An Assessment of the Rights to Electoral Participation and Representation of Non-Territorial Minorities in Ethiopia: Case of Oromia National Regional State

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Abstract

Ethiopia design ethnic based federal state structure to respond to the challenges of minorities by developing a counter-majority institutional system. However, the ethnic based federal state structure also creates local tyranny in which the ethno-territorial organization of the federating unites of Ethiopia left a number of non-territorial peoples of the country out of the constitutional recognition under the regional constitutions. As one of the regional state of Ethiopia, Oromia Regional State, is the major regional state which large number of non-territorial minorities are found. Minding this, this paper attempts to assess the rights to electoral participation and representation of non-territorial minorities in Oromia Regional State/Ethiopia. In doing so, different documents were used as data sources. Finally, as the data reveals, the Oromo use the regional autonomy for complete identification of their ethnic group and the non-territorial minorities clearly lack legal and institutional protection in the regional states.

Key terms
Federalism, Ethnic Group, Representation Right, Electoral Rights, Minority, Non-Territorial Minority

1. Introduction
1.1. Background of the Study

After a long period of unitary state experience, Ethiopia officially endorse federal state structure within the 1995 constitution which begins with the preamble “we the nation, nationality and peoples of Ethiopia” as the constituent unites of the federation.1 This expression of the constitution as ‘nation, nationality and peoples’ of the country clearly indicates that the constituent unites of the federal governments are the ‘ethnic groups’ which all are minority in the federal level of government.2 The main intension of Ethiopian Federalism is to maintain and balance the ethnic equality of nation, nationality and peoples of the country.

However, Even though, the institutional design of Federalism is the best option to respond to the challenges of minorities by developing a counter-majority institutional system, it also has a legacy of creating local tyranny which will further complicated the challenges of minority rights at the local constituent unites of the federation.3 “The federation has experienced tension and even serious communal violence and over attempts by indigenes to exclude large, but ostensibly non-indigenous, resident communities from economic and political opportunities controlled by state and local governments”.4 As Yonatan Tesfaye and Van der Beken clearly stipulates, most regional state constitutions would reveal that the provisions of the multi-faceted group right of self-determination are either explicitly or implicitly limited to indigenous internal minorities.5 For example, the preamble of the Oromia Regional State Constitution, which starts by the phrase of “we Oromo nation…..” is argued that it is the first clear move of the regional constitution to exclude the legal existence and legal protection of the rights of non-territorial minorities of the region.

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5 Ibid P: 11
1.2. Statement of the Problem

In most of the time, federal state has prized for the accommodation and protection of minorities thereby respecting their identity, culture, religion and empowers the right to self-administration.\(^6\) Hence, as federal state, the FDRE government of Ethiopia tries to create an ethnic federalism in which the territorial boundary of the constituent unites are primarily institutionalized on ethnic lines to create an ethnically homogenous regional states.\(^7\) However, there is no single federal state which has successfully demarcate the territorial matrix of federation in to an ethnically homogenous sub-national unites to lighten the crisis of ethnic minorities in the ethnically dominant regional state.\(^8\)

More importantly, the ethno-territorial organization of the federating unites of Ethiopia left a number of non-native peoples of the country out of the constitutional recognition under the regional constitutions.\(^9\) Most regional constitutions of the country have not any space for the right of those ‘exogenous’ peoples of the region for basic political rights like the right to have representative at any level of governments and the right to contest in election.\(^10\) This is Due to lack of constitutional recognition and language pre-requisite, which sated by the National Election Board of Ethiopia, Article 45 (1) sub b “any person shall be eligible for candidature, where he is versed in the working language of the regional state or the area of his intended candidature”. Accordingly, the non-native minorities excluded from major political rights to have representation and contest in election.

Therefore, under this study, the political rights of non-territorial minorities i.e. the electorate rights, the right to be represented, and taking part in decision making process that affects them and their life of non-territorial minorities in Oromia Regional State will be discussed. In doing so, the protection mechanism and measures of the regional state as well as federal government will be further assessed.

