region have not only denied the the very existence of such indigenous ethnic groups but also adamantly refused their applications to consider the legitimate claims of the representatives made by the same ethno-linguistic groups for recognition of their distinct identities and thereby the right to self-government.

Among these indigenous ethno-national minority groups Zay community is the one that advanced its claims since 1991 for political and legal recognition of its distinct ethno national identity and thereby the right to representation at all levels of government institutions and to secure and exercise the right to self-government.<sup>68</sup> In other words, as I shall discuss the details of the Zay political struggle and legal claims of the same, currently it is trying to draw the important attentions of not only the existing government officials of Oromia national regional state but also the concerned federal government institutions.

### **9.5.2. Historical Background of Zay Community**

The Zay community is one of the ethno-linguistic groups of the country in general and Oromia national regional state in particular. Zay community is also a minority ethno national group living mainly on the islands of Lake Zeway, in the towns of Zeway and Meki as well as the villages mainly surrounding lake Zeway. In other words, the people of Zay live in south eastern Shewa and Western Arsi administrative zones of Oromia national regional state. According to linguists and social anthropologists, the Zay language belongs to one of the Semitic languages of the country; particularly it is similar with that of Gurage and Silte ethno-national groups of Southern nations, nationalities and peoples' regional state.

In this regard, elderly peoples of the Zay community clearly put that members of Zay community are basically a Semitic-speaking people whose language is quite similar to that of Silte and Wolane dialects of the Gurage ethnic group, as well as the Aderi language of Harari people. Nevertheless, currently the language of Zay ethno national minority group is one of the languages exposed to extinction in the country.

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<sup>68</sup>Interview with anonymous representatives of Zay community, Ziway and Meki Towns, 30 April 2016)

Therefore, one may ask that why the Zay language is severely endangered at this juncture? The answer is very clear, in addition to exercising their mother tongue most of the Zay people speak the languages of either Amharic, Afan Oromo or both Amharic and Afan Oromo. On the other hand, the working language of the regional state of Oromia and medium of instruction in the same regional state in elementary schools is Afan Oromo.

Thus currently there are no people even in their own localities who speak widely the language of Zay (Zaygna) and it is also highly influenced by the languages of both Amharic and Afan Oromo. According to Jordan et al., Amharic is the islanders' foremost favorable language of religious practices of members of the Zay community and Afan Oromo is the language that formal education and the day to day activities of government institutions of the same regional state is usually conducted in the area as they live mainly surrounded by the Oromo people.<sup>69</sup> Considering this cultural and socio-political situation of the national regional state of Oromia, the Zay people have raised the issue of separate identity recognition as a distinct ethno national group and thereby started its political struggle and strong legal claim to secure their quest for the right to self-government since 1991.

The people of Zay community are also fighting against the domination of the Oromos and trying to preserve their language as well as other important identity markers including their social and cultural values through exercising the existing legal framework of the country although as we have observed in the previous sections the revised constitution of Oromia region does not recognize their separate existence.<sup>70</sup> However, the exact population number of Zay community is not formally known until these days, since it is not formally counted by the CSA.

Nevertheless, recently Michael Vinson in his research findings came up with certain estimates of Zay population. According to Vincent, the number of Zay population is very small – estimated between twenty and twenty-five thousand – having the population split between two administrative zones and three *woredas*.<sup>71</sup> Nevertheless currently local government officials and

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<sup>69</sup>Jordan Lidia, Jillian Netzley and Hussein Mohammed, 'A Sociological Survey Report of the Zay People in Ethiopia' (2011) TX:SIL International 3

<sup>70</sup>Ibid,

<sup>71</sup>Michael A. Vinson, 'The Struggle for Recognition: A Critical Ethnographic Study of the Zay' (PhD Dissertation, University of Leiden 2011) 97



representatives of the Zay community estimated the number of Zay population who can speak ‘Zaygna’ to be 14,000.<sup>72</sup> Regarding their historical legacies of the area, according to the strong belief of the elderly people of Zay community their ancestors came to the islands at various times from different places of the country. Concerning this Tuma Nadamo assumes that the original homeland of Zay people was not a single historical place of Ethiopia, therefore, according to his assumption the Zay ethno-linguistic group does not have common origin.<sup>73</sup>

However, some elders of the Zay community claim that the first settlers of the area in the 9th century were religious refugees fleeing queen Yodit who at the time was destroying churches and church properties in Aksum and its surroundings. According to these elders, other migratory waves to the islands and Lake Zeway areas are said to have occurred during the reign of Amde Tsion (r. 1314-1344), Zera Yaqob (r. 1434-1468) and finally during the war with Imam Ahmed ibn Ibrahim Alghazi, around 1527.<sup>74</sup>

Concerning this issue Michael Vinson also strongly stipulated that the first inhabitants of the islands were most likely from different groups, as some Zay have claimed that they were religious refugees from both the northern city of Axum and the eastern city of Harar during times when these cities were sacked by Yodit and the Muslim conquests of the country respectively.<sup>75</sup> Therefore, according to some people the Zay ethno-linguistic community is believed to be the result of three main population movements and socio-economic as well as religious interactions of different nation-nationalities and peoples of Ethiopia coming from different places of the country.

According to sources this was done particularly during 13<sup>th</sup> and 14<sup>th</sup> centuries. The group of peoples coming to the area are called Aren, Obbarubar and Zafit.<sup>76</sup> Later on, specifically in the middle of the 16<sup>th</sup> century, these social groups of different peoples were mixed with another group of people who came from Menz area of the former Shewa province, led by a certain wise and powerful person whose name is called Atsku Sillase. According to Tuma and Tesfay

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<sup>72</sup>Interview with one of the active members of identity recognition and the right to self-government committee of Zay community who is not want to be mentioned his nation, (Ziway, 2 May 2016)

<sup>73</sup>Tuma Nadamo, ‘A History of Zay in the 19<sup>th</sup> and early 20<sup>th</sup>c’ (BA Thesis, Addis Ababa University 1982) 1-2

<sup>74</sup>Interview with elders of Zay community who do not want their name to be mentioned in this dissertation, (Addis Ababa, 1 June 2016)

<sup>75</sup>Vinson, (n 712) 8

<sup>76</sup>Tuma, (n 734) 2

this person was very talented to consolidate the societal organization of Zay community all over the five islands of Lake Zeway and the surrounding area of Zeway town. Consequently, using his personal talent, wise outlook towards the society, political power and social acceptance by the majority members of the same community, with his strong leadership, he brought those scattered islands and uniformly named them Zay as well as made them under a single administrative entity.<sup>77</sup>

According to the perception of certain members of the identity recognition and the right to self-government coordination committee as well as elderly people of Zay community, when Atsku Sellase arrived in the area of Zeway Islands, he immediately looked the gap and discussed directly with the people of such particular locality as to how those five islands and their inhabitants should be governed under a single but strong administration.

As a result, after a thorough discussion made on the same issue, Atsku Selassie himself used this opportunity to unify the people and thereby had been elected as a leader of the community by the people. With his strong belief and the existing opportunity, Atsku Sellassie took the political leadership position and administrative responsibility of all the five islands of Lake Ziway. After securing his political power, he further appointed five men to rule each of the five islands and assisted his political leadership as well as administrative responsibility.<sup>78</sup>

Hence in the previous times i.e., until the Derg military junta came to power, members of the Zay community were ruled through their own Noble men (Balabats) directly elected by members of Zay community and later appointed by the governors of imperial regime. In this regard MichaelVinson states that:

The *balabbat* system began with Atque Selassie. When he arrived there were already people on the islands. Before he arrived the people were ruled by the elders who were said to be the descendants of the Levite priests exiled from Aksum during the time of Yodit. Then the people who lived there and Atque Selassie came together to discuss how the island should be governed. Some said they needed to be elders, others said by experience. Atque Selassie made

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<sup>77</sup> Ibid, p. 9 and Tesfaye Edeto, *History of the Zay People* (Berhana Selam Printing Press 2007) 21

<sup>78</sup> In addition to the aforementioned committee members and elderly peoples view Guta Balcha (2016), in his MA Thesis entitled Minority Rights Protection in Oromia National Regional State: A Case Study of the Zay People on page 46 strongly argues that the influence of Askus Sellasse's political leadership was very important to reshape Zay.

a bet that if his one grain of millet weighed more than their ear of millet then he would rule. The one grain weighed more so Atque Selassie took the leadership of that area with God's help. With this Atque Selassie took over the leadership of all five islands. He appointed five men to rule each of the islands... Each of the five rulers (further) appointed twenty-five people under them to help rule.<sup>79</sup>

However, the Derg regime dismantled the *balabat* system through revolution and replaced the local administration by elected people of the same community.<sup>80</sup> Following this political and administrative change, although the Derg regime tried to merge the Zay people with the neighboring *Kebeles* where Oromo ethnic group settled, the Zay community strongly protested the plan of merging the two ethno national groups and remain intact to have their own separate local administration.<sup>81</sup>

Considering this strong protest of active members of Zay community the Derg regime unlike its political nature and dictatorial behavior allowed to establish their own local administration at *Kebele* level so as to exercise the right to self-rule and administer themselves. Following this governmental decision of the Derg regime, the Zay people were electing their administrators among themselves as well as they have been directly represented at *Wereda* and National *Shengo* (legislative council) level.<sup>82</sup> In other words, the very existence and political role of Zay community was relatively recognized by the Derg regime. Based on this reality, Michael Vinson clearly stipulated that the Zay people have a long history of self-rule under a political system known as the *balabbat* administration.

According to Vincent this political system was based on an imperial dynasty that appointed rulers to see to the administration of the five islands and dry lands surrounding the lake Zeway. Then the Zay community ruled themselves under the *balabbat* system until the end of Haile Selassie regime and the military junta forced them to abandon it in order to establish strong collective administration at *Kebele* level. Hence during the Derg regime, members of

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<sup>79</sup>Vinson, (n 712) 102-103

<sup>80</sup> Interview with the anonymous representatives of Zay community, (Ziway, 1 May 2016)

<sup>81</sup> Ibid,

<sup>82</sup> Interview with members of identity recognition committee of Zay community, (Meki, 2 May 2016)

the Zay community were ruled themselves and each of the five islands had its own representative.<sup>83</sup>

### **9.5.3. Zay's Quest for Identity Recognition and the Responses of Governments**

Since 1991, the Zay people in general and their representatives in particular have been trying to achieve recognition as a distinct ethno national community and thereby having their own self government in the form of Special *Wereda* as well as equitable representation at all levels of government institutions of not only at national regional state but also at federal level. Despite the lack of success, the Zay people through their representatives have continued to push for legal and political recognition as well as fair and equitable representation at all levels of government institutions. Following this in the last 10-15 years they have even stepped up a strong pressure on the governments of both Oromia national regional state and the House of Federation with more petitions and application letters strongly expressing their demands. In this regard, Michael Vinson further argued that these days the Zay people are in a position to practice their constitutionally guaranteed rights to self-determination including the right to exercise self-government under their own leaders regardless of whether they are indigenous to the region where they live or migrated to the present day Oromia national regional state.