1.3. Objective

The main objective of this study is to assess the political rights of non-territorial minorities to participate in election for holding public office, decision making and have a representative in the local, regional and federal government. Under this, the paper had also the following specific objective:-
- Assess the electorate right of non-territorial minorities in Oromia Regional State.
- Scrutinize the level of participation of non-territorial minorities in decision making process of the regional state.
- Discuss the representational rights and levels of non-territorial minorities in the regional state.
- Examine the institutional and legal instruments and mechanism for the protection of the political rights of non-territorial minorities in Oromia Regional State.

For the purpose of this paper, different secondary data i.e. reports, journal articles, legal instruments etc. will be used, analyzed and crosschecked to draw a necessary conclusion and providing a constructive recommendation about issues.

2. Conceptualizing Non-Territorial Minorities
2.1. Non-Territorial Minorities Under International Human Right Regime

Protecting the rights of minorities in political, social, economic and cultural affairs is a necessary condition in which most human right activists, international and national human right

\(^6\)MengieLegesse. “Federalism for unity and Minorities’ protection: (Comparative Study on the constitutional principles and their practical implications: US, India and Ethiopia).” Central European University (Department of Legal studies), Budapest, Hungary (November 2010): P.42
institutions are agreed for both domestic and international peace. However, defining minority is the very complex activity in the international human right regimes. Even the united nation (UN) general assembly in resolution 217 (III) has declared that, ‘it is difficult to adopt a uniform solution to this complex and delicate question, which have especial aspect in each state in which it arises’.

Nevertheless, there are lots of attempts and discussion was held throughout the world, there was no an international consensus on the definitions and criteria to identify who minorities are and who can identify them, yet, until resent time most the attempts to define who minorities, scope of their rights, and who decide on one’s belongingness to minority does not include the groups of peoples who are not national of certain states. For example, from those attempts to define minority for the application of ICCPR in international level, the definition of Capotorti and Deschences are the better attempts than the rest. However, their definitions were not free form criticism. Their definition has been criticized because it does not see the possibilities that the non-national and numerically superior groups can be minorities. Nevertheless there are some groups who are in a dominant position which in fact loses the essence of the concept of minority, the requirement of ‘being nationals of the state’ or ‘citizens of the country’ clearly shows us that the non-nationals have not any tendency to be considered as minority in definition of the above two scholars.

However, after the human right committee puts its own interpretive declaration for the application of Article 27 of ICCPR, as the requirement of nationality is not further used, the concept of minority further includes the non-territorial group’s peoples who live outside their ‘homeland’. Contrary to the definition of Capotorti and Deschences, the Human right committee adopted a general comment for the application of Article 27 of the ICCPR on matters of minority rights protection. Accordingly, the committee states that: “Persons protected are those ‘who belongs to group and who share in common a culture, a religious and/or a language, who need not to be nationals or citizens … [or] permanent residence’”.

Due to the fact that the definition of minorities and the identification of minorities are a very challenging field of study in the international level, The UN Declaration on the Rights of Persons Belonging National or Ethnic, Religious and Linguistic Minorities put states as the central institution for the protection and promotion of minorities.

But, the absence of international agreed definitions of minorities, criteria for identifying minority groups and the scope of their rights have an adverse effect in protecting the rights of minorities and the process of identification of minorities in the national level. Therefore, it is fair enough to say that the national authorities have the possibility to actualize the extent and meaning of minorities at least in the national level.

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19 Tokuma Daba, “The legal and practical protection of the rights of minorities in self-administering nation of Ethiopia the case of Oromia (2010)” P. 34
2.2. Non-Territorial Minorities in Ethiopia

Here in Ethiopia, with the federal arrangement, it could practically unachievable in a multi-ethnic country to have ‘home land’ for all diverse groups of peoples who live in certain state in time of organizing a territorial federating unites. Therefore, there are many kinds of minority (non-territorial or territorial) who are in needs of protection and special consideration in the country. In fact, the concept of minority and their legal protection is not as such clear. However, no matter how there is confusion, the constitutions does not silently pass-over issues of minority rights.

There are lots of argument that the 1995 Ethiopian constitution depicts the ‘nation, nationalities and peoples’ for dealing about ‘ethnic minorities’in the country. For example, Yonatan Tesfaye and Van Der Beken argues, “the most conspicuous feature of Ethiopia’s 1994 federal constitution is its depiction of the Ethiopian population as being constituted of several nations, nationalities and peoples – the term the constitution uses to refer to ethnic minorities.” The argument is all ethnic groups in the country are considered as minority because, none of them did possess majority in the two houses of the federal government. On the other hand, even though all nation, nationalities and peoples of the country are considered as minority, the FDRE constitution tries to assign 20 seats for the Minorities in the House of Peoples Representative. Nevertheless, who are minorities and what are the possible criteria for identifying them is not a clear concept in the constitution.

However, because the FDRE constitutions empowers the right to self-administration up to secession for nation, nationality and peoples, fortunately or unfortunately, the identification of nation, nationality and peoples in line with the language they speak and pattern of settlement does not consider group of peoples who are displaced, migrated and moved from one area to the other. For instance, the reserve 20 seats for minorities under article 54 (3) of the FDRE constitution does not include those non-native minorities who are dispersed throughout the country and no measures and mechanism are developed to protect them from any regional tyranny. In fact the non-discrimination and equal recognition clause of the Federal constitution under article 5, 25, 59, and 89 (4) is used as the best mechanism for the protection of any groups of peoples and individuals who live in any place of the country.

Since the devolution of power and sovereignty in Ethiopia is an ethnic and territory based, those groups of peoples who are dispersed out of their ‘home land’ becomes out of the sight of the federal government. More importantly, the regional governments use this statement of power division in line of their ethnic groups and the territory that they inhibit as the source of their autonomy and power. In Oromia Regional State, no one except the Oromos’ have a sovereign power as of article 8 of the regional constitution which says “Sovereign power in the region resides in the people of the Oromo nation” and right to contest in election because of the language requirement of the amended electoral law of Ethiopia under Article 45 (b).

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21 Yonatan TesfayeFeseha: Federalism, the sub national constitutional framework and local government: Accommodating minorities within minorities “Perspective on federalism,” V. 4:p. 8
24 The 1995 FDRE constitution Article 54 (3)
27 Revised Oromia Regional state Constitution Arti. 8
2.3. Non-Territorial Minority Rights in Oromia Regional State

Oromia Regional State is the largest regional state with fertile soil land and natural resources and has a share of 30 percent of the country’s population. As the rest regional states of the country, Oromia regional states has its own constitution which had complete identification Oromia region with the Oromo ethnic groups in which the regional constitution blamed in not giving adequate protection and recognition to Non-Oromo (non-territorial) groups of peoples who live in the region.

Even though the regional constitution under article 2 (1) acknowledges the existence of Non-Oromo groups of peoples in the regional state, intentionally or unintentionally, the constitution under article 8 states that “Sovereign power in the region resides in the people of the Oromo nation”. The ‘Oromo Nation’ in the constitution as clearly stipulated under Article 39 (6) does not include any group rather than the Oromo’s who inhibit in the Oromia regional state. Regarding with this, Article 39 (6) of the constitution stipulates that:

"For the purpose of this constitution, the expression '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 Oromo’s and who predominantly inhabit in a contiguous territory of the Regional State."

So, this article is fair enough to say that the sovereign powers of the region do not reside in the hands of peoples of Oromia region, rather only in the hands of the Oromo ethnic group who inhibit the Oromia region. Accordingly, the regional constitution and administration is blamed in having less or insignificant protection and recognition for the electoral participation and representation rights of non-territorial minorities in the region.

Hence, to further assessed the situation and attain its objective of the paper, in the next sections the paper tries to address the major political rights specifically the right to elect and be elected, the right to get represented and take part in the public decision making system rights of minorities in the regional state.

2.3.1. The Right to Elect and be Elected of Non-Territorial Minorities in the Region

Formal constitutional or statutory recognition of a citizen's right to vote and to run for public office is common to democratic states and plays both a substantive and a confidence-building role. So, the rights to democratic participation of citizens are largely expressed through exercising the right to elect and be elected to hold public office. The electoral system of in a democratic society should be conducted in a way that assures the equitable representation of different groups (especially minorities) of the country. However, In Ethiopia, the voting methods, electoral law’s language requirement for political empowerment does not offer a desired atmosphere for minorities, especially non-territorial dispersed groups of peoples, both in regional and federal governments of the country.