According to Vincent if it is an issue of “who was there first?” the Zay have a stronger claim to the area than the Oromos, who only came in the 15<sup>th</sup> century, while the Zay community claimed they were first settled at the beginning of 9th century.<sup>84</sup> In this regard a huge argument had been also entertained among the Oromo and the Zay ethnic groups concerning the name of the town ‘Ziway’ but since the Oromia national regional state come to self administration, has renamed the name of ‘Ziway’ town to ‘Batu’, to commemorate the former name and belongingness of the area to the Oromo people, while ignoring the fact that the town was named after the Zay people since their early settlement to the area.

According to the elderly people of Zay community, the name Ziway had been in use to the town before even the Oromo come to the area for settlement. The adage that ‘Batu’ should be the name of the former Ziway town is still controversial and unresolved matter where the new name ‘Batu’ is in use for the same town. Although until now their relentless effort does not

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<sup>83</sup>Vinson, (n 712) 90

<sup>84</sup> Ibid,

bring any positive change on their recognition of separate political and administrative status, their claim to be recognized as a distinct ethno-linguistic community and the right to self-government by establishing their own special *Wereda* started in 1991, immediately after the down fall of the Derg regime, and still now their claim is strongly continued.

They also relentlessly continued their political struggle through their representatives and pushed the House of Federation to consider their legitimate demand of recognition as a distinct ethno national group and thereby the right to exercise self-government in their localities submitting formal petitions and application letters unequivocally expressing their strong demand.<sup>85</sup> Following this political situation, the House of Federation referred their formal claim to Oromia national regional state to be entertained first according to the law at national regional state level.<sup>86</sup> As mentioned above although the representatives of the Zay community had submitted their legitimate claim to both Oromia national regional state and the House of Federation since 1991, until now they did not receive any positive response either from Oromia national regional state or the House of Federation.

Because of this according to some of their representatives, the Zay people strongly believe that they are one of the neglected ethno national groups in the country not only in the past socio-political systems controlled by feudal and dictatorial leaders respectively but also in the present regime which is allegedly to be democratic and accommodative of ethno national groups.<sup>87</sup> As a result, nowadays the members of Zay community still attempt to correct these legal and socio-political injustices made by different regimes of the country including the incumbent through relentless peaceful and democratic political struggle using the existing legal framework of federal government.

According to the representatives of the Zay community, the objective of having their own special *Wereda* is to promote, preserve and develop their own distinct culture, language, history and traditions. Because the Zay people are nowadays conscious of their distinct identity markers and socio-cultural values than the previous times and almost all of the interviewees coming from Zay community aired their strong grievances with respect to the

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<sup>85</sup> The idea is taken from one of the application letters submitted to the House of Federation.

<sup>86</sup> A letter written by House of Federation to the Office of Chief Administrator of Oromia region (15/05/01 EC).

<sup>87</sup> Interview with members of identity recognition committee of Zay community, (Meki, 3 May 2016)

failure of the successive governments of Ethiopia to include the Zay ethno national group even in the national censuses conducted by the CSA including the 2007 Population and Housing Census.

The interviewees also felt that the act of the incumbent not only deprives the distinct identity, culture, language and history of the Zay people from being respected, promoted and developed, but also denies the very existence of Zay ethno national group so that discriminates them from other ethno national groups of the country that are recognized and to a certain extent are exercising their fundamental rights. However, by the spirit of FDRE constitution and its territorial arrangement, the Zay community can be considered as an indigenous people to the Oromia region although government officials of Oromia national regional state are still reluctant to accept this reality. As mentioned above, even though their claim for political recognition and to exercise their constitutional right of self-government has been relentlessly presented since the early 1990s.

However, the Oromia national regional state authorities have failed to respond to any of their applications so far. Concerning this Michael Vinson also strongly asserted that in fact the Zay have requested for equitable representation at all levels of government institutions in the country on a number of occasions. They have asked in 1987, 1998, 2001, 2002, and again in 2004 E.C. Application letters were also submitted to the House of Federation and responses (neither affirmative nor negative) were given saying that they wanted to do a study of the area to determine whether representation or a Special *Wereda* could be granted to the Zay.<sup>88</sup>

Besides, a thorough review of the application letters and petitions on the recognition claims of Zay community to be recognized as distinct ethno national group and allowed the right to self-government the suggestions of their representatives clearly shows that the Oromia national regional state authorities have not given to the applicants even a formal written response.<sup>89</sup> But according to Getachew Assefa W/Mariam when the Zay approached the House of Federation (HoF) after endless waiting for the later to exercise its constitutional mandate, the House of Federation demanded for its part that ‘regional state remedies’ should be exhausted first.

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<sup>88</sup>Vinson, (n 712) 100

<sup>89</sup> Getachew, (n 266) 130

However, as stated in the previous chapter recognition is an important element to claim, assert and exercise other fundamental rights and freedoms, including the right to self-government and equitable representation to genuinely exercise the principle of shared-rule on common matters and self-government on specific affairs of local communities of federal political system in a country. In this regard, Getachew Assefa Wolde Mariam further forwarded that “identity recognition is important because it is a constitutive act by which a group is placed on the map of a region or the federation for it to be able to exercise the self-determination rights recognized by the federal constitution, such as self-government, representation in local, regional and federal government institutions; development of their cultures and languages; and preservation of their histories.”<sup>90</sup> Hence, the people of Zay community residing within Oromia national regional state are denied proper recognition albeit their persistent demands and claims of distinct ethno-national identity recognition and the right to self-government. They also received mistreatment because of their quest for recognition as a distinct ethno national community and thereby the right to self-government.

In one of their several application letters submitted to the House of Federation and Oromia region, they clearly underlined that some government authority of Oromia region mocked them by saying that we generally consider the people of Zay to be part and parcel of the Oromo nation.<sup>91</sup> However, if you strongly believe on that and are saying we are different from the Oromo nation, go to the House of Federation (HoF) and claim your distinct identity as it is the one that can entertain such kinds of cases and responsible to provide a solution for your claim of recognition as a distinct ethno national group as well as the right to self-government and hence it is not the responsibility of the authorities of Oromia region.

Of course, one can easily identify that this kind of reply was irresponsible and against the existing legal system of the country including the pertinent proclamation No. 251/2001 as it clearly stipulates that claims for the recognition of identity or any of the rights of self-determination must first be submitted to the lawful authorities of respective regional states in which they arise.<sup>92</sup> Nevertheless, this proclamation itself alternatively provides that

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<sup>90</sup>Ibid, p. 129

<sup>91</sup> Ibid

<sup>92</sup>Article 20 of Proclamation No. 251/2001, A Proclamation that Consolidates powers of the House of the Federation.

application for identity recognition as a distinct ethno national group or the right to self-determination can be directly submitted to the House of Federation if the concerned national regional state authorities fail to decide on the matter within two years of submission of the application.<sup>93</sup>

Because of this the Zay community's quest for identity recognition and the right to self-government can be directly entertained by the House of Federation since the national regional state of Oromia failed to respond within two years period. However, before the Zay case is brought or submitted to the House of Federation in 2001 E.C. the government of Oromia national regional state officials were not as such sensitive even to entertain their application and request for identity recognition as a distinct ethno-national community let alone to allow the right to self-government and equitable representation in the national regional state polity.

Considering this political and administrative situation of Oromianational regional state, Getachew Assefa Woldemariam also concludes that it is clear by now that the national regional state of Oromia has no interest in entertaining the claim for identity recognition. According to him the national regional state government authorities did not even give a formal reply to letters written by the House of Federation itself on this matter, let alone responding to the powerless minorities in question.<sup>94</sup>

However, recently some government officials of Oromia national regional state who involved in the study of the same issue realized that the Zay community's quest for identity recognition as a distinct ethnic group and thereby to exercise the right to self-government in their localities seems legitimate since they have their own distinct language and socio-cultural values that makes them different from not only the Oromo nation but other ethnic groups of the country. <sup>95</sup>Because of this these government officials and legal experts of Oromia national regional state become aware of the distinct identity markers of the people of Zay community

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<sup>93</sup>Ibid,

<sup>94</sup> Getachew, (n 266) 131

<sup>95</sup>Interview with Abdi Kedir, Acting Head, the office of Oromia regional state constitutional interpretation commission, (Addis Ababa/Finfine, 2 December 2016).



and thereby open their mind to consider their legitimate claim as well as entertain the question of the same.<sup>96</sup>

## **9.6. Conclusion**

In Oromia national regional state, as the researcher has tried to show in the previous respective sections, only the Oromo nation is legally and politically empowered to control the polity of the national regional state of Oromia in general and administer the same in particular. Because of this Afan Oromo is the only prescribed language of governance and legal system at all levels of the region. As a result, the medium of instruction of the formal education at elementary school level except in certain urban areas of the region, the media and other public activities of the national regional state of Oromia are mainly conducted by Afan Oromo. This policy of discrimination and the attempt to Oromise other non-Oromo ethno national minorities including the indigenous people of Zay found in the region and its distinct culture were also justified by arguments which resonated with history of Oromia: the need to establish a strong ethno-national identity in the region.

But Oromisation inhibited the access of many ethno national minorities to schooling in the most rural areas of the national regional state of Oromia and opportunities to develop social capital; it also underscored socio-political gaps which further marginalized many ethno national minority groups living in the region. As we have observed in the previous respective sections of this chapter, the Oromia national regional state does not also abide by the principles of international human rights instruments which Ethiopia is a party and even the federal constitution of 1995 that guarantees the very existence of ethno national groups in the country and fundamental rights and freedoms of the same in general and such non-Oromo ethno national minority groups living in the region in particular.

Besides, the Oromia national regional state does not guarantee cultural autonomy to its non Oromo ethno national minorities, although the regional state government promises to recognize, respect and protect the rights of the same in the revised constitution of the national

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<sup>96</sup> Ibid and interview with Mustefa Aba Simel Aba Lofe, Head, the office of chaffe Oromia, (Addis Ababa/Finefine, 27 October 2016)

regional state which clearly shows the political commitment of the government of the same.<sup>97</sup> According to Article 39 sub 2 and 3 of the FDRE constitution, cultural autonomy and the rights of self-government is not only duly acknowledged but also constitutionally guaranteed.

However, contrary to this fundamental constitutional principle the government of Oromia national regional state began to discriminate against its ethno-national minorities from the very beginning of its establishment by denying even the very existence of such ethno-national minorities in the region including the indigenous peoples of Zay community. Hence this politico-legal situation of the region only gives such ethno-national minorities living within its territory two options, to assimilate with the majority Oromo population of the region or to leave the national regional state administrative territory and back to their home state. The irony is that as rightly pointed out by Getachew Assefa W/Mariam in the earlier section this political situation was understood and supported even by some of the framers and active political participants of the federal constitution of 1995 but the constitutional provisions that guaranteed the existence and other fundamental rights of ethno national minorities are still seen as the only way to prevent impositions coming from the majority government.