The challenges of Minority right to elect and be elected for hold public offices become very complicated and serious when we go to the regional level. In Oromia regional states, the electoral rights of peoples is undeniable right for everyone but the right to be elected for public offices is solely given to the Oromo ethnic groups only. In fact, the problem of holding public office for dispersed minorities is not only in Oromia regional state; rather it is also true in other regional states like,

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29Regional state of Tigray, Afar, Amhara, Gmbella, Somali, Benishangul-gumuz, SNNP and Harari regional states
31Regional constitution of Oromia Article 8
32Regional constitution of Oromia Article 39 (6)
34Ibid
Amhara, Benishangul-Gumuz, Gambella etc. This is because; the right to be elected to hold public office is a conditional right because of the language requirement of the NEB for those non-territorial minorities of the country.\textsuperscript{36}

In Oromia regional states, there is no any barrier or vivid hurdle for right of non-territorial minorities to elect in the regional electoral system. However, since the sovereign power of the region resides in the hand of the Oromo communities and being candidate for election requires to speaking Oromiffa language, guarantee the right to participate in election is meaningless as non-territorial minorities did not have any representative candidates in the regional state that they intended to elect.\textsuperscript{37}

\textbf{2.3.2. Representational Rights of Non-Territorial Minorities in the Region}

Now days, the representational rights of individuals and different groups of peoples are the symbols of democracy for better response of the interest and demands of groups of peoples, especially minorities, for development, peace and order in which states of the world are in demand of.\textsuperscript{38} There for, citizens of the state conduct election to elect individuals that best represents them through direct and indirect election. On the other hand, getting represented is also basic human rights of human being in any activity and decision making system in which it affect their life directly or indirectly.\textsuperscript{39} Here in Ethiopia, “taking into consideration it’s long history of competing ethnic nationalisms and lack of consensus, there is the need for securing adequate representation proportional to the numerical presence of minorities in constituencies in lieu of stubborn adherence solely to the majoritarian plurality system”.\textsuperscript{40}

The representatives of Oromo peoples (\textit{CaffeeOromia}) are also organized through direct election for representing the peoples of the region.\textsuperscript{41} It is very clear that the representative of the peoples does not elected by the Oromo ethnic groups only; rather the Non-Oromo peoples of the region are also take part in electing the representative of the region. However, since the sovereign power of the region resides in the Oromo ethnic groups\textsuperscript{42}, the ‘\textit{CaffeeOromia}’ does not be considered as the representative of the population of Oromia, rather as the representative institutions of the Oromo ethnic groups.\textsuperscript{43} Therefore, non-territorial groups of peoples who live in the region have not any representative in the regional parliament. Even though they participate in election, the body that they elect will not protect their rights since they do have any sovereign power in the region which makes their election ceremonial to the election process of the Oromo ethnic group of the region.

The non-consideration of the Non-Oromo peoples of the region is also reflected in the appointment of the CCI of the regional state. As per article 68 (2) of the regional constitution of Oromia, members of the regional CCI is appointed by the ‘\textit{CaffeeOromia}’, who do not represent the non-territorial groups of peoples, from a groups of peoples who are the holders of sovereign power of the region. Additionally, the rest members of the regional CCI are the members of the ‘\textit{CaffeeOromia}’ and president and vice-president of the regional supreme court\textsuperscript{44} which appointed by the ‘\textit{CaffeeOromia}’ through language requirement from the Sovereign power holder of the regional state.\textsuperscript{45}