As mentioned elsewhere in this chapter the national regional state of Oromia also comprises an ethnically, linguistically and culturally diverse mosaic socio-linguistic communities and distinct ethno-national groups, which for the most part have lived together in harmony and mutual respect. Nevertheless, over the past twenty six years, some parts in the regional state have suffered episodes of inter communal violence that, while exhibiting ethno national dimensions, which have root causes that are complex and multi-faceted. Hence the special status given to indigenous peoples that differentiate from other non-indigenous ethno national groups have frequently resulted in profound socio-economic inequalities among citizens living in Oromia national regional state of federal Ethiopia.

Besides, in Oromia national regional state many of those ethno-national minority groups living in the same region have been regarded as settlers or non-Oromo nationalities, nationalities and peoples living in a given area for generations and yet still now face insurmountable legal,

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<sup>97</sup>Article 103 (2) of Oromia national regional state constitution clearly states that the state shall respect the identity of nations, nationalities and peoples living in the region and shall accordingly have the duty to strengthen unity, equality and fraternity among them.

political and administrative obstacles to exercise their fundamental rights to self-determination. Moreover, access to public jobs, scholarships and even in some cases land tenure in the region for those members of ethno-national minorities living in the region are not legally guaranteed.

This differentiated social, economic, political and legal treatment as well as political status in the region has caused resentment among ethno-national communities and contributed to fuelling tensions between the indigenous and the so called non-indigenous ethno national minority groups as well as sometimes paved the way towards episodes of distractive violence which damages not only the lifes and properties of these ethnic groups but also the smooth relationship of different ethno-national groups of the same region. Because of this, non-Oromo ethno-national minorities in this national regional state are often among the most disadvantaged population groups and experience the worst socio-economic and political conditions of the country. Maintaining accommodative political culture and system of governance that recognizes and accommodates the interest of all ethno-national minorities in the country in general and in Oromia national regional state in particular was also expected to be taken as an essential element to establish system of democratic governance and inclusive polity in the national regional state of Oromia.

However, a system of democratic governance deficit exists federal government in general and specifically in Oromia national regional state in particular with its negative political and legal implications for non-Oromo ethno national minority groups and their fundamental rights and freedoms as well as community relations. As everyone may easily understand the system of democratic governance comprises different intertwined features, such as recognizing the existence of diversities in the country, encourage inclusive political participation, allow equitable representation and install system of genuine consultation of the whole communities including ethno-national minority groups.

In other words, system of democratic governance in federal seting basically guarantees the right to equality between and mong citizens of a given country including sub national governments and above all recognizes the need to have equitable representation at all levels of

government institutions and allows people to administer themselves through their direct representatives.

## **CHAPTER TEN**

### **Conclusion and Recommendations**

#### **10.1. Introduction**

Ethiopia as a multiethnic and multicultural country with more than 80 nations, nationalities and peoples having their own languages, cultures, and ways of life has adopted federal political system in 1995 through constitutional means that tries to accommodate the diverse interest of such ethno national groups of the country. Following this political, legal and administrative measures, different efforts have been made in recognizing and protecting the fundamental rights of ethno national minorities of Ethiopia and it could also be taken as experiences of mixed stories of either positive or negative consequences in many respects.

Thus, along with the trends under national legal and political system, especially through different national human rights instruments, several regional states of federal Ethiopia have devised their own special political and legal schemes and taken administrative measures in responding the issues of ethno national minorities. Although until recently there are some marginalized ethno-national minorities in almost all regional states of federal Ethiopia, this research work is, however, confined mainly to the Amhara and Oromia national regional states of Ethiopia as well as to some extent the federal government legal framework and institutional arrangements respectively.

The purpose of focusing on the aforementioned national regional states of Ethiopia and federal government's legal frameworks as well as practical implementation of institutions of the same is in order to depict relatively condensed picture about national regional states under consideration. In other words, the researcher is more interested in reexamining as well as comparing and contrasting the legal and practical responses of the Amhara and Oromia national regional states in relation to the recognition and protection of the right to existence, equitable representation and self-government of ethno national minorities living in their respective administrative territory.

Although the recognition of ethno national minorities in federal Ethiopia is guaranteed not only by proclamation number 7/1992 but also several provisions of the FDRE constitution of 1995.

However, the first legal document which unequivocally recognized and guaranteed ethno-linguistic minorities is the transitional period charter of 1991. Because of this, the Transitional Period Charter can be taken as a cornerstone to the current Ethiopian federal political and legal system. Political representation of different peoples in the present day Ethiopia has been also largely channeled through ethno national group based political parties mainly through those that established Ethiopian Peoples Revolutionary Democratic Front (EPRDF) and its affiliates.

Hence, the degree of rights accorded to those ethno national minorities living in their respective territorial administrations of the regional states in general and national regional states under discussion in particular vary from one another. Therefore, the chapter basically attempted to consolidate the concluding remarks of the previous respective chapters of this dissertation in relation to the rights of ethno-national minorities in general and the case study national regional states of Ethiopia in particular.

By way of evaluating the international human rights legal regime, continental human rights system, national and regional state legal frameworks, the chapter tries to answer the main research question framed as follows, how does the legal framework of the federal government of Ethiopia addresses the rights of ethno national minorities related to existence, equitable representation and self-government and how have the national regional states under discussion implemented them? Besides, the chapter looked into related legal and political issues in a framed way what rights do ethno national minorities have under International Human Rights Law and in certain Multiethnic Federations? And what rights do federal constitutions provide to ethno national minorities at sub national level?

Thus, the dissertation in general and this chapter in particular has attempted to delve into one of the less investigated areas of the Ethiopian federal political system, particularly the right to existence, equitable representation and self-government at federal and national regional states level. At the end of this chapter, the researcher also tries to recommend some important solutions by indicating the practical problems of the existing legal and political reality of national regional states under discussion and also intends to inspire ethno national minority groups of the same.

## 10.2 Conclusion

Since the peace agreement of Westfalia 1648, there was an international attempt to address the claims of minorities' rights. Unfortunately, the end of the Second World War, which had heralded a new era for individual human rights, did not sustain the continuation of addressing minorities' problems. Even in the post-World War II legal and political order of the international community, the recognition and protection of minority rights remained only in asserting the right to equality and prohibition of discrimination. As a result, the present international human rights regime is not as such inclusive of minority rights in general and the right to self-government in particular.

Because of this, until 1990s the issue of minorities in the international community was regarded as part of domestic matters and thereby the problem of minorities could not be taken as serious and the immediate concerns of the United Nations human rights regime. Consequently, within the United Nations legal regime minority protection was basically subsumed as a facet of the general United Nations human rights protection system. The absence of serious concern and universally accepted definition of the term minority and thereby legally binding treaty document at international level makes it controversial.

Thus, the rights of minorities in general and ethno national minority groups in particular were not legally recognized by the international community before 1992. The main reason for this politico-legal situation was, basically individual rights were the important concerns of the international community than group rights in general and ethno national minorities in particular. Because of this, minority concerns and problems did not draw serious attentions of the international community in general and government officials of the most powerful and influential state parties to the United Nations in particular and thereby did not achieve in having prominent position in the International Bill of Rights.

However, certain countries in the world such as Switzerland and India have devised special legal schemes and taken political measures in responding issues of minorities in general and ethno cultural groups in particular through adopting constitutionally guaranteed federal system. Recently Ethiopia too followed this important and the most decisive path. In fact, the responses vary significantly from country to country depending on the particular contexts distinct to them

which take account of historical, political, social, economic or cultural factors of the respective countries. Thus, federalism can claim to serve to the equal existence of both pluralism and self-government, in return, this administrative arrangement invites for the proper application of political recognition, legal protection and complementariness in the territory of the units rather than being reluctant in exercising their powers. Nevertheless, as we have seen in chapter four of this dissertation federalism is not an all-encompassing panacea rather it is a complex institutional arrangement, compatible with centralized and majoritarian governments, as it is highly associated with decentralized and consociation types of government structures.

In short, as has been discussed in chapter five of this dissertation in light of the experiences of federal countries in the world such as Switzerland (cantons), Nigeria and India (states), the advocates of democratic decentralization or democratic self-rule strongly argue that a federal system is only viable and manageable if the existing ethno national group feelings are further sub-divided into manageable geographic and contiguous ethno-linguistic regions. Following the viable concrete examples from the well managed federated nations of the world order like Switzerland and India, believing that the formation of an ethno national community contributes to the formation of a shared space that could provide individuals with a cultural context in which to establish smooth relationships.

Therefore, the obvious and important lesson that can be drawn from such comparative analysis of federal countries is to concentrate on the extent to which consociational features of democratization are essential for a successful multicultural federal political system and administrative arrangement. In this regard Lidija R. Basta strongly asserts that the examination of the Swiss federal experience for instance shows that the legitimacy of multi-ethnic federal states cannot afford to dispense with minorities. The other important lesson that we can consider here includes those relating to the types and numbers of constituent units and the distribution of the diversities.

Such a political arrangement affects relations between units, with regard to the perception of domination and the possibility of changing majorities in a federation with a larger number of administrative units. The third essential lesson that we could draw is according to some pertinent scholars of the area although federal structure by itself can exacerbate conflict between ethnic or religious groups in the absence of security, consociational elements are desirable to prevent this



conflicting interest. The fourth and the last important lesson that Ethiopia will learn from Swiss and Indian federal experiences in addition to consociational democracy will be the positive treatment and genuine accommodation of language rights and equitable representation of ethno national minority groups. Generally to use Lidiya R. Basta's word multi-ethnic societies can survive only if all respective ethno national groups within feel themselves as "winner" in their day to day political life. That means in federations such as Nigeria, India Switzerland and Ethiopia ethno national groups living in the respective federal countries must be accommodated and properly treated not only to be part and parcel of the polity of the country but also they should and must consider themselves as owner of the same.

In multi-ethnic federations, the position of intra-unit ethno national minorities is therefore enhanced by a system that allows them to be equitably represented in sub national decision-making bodies of such federations. Because of this, unless the constitutional and legal frameworks as well as political and practical responses of governments of federal political systems and genuinely accommodating the interests of their diverse societies, it is often stated that in multi-ethnic federations, if states do not reflect the major diversities that define the population of the country in a state, sooner or later the federation will face a serious political and administrative crisis.

Moreover, unlike Nigeria and Ethiopia in both India and Switzerland federalism backed by genuine democratic values and has thus limited the nation state ethnically speaking. Because since the founding of the Swiss modern federation in 1848, the country has maintained remarkable ethnic peace except for the internal secession of the Canton of Jura in 1979. Besides, some multi-ethnic federations go beyond recognizing the right to existence, representation and self-government so as to protect intra-sub state ethno national minorities. In Switzerland, for example, all cantons have a high degree of proportional representation. Because of this, no political party enjoys absolute power in any canton and neglects representation rights of sub-state ethno national minorities.

As clearly mentioned in the previous respective chapters of this dissertation although Ethiopia is a rich mosaic of different ethno national and cultural groups having variety of languages, religion, customs and other identity markers, for a long period of time, it was ruled by successive monarchies and very recently by a military led dictatorial regime. The dissatisfaction with the

hierarchical social, political, and economic structure of the Ethiopian state that was anchored upon Amhara-Tigre cultural domination precipitated new projects of reconstructed historical narratives.

This harsh as well as discriminatory legal, administrative and political situation of the country also continued in the Ethiopian system of governance until the 1974 popular revolution. However, the supposed revolutionary vanguard movements of Ethiopia also failed to emerge, since the Worker's Party of Ethiopia, which commenced in 1984, was totally controlled by the junior military officers of the country at all levels of government institutions. As a result, during the rule of Emperor Haile Selassie I (1931–74) and the military Marxist regime of Mengistu Haile Mariam (1974–91), ethno national groups, cultures, and languages other than Amhara and, to a certain extent Tigre, were clearly ranked, and ethnically based political movements were highly oppressed and treated in a discriminatory manner.

As a result of failure to address the aforementioned questions of ethno national groups of Ethiopia, the political struggle for democracy, equality, self-government, representation and movements for liberty from national oppression and seeking good governance continued unabated. As rightly pointed out in chapter six of this dissertation the opposition, especially those actively engaged in guerilla warfare for a long period of time saw this unpredictable political situation administrative arrangement as a good opportunity to escalate their insurgency against the unpopular dictatorial regime of the country. Besides, the Derg regime, later People's Democratic Republic Government of Ethiopia led by the Workers Party of the country failed to ensure the prevalence of rule of law and democracy as well as severely experienced internal and external conflicts.

Following this political and administrative situation on 28 May 1991, Ethiopian Peoples Revolutionary Democratic Front took control of Addis Ababa, the capital city of Ethiopia. With this step, the nationalist guerilla fighters that were mainly Marxist-Leninist in their political orientation temporarily paid sacrifice for such unique political goals of self-determination for the purpose of overthrowing the Derg regime and established federal political system that recognizes shared rule and self-government of nations, nationalities and peoples of the country.

Therefore, in the present day Ethiopian federal system and administrative structure of the country each regional state has its own distinct ethno linguistic groups and multiple religious societies who strongly demands political and legal recognition. Following this the Agews, the Oromo, Argoba and recently the Kemant historic ethno national minority groups, who live relatively in a contiguous territory within the Amhara region are accorded “semi-autonomous” political and administrative status. Whereas, although Oromia region has diverse ethno-national minorities, in the region’s revised constitution of 2001 the very existence and other basic rights of such diverse ethno national minorities other than Oromo are not recognized and thereby voiceless. Because of this, their rights including the right to existence, equitable representation and self-government for territorially concentrated ethno national minorities could not and cannot be legally guaranteed and protected by the revised constitution of the region.

As a result, these non Oromos are still suffering from a severe lack of effective and equitable representation, denial of fundamental rights and freedoms of the same. Moreover, although meaningful political recognition and legal protection of ethno-national minorities through taking political and administrative measures towards their human and democratic rights is essential in all regional states of the country, yet its legal and political denial is the most acute in Oromia national regional state than the other regional states of federal Ethiopia except Ethiopian Somali region.

Although the FDRE constitution of 1995 unequivocally recognized and extends its legal protection and guarantee to all ethno national groups of Ethiopia, unfortunately the Oromia national regional state legal framework has resulted in little improvement in the establishment of accommodative government institutions. Whereas, the Agews, the Oromo and the Argoba ethno-linguistic minority groups’ have their own representatives in Amhara region council and thereby play an important political role not only at local and regional state but also at federal government level.

Because of this, the historic ethno national minorities who are territorially contiguous have their own political and administrative power in their respective administrative territory.<sup>1</sup> In this respect Murtaza H. Shaikh strongly argued that “in a system where structures of governance reflect the peoples’ will and their best interests, the observance of their fundamental right will be inherent. When these systems are unable to effectively represent the people, autonomy is seen as a device for increasing the proximity between their will and the policies to which they are subject.”<sup>2</sup> That means, as we have seen in chapter eight and nine of this dissertation respectively, in the Amhara national regional state the political and administrative status of ethno-national minority groups such as Oromo, Agew-Hemra, Agew-Awi, Argoba and recently Kemant and the political and administrative status of the indigenous community of Zay and the non-Oromo ethnic groups in the case of Oromia national regional state are the focus of the following concluding remarks. As discussed in chapter eight of this dissertation in Amhara region there is a legal and political recognition of the rights of ethno national minorities although there are practical problems.

However, in Oromia region there is a total denial of the rights of ethno national minorities not only by the 2001 revised constitution of the region but also in practical implementation of the laws of the country. Concerning this politico-legal situation, one can strongly argue that if a multinational state is established based on federal political system, different ethno national groups divided among the constituent states on the basis of ethnicity, they should receive national rather than minority status in the constituent states. Nevertheless, most of the ethno national minorities stated above have their own long established territories in the regions they are inhabiting. Even some of them can be considered as indigenous or native to the national regional states and they are also historic ethno national groups to those regional states under consideration.<sup>3</sup>

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<sup>1</sup>Although Article 73 of the revised constitution of Amhara region (2001) established an independent judiciary of nationality administrations considering it as a third branch of nationality administration, practically it is under strict supervision of state supreme court and the regional state legislative council.

<sup>2</sup>Thomas Benedikter (edn), ‘The Federal Administered Tribal and Northern Areas: Fundamental Rights, Effective Representation and Political Autonomy’, A Short Guide to Autonomy in South Asia and Europe (EURAC 2009)

<sup>3</sup> Zay community in Oromia, Agew-Awi in Benshangul Gumuz, and Rayan Oromos and Amharas in Tigray are some of the indigenous communities to their respective regional states.

Hence, pertaining to accommodation of ethno national minorities, the position of the Amhara national regional state constitution and the regional government's practical implementation of laws as well as political policies of the region, to a certain extent, seems different from that of its counterpart of Oromia region. Although at federal level 20 seats in the 547 member parliament have been set aside and reserved for ethno national minorities, there is no any reserved seat at executive and judicial branches of federal government.<sup>4</sup> This ignorant legal and political approach is more serious to Amhara and Oromia national regional states than the federal government as they have no any legal provision talking about reserve seats not only in their executive branches but also regional legislative councils of the same.

Moreover, as mentioned in chapter nine of this dissertation, reducing the number of representation of ethno national minorities in Oromia region urban dwellers recognized as first and second grade city administrations has been an implicit and, at times, explicit policy of the government of Oromia region since the year of 2003. In this regard, as clearly indicated in chapter nine Professor Florian Bieber rightly points out that most political and administrative measures to hinder minority representation do not take the form of explicit bans, but rather express themselves through a number of obstacles, which sometimes inadvertently and, at times intentionally, seek to preclude or reduce minority representation.<sup>5</sup>

The revised constitutions and practical applications of the governments of regional states covered by the study are also different not only in approach but also in giving attention towards the very existence of ethno national minorities living in their respective administrative territory. In this regard, as we have already seen in the discussion of chapter eight the Amhara region gives relatively appropriate space to the existence and rights of ethno national minorities but Oromia national regional state government ignores even the very existence of nations, nationalities and peoples of Ethiopia living in its national region administrative territory. Considering the aforementioned justifications one can reasonably

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<sup>4</sup>Article 54 (3) of FDRE constitution of 1995 stipulates that members of the House (the House of Peoples' Representatives) on the basis of population and special representation of minority nationalities and peoples, shall not exceed 550; of these minority nationalities and peoples shall have at least 20 seats.

<sup>5</sup>Florian Bieber, *Introduction: Minority Participation and Political Parties*, (Friedrich Ebert Stiftung 2008) 20

argue that the Amhara national regional state revised constitution and practical application of the regional government can be taken relatively as a good example.

However, that does not mean there is no restrictive legal and political conditions imposed up on those historic ethno national minorities and practical problems in the exercise of their constitutionally guaranteed right to self-government, equitable representation and participation among others. Because of the Oromia national regional state's existing policies of marginalization and legal discrimination applicable on non-Oromo ethno national minority groups, political recognition and legal protection accorded to ethno national minority groups by both the international human rights instruments of 1966 and FDRE constitution of 1995 can easily be violated through legislative Act and decision of not only the regional state legislative council of Oromia but also by simple decision of the executive branch of the same. In this regard, as mentioned in chapter nine of this dissertation proclamation No. 113/2006 can be taken as a living example which effectively encroaches the rights of non-Oromo urban dwellers of the region with regard to representation of ethno-national minorities living in the region. Nevertheless, these marginalized ethnic minority groups living in those national regional states under discussion can invoke the international human rights instruments which Ethiopia has adopted together with the federal constitution in order to be politically recognized and thereby to legally exercise their individual and group rights guaranteed by FDRE constitution of 1995.

Concerning this Francesco Capotorti appropriately stipulates that if there are sufficient elements to indicate a minority existence, the recognition or non-recognition of the concerned government officials does not hinder the applicability of pertinent international human rights law.<sup>6</sup> The most important thing that practice reveals and suggests that ethno national minority rights are often not implemented without guaranteeing the very existence, active political participation and equitable representation of ethno national minorities themselves.

For example, constructive suggestions forwarded from the interviewee of ethno national minority representatives in the national regional state of Oromia contrasts municipalities in the region where minority participate in local government with those cities where they are

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<sup>6</sup> P.Thornbery's book, *International Law and the Rights of Minorities* (1991)157

excluded despite constituting a significant share of the urban population of the region, ensuring that the political inclusion of these ethno national minority groups significantly advances the protection of ethno national minority rights in the region.<sup>7</sup>

Similar experiences at local and national regional state levels are common not only across Oromia region but also in other regional states of federal Ethiopia. Hence, the difference between the Amhara national regional state revised constitution and its counter part of Oromia region begins from the strong statements they made in their respective preambles of their revised constitutions. As the preamble of the Amhara region revised constitution of 2001 makes a reference to all nations, nationalities and peoples of the region, whereas there is no such kind of accommodative and inclusive approach in Oromia national regional state revised constitution of 2001 rather it exclusively considers the Oromo nation as the sole owner of the national regional state of Oromia. As a result, the national regional state revised constitution of Oromia does not have any reference with regard to the right to existence, representation and self-government of non Oromo ethno national groups. Hence the provisions of the Oromia national regional state revised constitution mainly focusing on the sovereign political power of the people also reinforce the aforementioned firm legal and political position that clearly shows the attitudes of government officials of the region towards the accommodation of diverse ethno national minority groups living in their national regional state.

Whereas, in the Amhara national regional state sovereign power belongs to all nations, nationalities and peoples of the region instead of controlled by a single majority ethnic group of the same region i.e., Amhara nation. However, in its counterpart i.e., Oromia region not only politically but also legally it is controlled only by the people of Oromo nation. The same legal and political approach is reflected in the provisions specifically talking about representations of nations, nationalities and peoples of Ethiopia in their respective national regional state legislative councils.

Concerning this issue, the 2001 revised constitution of Amhara national regional state pays relatively proper attention to the rights of existence, representation and self-government including preserving and developing their distinct identity markers as well as allowing

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<sup>7</sup> Interview with anonymous persons of non-Oromo ethnic groups, (Adama, 12 February 2016)

political participation of ethno-national minorities by providing mechanisms for their fair and equitable representations at least in the legislative council of the region. Accordingly, the Amhara region legislative council which adopts the revised constitution of 2001 even recognizes that the negative implication of first-past-the-post (FPTP) electoral system of the country on the representations of ethno-national minorities in the regional legislative council and incorporates better mechanisms of accommodation of the same.

Regarding this reality Article 45 (3) of the Amhara region revised constitution of 2001 clearly stipulates that without prejudice to the provisions laid down under sub-article 2 of this Article hereof, the representation of other nation-nationalities and peoples settling in regional state shall be taken care of with special considerations. This constitutional accommodative approach recognized by regional state revised constitution is also strengthened by Article 48 (2) of the same constitution. According to this provision, ‘the minority of nationalities and peoples that are believed to deserve special representation shall be represented in the council through an election’. The constitution of Oromia national regional state on the other hand pays no attention not only to the equitable representation of ethno-national minorities living in the region but also it ignores the very existence of those non-Oromo ethno national minorities as a distinct community including the indigenous ethnic group of Zay who is regarded itself as part and parcel of the national regional state of Oromia.

That means the revised constitution of Oromia national regional state mainly associates its legitimacy and protection only with the people of Oromo nation without considering the very existence and positive contribution of non-Oromo ethno national groups of the country. The basic rights guaranteed by the FDRE constitution of 1995 to these non-Oromo ethno-national minority groups is therefore violated through legal means and practical implementation of Oromia region government institutions. Moreover, such differences of legal framework as well as political and administrative policies between the two regions under discussion reach to the extent of the equitable representation of ethno national minorities in the institution that is responsible to give a final verdict on constitutional matters raised by any concerned citizen.

In other words, in the Constitutional Interpretation Commissions of both Amhara and Oromia national regional states, representation of all ethno national groups of Ethiopia and active



political participation of the residents of the regions is indispensable. In accordance with the Amhara national regional state Constitutional Interpretation Commission, equitable representation of ethno national minorities of the region has secured constitutional guarantee as it clearly stipulates that those members of nationality and *Wereda* administration legislative councils are represented in the Constitutional Interpretation Commission of the region.<sup>8</sup>

However, we could not find such kinds of political recognition and constitutional guarantee in the revised constitution and other sub constitutional laws of Oromia national regional state. Because of this denial approach and weak legal and political protection accorded to these ethno-national minorities settling in its administrative territory, one can safely argue that the government of Oromia region does not pay proper attention to the rights of non-Oromo nation-nationalities and peoples by considering their special interest in the regional state polity although recently there are some practical improvements taken by Oromia region government towards recognition and representation of ethno national minority groups living in first and second grade cities of the region. In fact, until now some government officials of Oromia are not ready to appreciate not only the strong claims raised by those non Oromo ethno-national groups settled in the region but also their rights of existence in the region.

For instance, some government officials of Oromia region whom I interviewed clearly show their hesitant and reluctant political position to consider and accept the legitimate claims of distinct existence and the right to self-government of Zay community and thereby to recognize their active political participation and equitable representation of the regional state polity. In other words, such denial political and legal approach clearly prohibited the regional state government officials and the leaders of the ruling party to even allow the right to self-government, political participation as well as equitable representation in the polity of the region although some of them are positive towards the rights of the same.<sup>9</sup>

In this regard, the researcher himself witnessed their hard line approach during the process of data collection in Oromia national regional state government institutions as well as conducting interview with those higher and middle level echelon officials of the same including their

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<sup>8</sup>Article 70 (1) of the 2001 revised constitution of Amhara region

<sup>9</sup>Interview with members of Zay community, (Ziway, 13 February 2016) and a government official of Oromia region, (Addis Ababa/Finefine, 15 February 2016)

legal advisors.<sup>10</sup> In the Amhara region, the rights of ethno national minorities are not only politically recognized by the regional state government and guaranteed through the provisions of the revised constitution of 2001 but also they are relatively protected by sub constitutional laws including the political and administrative practices of relevant government institutions of the same.

In this regard, the children and youngsters of these historic ethno national minority groups in Amhara region are attending their education using their own mother tongue. For instance Oromo nationality administration uses Afan Oromo since its establishment as a medium of instruction for both elementary and senior secondary schools' education, whereas nationality administrations of Agews (both Agew-Awi and Agew-Hemra) of Amhara region have also introduced primary education at elementary schools level to their children using their own vernacular. Nonetheless, until recently the nationality administrations of Agew Awi and Agew Hemera did not develop and use their languages for the high school education and formal public purpose of the same. The reason why they are not using their language as working language is mainly lack of skilled man power, institutional capacity and attitudinal problems of the elites of ethno national minority groups that are already allowed political and legal autonomy.

Besides, the national regional state of Amhara mass media agency has also another important experience which introduces the language uses of ethno national minorities and thereby exercise the right to use their own mother tongue. Because of this, some three-four years back it already started transmitting news and certain special programs concerning the activities of nationality administrations and their respective culture and social values using the languages of historic ethno-national minorities through its television, radio and print mediums. Moreover, the nationality administrations legally established in the Amhara region since 1986 are also trying to preserve their own identity markers and important valuable cultural as well as historical heritages through building cultural centers including museums of their own.

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<sup>10</sup>During conducting an interview with certain officials of Oromia national regional state the researcher realized that they are in a position that in Oromia region there is no indigenous nation-nationality and people other than the Oromo nation and they were also reluctant to be interviewed as well as accessed by the researcher.

But the national regional state government officials of Amhara do not support their relentless effort through providing additional budgetary support considering their special political and administrative autonomy, different language and cultural conditions. Because of this, the important principles as well as preconditions of federal political system which are the very features of genuine federal political system are not fully backed by democratic practices applicable not only in the national regional states covered by the study but also at federal level.

Although these democratic principles are recognized and guaranteed by the federal constitution of 1995 and essential international human rights instruments, for the effective recognition and protection of ethno-national minorities in general and guaranteeing of their right to existence, equitable representation and self-government in particular, there must be genuine and democratic system of governance at both federal and regional states level.

In other words, although there are some positive measures and thereby remarkable achievements in implementing the federal principles recognizing the rights of ethno national minorities at federal and Amhara regional state levels, there are also serious legal gaps and practical problems at regional state and local government levels of Oromia region. Of course this practical problem is also seen at federal government executive, particularly in considering equitable representation and political participation, as stated under federal constitution which the researcher has tried to identify and uncover in the previous respective chapters.

To put it other way, the principles of shared rule and self-rule including the rights of existence, equitable representation and active political participation of ethno national minorities found in national regional states covered by the study, do not properly recognize and respect. As briefed in chapter nine of this dissertation for instance government officials of Oromia region and the political leaders of the governing party of the same are not politically committed to resolve such differences that occur between them and non-ethno national minorities settled in the region that are negatively affected by political decisions of such narrow nationalist officials of the region.

Therefore, to minimize and thereby eliminate this unnecessary political tension that occurred between officials of the region and non-Oromo ethno national groups they must do their own

part to put the federal project in the right direction that benefits all ethno national minority groups residing in the region. Besides, the Oromia region politicians and government officials should also avoid their narrow nationalist views in order to create an enabling political environment and administrative conditions in the region for a free and active participation of such non Oromo ethno national minorities living in the region.

Moreover, all the concerned government institutions and political authorities of the national regional state of Oromia must be ready to learn more from such historic mistakes they made before and be flexible enough to do the right thing that benefits not only to the people of Oromo nation but also other non Oromo ethno-linguistic groups of the national regional state of Oromia. The administrative and political authorities of this particular region must be also open-minded, tolerant and forgiving for the past injustices made by the ancestors of the Amhara people living in the region and thereby address public concerns and questions promptly. Besides, the present national regional state political and administrative experience clearly suggests that the largest minorities in the region have not been represented by relatively strong political parties which have been included in those regional state governments let alone to accommodate the smaller ethno-national minorities. In this particular region, neither the electoral system of the country, nor any particular promotions of minority rights have encouraged the significance of the very existence and active political participation of these non-Oromo ethno national minorities.

In this regard, Ian O’Flynn rightly argued that “in order to show that democratic values really do provide viable standards, I suggest the following. With Lijphart, Diamond and others, I agree that electoral systems must be as inclusive as possible; they must, in other words, provide for the greatest possible range of electoral choice and society-wide representation. I therefore agree that proportional electoral systems are more appropriate than systems like the alternative vote that may not be sufficiently inclusive.”<sup>11</sup> In other words, the genuine claims for the rights of existence as distinct identity and the right to protection including equitable representation are not properly entertained in Oromia region, let alone to allow the right to

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<sup>11</sup>Ian O’Flynn, ‘Democratic Values and Power Sharing’ in Ian O’Flynn and David Russell (eds), *Power Sharing New Challenges for Divided Societies*, (2005) 25

self-government for such territorially concentrated ethno national minorities residing within the same region.

Because of this, not only smaller ethno national minorities but also the larger ethno national minority groups like that of the Amhara people residing in Oromia region have been unable to secure equitable representation in the regional parliament as well as *Wereda* and city administration legislative councils across the national regional state of Oromia. That means neither a larger ethno-linguistic group nor a very smaller ethno national minorities in Oromia region have generally been able to benefit from such positive legal and political measures promoting ethno national minority representation and the right to self-government, which favored only the Oromo nation.

Nevertheless, parliamentary representation is often merely one aspect of a broader part of ethno national minority rights, which entails fair and equitable representation at local, municipal as well as regional state levels. And in some cases some degree of cultural autonomy, as well have been recognized and respected. However, as noted above parliamentary representation, although symbolically important, has often not been the most significant form of minority inclusion, as the impact of minority members in the parliament has been always marginal. In this regard the most marginalized and highly discriminated ethno national minority groups in Oromia national regional state are therefore the indigenous community of Zay and the largest ethnic minority group of Amhara nation have been the least benefited from the efforts to promote the existence, equitable representation and self-government of the same region.

Besides, struggling with a fragmented Amhara landscape in most regional states of the country, suspicion towards mainstream politics and distrust in their own political elites, the Amhara people and some other ethno national minority groups have also been consistently denied their very existence and underrepresented across the national regional state of Oromia. Concerning this while many members of the Amhara nation and other ethno national minorities vote for majority party of Oromia i.e. Oromo People Democratic Organization (OPDO), this voting pattern is hardly a reflection of the integration of them into mainstream

politics of the region, but rather of the political and social marginalization of the communities themselves.

The cause and remedies for the political underrepresentation of the indigenous community of Zay and the largest ethno national minority groups such as the Amhara, Hadya, Gurage, Gedeyo and the people of Sidama, for instance lie beyond the field of electoral systems. However, with regard to the equitable representation of ethno national minorities in the political system of the country, the federal government has not taken a strong position towards this fact. The widespread existence of ethno national minorities in the country in general and in Oromia region in particular has meant that minority concerns are commonly aggregated through political parties rather than through other institutions such as civic society organizations, professional associations and extra-institutional movements.

The internal diversity and differences between ethno national minorities in the region therefore expresses itself in divergent views on how to secure minority interests and different positions along larger political cleavages. Therefore, according to John Attanasio, to protect the rights of local and central ethno national minorities alike, at least three basic alternatives exist: “the central government could protect them, the state government could protect them, or relatively autonomous localities could be designated within that particular province to protect them.”<sup>12</sup> In this regard, by referring different scholarly works and consolidating ideas of the same people Yared Legesse rightly pointed out that the early stated remedial approaches forwarded by John Attanasio are more viable to protect the rights of “minorities within minorities,” particularly where a federal system has been opted for as a response to minority aspirations. These are:<sup>13</sup>

1. A federation within a federation - some ethno national minorities are not concentrated or big enough to form their own constituent unit of the federation; but at the same time they are geographically concentrated enough for “a federation within a federation,” meaning to form a

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<sup>12</sup>John B. Attanasio, ‘The Rights of Ethnic Minorities: The Emerging Mosaic’(1991) Vol 66 *NOTRE DAME L. REV.* 1206-1207

<sup>13</sup>Yared Legesse Mengistu, ‘Protection of National Minorities in Multinational Federations: A Comparative Analysis’(PhD Dissertation,Central European University 2010) 53-54

local government in a federation. In Ethiopia this constitutional arrangement is adopted as “local governments” and is used to give autonomy to smaller ethno linguistic groups,

2. Protection by state governments - the second important political and legal device for the protection of such ethnic minorities is the sub-national government itself. Because the sub-national government may have adopted its own constitution creating a sub-national system of rights and protections aimed at bringing justice closer to home. This is not implausible since interspersed minorities in many countries have gained such protection from sub-national institutions of the state in which they live. Sub-national institutions can be organized in the same manner to eclipse the excesses in the legitimate exercise of democratic and political power and

3. Establishing local governments - the third solution to tackle the dilemma of “minorities within minorities” might take the form of local governments. The local government may be constitutionally entrenched or may fall within the exclusive competence of the state or province. This is a contentious issue in different federal systems including the Ethiopian federal political arrangement; in some cases the constitutional entrenchment of local government has been considered as stripping of state autonomy. Hence the protection of the rights of ethno national minority groups like any other important state objectives, is now a crucial concern and a serious objective standard for future policy directions and political strategies of not only the federal government of Ethiopia but also the regional states administrative arrangements, political policies and legal jurisdictions. The FDRE constitution and other sub constitutional legal frameworks of the country can, in combination with the aforementioned national regional state objectives, help to strengthen a new phase of modern concepts of ethno national minority protection. To sum up this particular section not only the national regional states under discussion but also the federal government of Ethiopia should consider the aforementioned legal and practical problems and relevant pragmatic solutions so as to properly answer the fundamental questions of ethno-national minority groups living in their respective administrative territory.

In other words, as we have seen from the previous respective chapters and this very chapter there are legal and practical problems in the regional states under discussion concerning the

treatment of such non indigenous ethno national minorities of the country and hence there is a need to accommodate their interest by recognizing their very existence, facilitating equitable representation at all levels of government institutions of both federal and regional states and allowing the right to self-government for the specific interest of such ethno national groups.

### **10.3. Recommendations**

Anyone who would like to see the prosperous future of nations, nationalities and peoples of Ethiopia in general and the country as a legal entity in particular should recognize and respect the full enjoyment of human rights of Ethiopian citizens in general and the rights of ethno national minorities in particular. Since at least in the last 100 and plus years millions of Ethiopians sacrificed their precious lives and many are left disabled fighting against the previous feudal-Bourgeoisie and dictatorial regimes in order to liberate all nations, nationalities and peoples of Ethiopia and install system of democratic governance as well as maintain rule of law in the country.

Besides, nations, nationalities and peoples of Ethiopia should also express their economic, social and political prosperities as well as strong interest of the same freely and even administer themselves and be free from all sorts of exclusion, marginalization, as well as disadvantageous political and administrative situations thereby to have better living conditions in their country. As we can easily understand from the above statement, those Ethiopian sacrifices were intended not only to install system of democratic governance and maintain rule of law at federal level but also they wanted to improve the country's socio-economic development and to sufficiently respond the fundamental questions of nationalities as well as all concerns of nations, nationalities and peoples of Ethiopia at regional and sub regional state levels. Therefore, the federal project that takes place in this country should address not only the longstanding national questions of the right to shared rule and self-government as well as equitable representation of nation-nationalities and peoples of Ethiopia but also it must create democratic and inclusive system of governance in the country including national regional states and local governments of the country.



Hence, the researcher strongly believes that it is high time to respect the basic principles of FDRE constitution of 1995 and the basic futures of federalism in order to properly implement a culture of tolerance and positively respond the aforementioned fundamental questions of ethno national minorities in the country. Furthermore, political leaders and government officials of not only those national regional states under discussion but also the federal government must be ready and willing to address the political claims of ethno national minorities residing in their respective regional states. With regard to the realities stated above, regional states in federal Ethiopia in general and in those national regional states covered by the study in particular are responsible and expected to extend the full recognition and genuine legal and practical protection of the rights of ethno-national minorities living in their respective administrative territories.

This legal and political recognition and practical protection of their fundamental rights should also include their separate existence as a distinct ethnic group, equitable representation and active political participation at all levels of government institutions. On top of that, it should also guarantee the right to self-government of territorially concentrated ethnic groups within their own administrative territory. However, as mentioned in the previous chapters, federalism as such is not meant to and cannot totally avoid the dominant nature of majority nation-nationality found in regional states by ensuring all types of rights for those numerically inferior ethno national groups.

And this can be done by minimizing those inevitable political problems by legal mechanisms and politically allowing or practically facilitating equal opportunity to the same and strictly avoiding practical acts of discrimination based on ethnic cleavage. To put this statement in other way, federalism is a political system that helps to maintain unity in diversity and recognizes diversity within unity or it may be preferred for the legal protection and recognition of the rights of ethno-national minorities through applying the principles of federal political system of governance and democracy through guaranteeing by written constitution.

Having said this general recommendation, the researcher also wants to forward some specific points in order to attract the attentions of the concerned federal government institutions and national regional state government officials who do not recognize and respect even the very

existence of such nations, nationalities and peoples of Ethiopia living in the territories of their respective national regional states. Therefore, the specific points which are important to draw the attentions of both national regional state government officials and the concerned nationality administrations, particularly found in Amhara national regional state including both nations, nationalities and peoples of the region under discussion are the following:

1. National regional states covered by the study should take necessary political, legal and administrative measures to revise their respective constitutions in order to make the existing revised constitutions and other sub-constitutional laws consistent with the FDRE constitution of 1995 and thereby with the international human rights instruments which Ethiopia is a party.
2. As we have seen in chapter eight of this dissertation, the Amhara region tries to recognize ethno-national minorities, guarantee the exercise of representation and allow self-government for historic ethno-national minority groups of the region. However, in practice political leaders of the governing party and officials of the regional state government of Amhara are still reluctant to make them active political participant in the polity of the region. So the leaders of the governing party and the national regional state officials should take effective political and administrative measures in order to correct the existing legal gaps and avoid practical problems that are negatively affecting the rights of ethno-national minorities living in the region.
3. At the same time, as we have seen in chapter nine of this dissertation the 2001 revised constitution of Oromia region denies even the very existence of non-Oromo nations, nationalities and peoples settling in the region in general and even some indigenous ethnic groups of the same in particular. In other words, the 2001 revised constitution of Oromia region recognizes only the existence of Oromo nation and makes it the legitimate people to control the regional state's sovereign power. Hence, this constitutional denial of recognizing nation-nationalities and peoples of Ethiopia other than the Oromo nation should be corrected through not only the process of constitutional amendment or revision of the regional state constitution but also by other additional appropriate legal and political measures that help to protect and recognize the rights of such nations, nationalities and peoples living in the region.

4. Nations, nationalities and peoples living in those national regional states covered by the study, be they are indigenous or non-indigenous, historic or non-historic to the respective national regional states should be properly represented at all levels of government institutions. At least their constitutionally recognized right to be equitably represented and self-rule at all levels of government institutions must be respected as well as their political participation must be encouraged and guaranteed by constitutional provisions and other sub constitutional legal means including taking political and administrative measures.
5. Last but not least, Nationality Administrations that are established by the revised constitution of Amhara national regional state and subsequent legislations of 2006 and 2015 respectively should establish a legal platform in order to discuss and share some administrative experiences as well as political views from each other and strengthen their negotiation and bargaining power to be properly heard and accepted their voices at national regional state level.

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## Appendices

### Summary and Composition of Participants of Interviewees

No.	Federal	Regional states	Sub State	Sub Total
1	House Speaker	Speakers, RC (2)	Speakers, NAC (3)	6
2	Secr. CRA, HoF (2)	Legal Advisors (4)	Heads, DCSs (4)	10
3	MP, HoPR (2)	Chair,Sta. CLA (4)	Chair, Stand. CLA (4)	10
4	Experts, MPHRRM (2)	Former President	Former Ch.Adm. (4)	7
5	Legal Expert HoF (2)	Leadership Advisor	Dputy Chief Admn. (2)	5
6		Media Head	Community Reps. (15)	16
7		Academics (5)	Lawyer	6
8		Head, Office of HS (2)		2
9	Federal sub total (9)	Region Sub-total (20)	Subreg. Sub-tot (33)	62

### Lists of Interviewees

Name of Interviewee	Affiliation/Responsibility	Location	Date of Interv.
Ato Abayneh Zewdu	Lawyer of Kemant Community	Gonder	9 June 2015
Ato Abdi Kedir	Acting Head of CIC, Oromia Region	Addis Ababa	2 Dece. 2016
Ato Abraham Minaye	Member of LASC of Awi Nationality Council	Bahir Dar	10 June 2015

Ato Addisu Melaku Hailu	Legal Advisor, Speaker of Chaffe Oromia	Addis Ababa	1 Nevem. 2016
Ato Alelegn Yehuala	Legal Advisor, Speaker of Amhara Region Council	Bahir Dar	10 June 2015
Ato Alemayehu Haile	Researcher, Oromo Cultural Centre	Addis Ababa	21 June 2016
Ato Amare Sete	Diputy chief Administrator of North Gonder Zone	Gonder	11 June 2015
Ato Araya Selasie	Chair Person, LASC of Amhara Region Council	Bahir Dar	13 June 2015
Ato Assefa Belay	Director, SLSP to chief administrator of Amhara	Bahir Dar	13 June 2015
W/ro Atalelech Engida	Member of Amhara Region Council	Bahir Dar	11 June 2015
Ato Ayele Yirdaw	Member of Amhara Region Council	Bahir Dar	12 June 2015
Ato Belay Shibeshi	Lecturer and Member of Kemant's IRCC	Gonder	8 July 2015
Ato Daniel Demissie	Secretary, SCCIRA, House of Federation	Addis Ababa	15 Octob. 2015
Ato Hailu Misew	Speaker, Wag Hemera Nationality Administration	Bahir Dar	10 June 2015
W/ro Huluagersh Tazez	Member, Amhara Region Council	Bahir Dar	11 June 2015
Ato Ibrahim Mohamed	Member, Amhara Region Council	Bahir Dar	14 June 2015
Ato Indris Ahmed	Speaker, Oromo Nationality Council	Kemisie	10 July 2015
Interview with A.	Member of Zay Community	Ziway	1 May 2016
Interview with B.	Member of Zay Community	Meki	3 May 2016



Interview with C.	Member of Zay Community identity recognition com.	Meki	2 May 2016
Interview with D.	Elder of Zay Community	Ziway	1 June 2016
Interview with E.	Member of Zay Community identity recognition com.	Ziway	2 May 2016
Interview with F.	Member of Zay Community identity recognition com.	Meki	30 April 2016
Interview with G.	Member of Zay Community	Ziway	13 Feb. 2016
Interview with H.	Government officials of Oromia Region	Addis Ababa	15 Feb. 2016
Interview with I.	Member, one of the non-Oromo ethnic groups	Adama	12 Feb. 2016
Interview with J.	Member, one of the non-Oromo ethnic groups	Adama	12 Feb. 2016
Interview with K.	Active member of Kemant Community	Gonder	8 July 2015
Interview with N.	Member, Ethic group living in Oromia region	Adama	12 April 2017
Interview with O.	Member, Ethic group living in Oromia region	Adama	12 April 2017
Interview with P.	Member, Ethic group living in Oromia region	Debre Zeit	13 April 2017
Interview with Q.	Member, Ethic group living in Oromia region	Debre Zeit	13 April 2017
Ato Issa Boru Tola	Chair Person, LASC of Cahfe Oromia	Addis Ababa	1 Novem. 2016
Ato Legese Tulu	Former chief Admn., Oromo Nationality Zone	Bahir Dar	12 June 2015

Ato Lejalem Weldie	Former Speaker, Wag Hemera Nationality Council	Bahir Dar	11 June 2015
Ato Melese Abayneh	Former chair person, LASC of Chafe Oromia	Addis Ababa	17 Nove. 2016
Ato Melkamu Sisay	Lecturer, Legal advisor to Kemant community	Addis Ababa	15 April 2016
Ato Merhatsidik Mekonen	Legal advisor to chief administrator of Amhara	Bahir Dar	13 June 2015
Ato Mesrak Tefera	Chair person, BPASC of Amhara Region	Bahir Dar	13 June 2015
W/ro Metin Chekole	Member of Amhara Region Council	Bahir Dar	14 June 2015
Ato Metiku Beyene	Former chief Admn., Wag Hemera Nationality	Addis Ababa	16 April 2016
Dr. Milkesa Midega	Lecturer and Activist on Oromia case	Addis Ababa	5 Novem. 2016
Ato Mola Jember	Member of Kemant Community	Addis Ababa	10 June 2016
Ato Mulugeta Debasu	Chief Admn., Agew Awi Nationality Admn.	Injibara	15 June 2015
W/ro Mulunesh Dessie	Member of BFASC of Awi nationality council	Injibara	15 June 2015
Ato Muluye Welelaw	Case flow manager, CICR of HoF	Addis Ababa	27 April 2016
Ato Mustefa Aba Simel Aba Lofe	Head, office of Chaffe Oromia	Addis Ababa	27 Octob. 2016
Ato Nega Gete	Member of Kemant Community	Gonder	8 July 2015
Ato Nibret Fentahun	Former Speaker, Agew Awi Nationality Admn.	Injibara	14 Jine 2015
Ato Seidu Eshetie	General Manager, Amhara	Bahir Dar	12 June 2015

	Mass Media Agency		
Sheik Yesuf Abdulmed	Member of Amhara Region Council	Bahir Dar	10 June 2017
Sheik Abdulwahab Muhmed	Member, Amhara Region Council	Kemisie	10 June 2015
Ato Shimelis Nigusie,	Member, Amhara Region Council	Kemisie	12 June 2015
Ato Tefera Feyisa	Former chief Admn., Oromo Nationality zone	Bahir Dar	12 June 2015
Ato Teferi Habtamu	Data Admn., Oromia education Bureau	Addis Ababa	10 June 2016
Ato Tokuma Dhaba	Lecturer and researcher Ambo University	Addis Ababa	13 April 2016
W/ro Worksemu Mamo	Deputy Speaker, Amhara Region Council	Bahir Dar	13 June 2015
Ato Worku Adamu	Secretary, SCFCIRA, House of Federation	Addis Ababa	18 April 2016)
Ato Yalew Abate	Speaker, Amhara Region Council	Bahir Dar	13 June 2015
Ato Yosef Reta,	Former chief Administrator of Amhara	Bahir Dar	15 June 2015

## Semi-Structured Interview Questions

### A. Questions to repondents of both federal and regional state government officials/experts

- Do you think the federal constitution of 1995 is accommodative of ethno national minority rights residing in all regional states of federal Ethiopia?
- Do you think the fundamental rights and freedoms of ethno national minorities reside in regional state administrative territories are guaranteed by the revised constitutions of the same and practical implementation of regional state governments?

- How are the questions of existence, equitable representation and self-government of ethno national minorities entertained by regional state governments and the House of Federation?
- What is the extent of practical implementation of the constitutionally guaranteed right to self-determination including and up to secession of ethno national groups in the respective national regional states under discussion?
- What are the limitations of the Ethiopian federal political system in general and the national regional state governments under consideration in particular with respect to the existing laws of the country in dealing with the issues of ethno national minorities?
- How does the political and legal context of federal Ethiopia affect the right to existence, equitable representation and self-government of ethno-national minorities in the country in general and in the national regional states under discussion in particular?
- Do you think the regional state revised constitutions of Amhara and Oromia have incorporated provisions inconsistent with the FDRE Constitution of 1995? Especially with the fundamental provisions of federal constitution, which provides for the right to self-determination of ethno national groups in the regional states under consideration?
- How can we best address policy and legal matters related to the rights to existence, equitable representation and self-government of ethno national groups in regional states?

**B. Questions to respondents (officials/experts) of regional states of Amhara and Oromia**

- Are all ethno-national minorities politically recognized and legally guaranteed to be equitably represented at the regional legislative councils? If not, what are the practical implications of the lack of equitable representation of the same?
- On what basis of criterion does the regional state government decide the number of representatives of ethno national groups from each electoral constituency for representation to the regional state legislative council?
- Is there any constitutional or legal ground for the regional council to decide the number of representatives from each *Wereda*/nationality administration?

- Is there any form of territorial or cultural autonomy allowed for ethno national minorities living in the regional state of your own? If no, why not? If yes how they are organized?
- Are there political and legal mechanisms employed by the regional state government to accommodate the rights of the non-indigenous ethno national minority groups in light of equitable representation in the regional state council?
- Has the territorial or non territorial administrative arrangement of ethno national minorities, which are found territorially concentrated or scattered, negatively affected/ positively helped the regional state in considering their right of self-government?
- Is there any form of power sharing mechanism employed in the regional state government? If the answer is no, why not? If the answer is yes, which ethno national minority groups are entitled for such power sharing and why?
- What is the main reason behind the under representation of non indigenous ethno national minorities living in the region?
- Is there any reason behind the fact that non indigenous ethno national minorities have not been able to secure equitable representation in accordance with their numerical size?
- Have you any clue about the cause of ethnic conflicts that have been occurred in your regional states between indigenous and the non-indigenous communities?
- What are the legal and practical limitations on the right to existence, equitable representation and self-government of ethno national minorities in the national regional states under discussion?

### **C. Questions to respondents of community members of Amhara and Oromia Regions**

- What is the relationship between different ethno national groups in the region you are living in general and with the majority ethnic group of the regional state in particular?
- Do you feel some ethno national groups are more dominant over the others? If the answer is yes, in what manner? Is that clearly expressed in your particular community?

- Is there any mechanism that accommodates your interest through equitable representation of non indigenous ethnic groups at all levels of regional state government institutions?
- Why you raise the question of separate existence as a distinct ethnic group and the right to self-government at this important time (juncture) and what is the response of your respective regional state government officials?
- Do you think the political and legal treatment of regional state government is sound in entertaining your claim of distinct identity recognition and the right to self-government?
- What is the current status of your claim of identity recognition and the right to self-government? Do you think that the political leaders of the ruling party and officials of regional state government will consider and thereby answer your identity claim?
- What if the regional state government is not ready to respond your claim to identity recognition and the right to self-government?
- Have you went to the House of federation in the form of appeal? If the answer is yes, what was its response? If not, why you kept quiet to go there?
- Why you are reluctant to accept the regional state's political and legal response towards your community's distinct identity recognition and the right to self-government?



Appendix 1

የፌዴራል የሥነ ምግባርና የዕቃ አስተዳደር ዘርፍ

የፌዴራል የሥነ ምግባርና የዕቃ አስተዳደር ዘርፍ

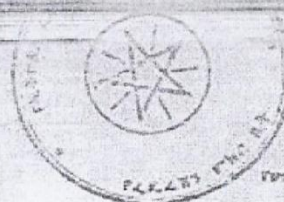
የፌዴራል የሥነ ምግባርና የዕቃ አስተዳደር ዘርፍ  
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Date

በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት

የዕቃ አስተዳደር ዘርፍ

በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት ዕቃዎች በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት ዕቃዎች በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት

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የፌዴራል የሥነ ምግባርና የዕቃ አስተዳደር ዘርፍ  
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2/5/2001

አገልግሎት

- በተዘጋጀ የዕቃ አስተዳደር ዘርፍ
- በተዘጋጀ የዕቃ አስተዳደር ዘርፍ
- በዕቃ አስተዳደር ዘርፍ

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- በተዘጋጀ የዕቃ አስተዳደር ዘርፍ
- በተዘጋጀ የዕቃ አስተዳደር ዘርፍ
- በዕቃ አስተዳደር ዘርፍ

በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት

በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት

በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት

በዕቅድ ውስጥ ያለውን ዕቃዎች በመግለጽ የሚገኝበት



የገጽ 1

ANR COUNCIL

0001/0003

የሕዝብ አዋጅ ቤት



Office of the Speaker of the Amhara National Regional Council

ቁጥር: የፈጥ 01/971/መረ-1

Ref. No.

ቀን 1 06/12/2005

Date

በሥራ ላይ የሚገኙት  
በተደራጀ ጽ/ቤት

**ጉዳዩ የትግንት ማህበረሰብ የማንነትና የራስ አስተዳደር ጥቅል ላይ የሚከናወን ውሳኔ ስለማለወጥ**

የሕዝብ አዋጅ ቤት የተደራጀ የውሳኔ ሃሳብ ለም/ቤቱ የቀረበ መሆኑ ይታወቃል፡፡

በሕገ መንግሥት መሠረት በም/ቤቱ ስልጣን ሥር የሚካተት ስለመሆኑ ለጥንቃቄ ተገኝቶ ለመሆኑም በተሻሻለው የክልሉ ሕገ-መንግሥት አንቀጽ 49 ንዑስ አንቀጽ 3.2 መሠረት የሕዝብ አዋጅ ቤቱ ሁኔታዎች ተሟልተው ሊገኙ በክልሉ ውስጥ ተጨማሪ የአስተዳደር አርክቶችን ወይም በራስ አስተዳደር አካባቢዎችን ለማቋቋም እንደሚችል ለም/ቤቱ ስልጣን የተሰጠው መሆኑን ያሳያል፡፡ በመሆኑም ም/ቤቱ በ4ኛ ዙር 3ኛ ዓመት የሥራ ዘመን 10ኛ መደብ ጉባኤው ጉዳዩን እንዲያገዝ እድርገት ተወያይቷል፡፡

በዚህ ተደጋጋሚ ጥናት ተመስርቶ የክልሉ መስተዳድር ም/ቤት ካቀረበው ፕሮጀክትና የክልሉ ም/ቤት የተደራጀ የውሳኔ ስለተያየት ጋር በማገናኘት የሕገ መንግሥት መሠረት ለሚገኝው ስልጣን መሠረት የተደራጀው ስልጣን የሰጠው የሕገ መንግሥት መሠረት ስልጣን ለማሳደግ የሚችል መሆኑን ያሳያል፡፡

በዚህ የትግንት ሕዝብ ታሪክ ቋንቋ ላህሉ እንዲቀርብና ለመጨረሻ ትውልድም እንዲተላለፍ ለማድረግ ለግብርና ለውጭ የክልሉ አስፈጻሚ አካል በክልሉ በተለየ ትኩረት መከታተል እንደሚገባ እንዲሁም ለህብት በመመደብ እንደ ትምህርት፣ ጥናትና ምርምር ያሉ ተቋማትን በመመስረት ተገቢ ስራ እንዲወስድ ተወስኗል፡፡

የሕገ መንግሥት መሠረት አስፈላጊው እንዲረወጥ አያሳስብኩት የክልሉ መስተዳድር ም/ቤት በዚህ ፕሮጀክት ከፒ 6 ንዑስ የክልሉ ም/ቤት የሕገ መንግሥት አስተዳደር ጉዳዮች ቋንቋ ለም/ቤቱ የቀረበውን ሪፖርትና የውሳኔ አስተያየት ከፒ 2 ንዑስ የክልሉ ም/ቤት ሪፖርት 9 ንዑስ ባደረገው 17 ዘመናዊ ደብዳቤ ጋር አያይዘን የላከን መሆኑን አሳውቃለሁ፡፡

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በሥራ ላይ የሚገኙት  
በተደራጀ ጽ/ቤት

- ♦ ለምክትል አፈ-ገባዔ
- ♦ ለሕግ፣ ፍትሕና አስተዳደር ጉዳዮች ኮሚቴ
- ♦ ለሕግ አማካሪ
- ♦ ክልል ምክር ቤት ጽ/ቤት
- ♦ የትግንት ብሔረሰብ የማንነትና የራስ አስተዳደር ይፈቀድልን አስተባባሪ ኮሚቴ
- ♦ ባለቤት



"ከሰላም ጋር"  
የሰው አባተ  
አፈ ገባኤ



የራስ አስተዳደር ጥያቄ በተደረጋጋ የቀረበ መሆኑንና ጉዳዩም ለፌዴሬሽን ምክር ቤት በአሉ መንግስት መፍትሄ እንዲሰጥ ከአንዴም ሁለት ጊዜ ደብዳቤ መሳኩን ኮሚቴው ለተነሣው ጥያቄ ሀገራዊ ጉዳዩ መልስ ለመስጠት ክልሉ ያደረጋቸውን ጥረቶች በመጨረሻም የክልሉ ካቢኔ የደረሰበትን ውሳኔ ኮሚቴው ተመልክቶ ለተከበረው የውሳኔ ኃሳብ እንዲያቀርብ በተጠራበት መሰረት ለቀረበው ጥያቄ ምላሽ ለመስጠት ጥረቶችን በዘርፉ

የራስ አስተዳደር ጥያቄዎች ምክር ቤት የሚያገኙት በሀገራዊ መንግስቱ ማዕቀፍ ስር መሆኑን ገልፅ ነው። በኢ.ፌ.ዲ.ሪ ሀገራዊ መንግስት አንቀፅ 39/5/ እና በተሻሻለው የአማራ ዘመን ሀገራዊ መንግስት አንቀፅ 39/7/ መሰረት ብሄር ብሄረሰብ ወይም ህዝብ ማለት፡-

ለ የጋራ ጠባይ የሚያንፀባርቅ ባህል ወይም ተመሳሳይ ልምድ ያላቸው፤  
በጠባብ የሚችሉበት የጋራ ቋንቋ ያላቸው፤

ወይም የተዛመደ ህልውና አለባቸው ብለው የሚያምኑ የስነልቦና አንድነት ያላቸውና

በሀገራዊ የቀረበው ጥያቄ በእርግጥም በሀገራዊ መንግስቱ የተቀመጡ መሰረቶችን የሚያሟላ ለመመሆኑን ለማረጋገጥ የተደረጉ ጥረቶችን አይተናል። የክልሉ መንግስት ለጉዳዩ ምላሽ ይከናወናቸው ተግባራት፡-

1. የደረጃ የክልሉ የበላይ አመራር በጉዳዩ ተወያይቶ ሀገራዊ መንግስቱን በትክክል ለማድረግ የሚያስችል ጥናት እንዲካሄድ ወስኗል፤

2. ክልሉ በክልሉ መንግስት በኩል በተደራጀ ኮሚቴ አማካኝነት ለሰነድ ጊዜ እና በማህበረሰቡ አንድ ጊዜ በድምሩ አራት ጊዜ ጥናቶች እንደተካሄዱ የሚገልፁ መረጃዎች ይሰጣሉ።

3. ጥናቶችና በተለያዩ ጊዜያት የተደረጉ ውይይቶች መሰረትም፡-

4. የቋንቋ ሰብተሰብም ሆነ በአካባቢ ደረጃ የማይነገርና አልፎ አልፎ ቁጥራቸው እጅግ በጣም አዛውንቶች ብቻ ተወስኖ ያለ መሆኑ፤

5. ተናጋሪዎች ከአማርኛ ተናጋሪዎች ጋር ተደባልቀው የሚኖሩ እንደ ሰገጥ / በመንደር ለገደለሰና ተናጋሪ አዛውንቶችም በተለይ እነ አካባቢ እንደሚኖሩ፤



Handwritten signature and date '16/08'.



በሆን ልዩነት ጎልቶ የወጣ ከአማራው የተለየ ሁኔታ አለመገኘቱንና፤  
 ወረዳ ላይ ብቻ በግለሰብ ደረጃ የተወሰነ የህግ-ልቦና አማካኝ አገልግሎት መረጋገጠቱን፤  
 በሰነድ ልቦና አንድነት፤ በዘር ግንደና በስሜን ቅማንት ነገ ሰሎ የሚያምን የህዝብ  
 ለሰመዋሩ ተስተውሏል።  
 በሆን የተገኙትን የጥናት ውጤቶች ከህግ-መንግስቱ መስፈርት አገዳ መዝና የቅማንት  
 ግለሰብ ደረጃ በጥቂት አዛውንቶች በተበታተነ ሁኔታ የሚነገር እንደ የአለት ተአለት  
 ሆኖ ቋንቋ አሰመሆኑን፤ ቋንቋው የ ነገር ሀብት በሰህን ጨርሶ ከመሞቱ በፊት የክልሉ  
 ጥያቄ በፌዴራል ሆኖ በመገኘቱ መስፈርቱን አሟልቶ  
 ሆኖ የራስ አስተዳደር ጥያቄውን አገዳ ባለባት ሁኔታ ምላሽ ለመስጠት በዚህ ምክር ቤት  
 በማለት መወሰኑን ለክልሉ ምክር ቤት አገልግሎት በዚህ ምክር ቤት  
 ለሆን የጥናት ጉዳዩ ለቋሚ ኮሚቴው ተመርቶ ባለው አጭር ጊዜ ውስጥ የጥናት ሰነዶችን  
 በሆን የክልሉን ህጎች በመመርመርና በተጨማሪ የህግ ባለሙያዎችን በማወያየት ሃሳብ  
 ላይ ጥረት አድርጓል። ከቀረበልን የጥናት ውጤትና ከባለሙያዎች አስተያየት እንዲሁም  
 ለሆን መስተዳደሩ ከቀረበው ሪፖርት መገንዘብ የቻለው የጥያቄው ዋና ማጠንጠፍ የራስ  
 ለሆን ጥያቄ መሆኑ ነው። በተጨማሪም የሆን ምክር ቤት አቅጣጫ 49/3/21 መሰረት  
 ለ ምክር ቤት የህዝቡን ብዛት፤ የክልሉን ስፋትና ማህበራዊ-ኢኮኖሚያዊ አቅራቢ ጥንት ውስጥ  
 በሆን በክልሉ ውስጥ ተጨማሪ የአስተዳደር አርክቶችን ወይም የራስ በራስ አስተዳደራዊ  
 ምክንያት እንደሚያቋቁም በተሰጠው ስልጣን መሰረት የራስ በራስ ማስተዳደር ጥያቄም መልስ  
 ላይ የሚችለው በህግ-መንግስቱ መስፈርት ብቻ ሊሆን ይገባል። ስለዚህ የክልሉ ካቢኔ ባቀረበው  
 ላይ ወደፊት ቋንቋውን ለማሳደግ አስፈላጊው ጥረት ሁሉ መደረግ ያለበት ሆኖ፤ ነገር ግን  
 አስተዳደር ጥያቄን በተመለከተ በህግ መንግስቱ የተመለከቱት መስፈርቶች ባልተሟሉበት  
 መፍቀድ አስችጋሪ መሆኑን ኮሚቴውም በአስተዳደር ምክር ቤቱ የቀረበውን ውሳኔ ርዕዮተ  
 ነገሩ በመሆኑ የተከበረው ምክር ቤትም ለ ክርበት እንዲወስን የውሳኔ ሃሳባችንን አቅርበናል።



የህግ ፍትህና አስተዳደር  
 ጽሕፈት  
 አርሳያ ሥላሴ ሳለሙ አበጃ  
 Araya Silase Alemu Abeje  
 የህግ ፍትህና አስተዳደር ጉዳዮች  
 ጽሕፈት ሰብስቦ  
 Legal Services and Administrative  
 Affairs Standing Committee Chair  
 Person



የግንኙነትና የራሱ አስተዳደር ጥያቄ ላይ አፋጣኝ ውሳኔ እንዲሰጠንና ብሔረሰቡ ራሱን