\begin{thebibliography}{99}
\bibitem{36}BezaDesalegn. “The right of Minorities to political participation under the Ethiopian Electoral system” Mizane Law, vol.7 No.1 (2013): p. 1
\bibitem{39}BezaDesalegn. “The right of Minorities to political participation under the Ethiopian Electoral system” Mizane Law, vol.7 No.1 (2013): p. 2
\bibitem{40}BezaDesalegn. “The right of Minorities to political participation under the Ethiopian Electoral system” Mizane Law, vol.7 No.1 (2013): p. 1
\bibitem{41}See Oromia regional states Article 48(1)
\bibitem{42}Oromia regional constitution Article 8
\bibitem{44}See Oromia regional constitution article 68(2)
\bibitem{45}See Oromia regional constitution Article 65(1)
\end{thebibliography}
the issues of constitutional interpretation of the region is also unilaterally given to single ethnic groups without considering the non-territorial ethnic groups of the regional state. However, there is an argument that, because Non-Oromo peoples of the region are highly dispersed throughout the region; and, power and authority share of ethnic groups in the country are most likely based on ethnic groups who inhibit a defined territory, giving autonomy and representational right for these groups is very difficult in the region. In addition to this, because the devolution of power and sovereign autonomy in Ethiopian federation is based on the defined territory to ethnic groups in which constitutionally recognized as native to the region, the non-native groups of peoples are not constitutionally legitimate to hold public office and take part in electoral contestation. However, since federalism means not confederation in which states are cooperated with their complete sovereignty, considering non-native/non-territorial groups of peoples as emigrant is not constitutionally valid.

2.4. Mechanism of Protecting the Rights of Non-Territorial Minority in Oromia Regional States

The Minorities are historically miss-fortuned groupsof peoples who largely subordinated, discrimination dominated in social, political, economic and cultural matters of their history. Therefore, minority groups of peoples need to have special consideration and effective protection mechanism of their rights for the preservation of their culture, identity as well as to enjoy their rights of self-determination and identification. However, the non-territorial minorities in Ethiopian case are moderately different from the above concepts. Because, some of the non-native minorities are historically dominant while others are not and currently, they are politically dominated which will frustrate their existence because of political persecution and exploitations. Therefore what they basically in need off is to have a political and legal protection and recognition in different areas of the country. Therefore, in doing so, to have an effective protection mechanism, institutional and constitutional measures are the main significant instruments in certain political community.

2.4.1. Institutional Protection Mechanism of Non-Territorial Minority Rights

Minority groups of peoples are always in need of special protection and consideration from survival to preservation of their identity, culture, tradition and ways of life. For such protection and consideration of the right of minorities, well organized institutional setup is the basic necessary instrument for the better protection of minorities in certain political society. Withstanding from this fact, the Oromia regional states had also expected to flourish such institutions for the protection of minorities. The three organs of the government i.e. the Legislative (CaffeeOromia), the executive and judiciary and other governmental institutional like the Regional CCI and social institutions like ‘Jarsumaa’ are the major institutions which have a tremendous importance for the protection and promotion of minorities rights in the regional state.

The major institutions that are better in position of protecting and defending the rights of peoples and minorities in the regional state are the representative of the regional peoples i.e. the ‘CaffeeOromia’. However, as ‘CaffeeOromia’ is not the representative of the peoples of the region, rather it is representative of the Oromo ethnic groups of the region, the major institution that intended to protect the right of minorities in the region is not in a position to protect and defend their rights.

More than this, as the regional government is one chambered parliamentary system, there is no any alternative institution rather than the ‘CaffeeOromia’in the regional house that represents the Nation, Nationalities and Peoples (ethnic groups) of the region as that of the federal two chambered house in which the upper house is the representative of the NNP’s (ethnic groups) of the country and the lower house is the representative of the peoples the country.

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47TimoMakkonen, Identity, difference and otherness; the concept of ‘people’, Indigenous people’ and ‘minority’ in international law, (2000): P. 90
Even as the CCI of the regional state is elected by regional parliament in which members of the parliament are all from one ethnic group and from the sovereign power holder through language requirement, the non-territorial minorities which have not a sovereign power of the region, did not have any representative and participation to have a say over the constitutional matters of the region which affects their life. So, the regional administration has not any room and institutional set up for the protection non-territorial minorities of the region.

In fact social institutions like jarsumas are still in an important position to practice the protection of non-native minorities in the regional states. Community social institutions like church and mosques and related social association ‘edir’ and ‘equb’ are the main institutions which develop an equal recognition and protection non-native minorities not only in Oromia region but also in all regions of the country. So, the social institutional are more inclusive and protective than the legal and institutions in the all regional states of the country in protecting the minorities.

2.4.2. Constitutional Protection Mechanism of Non-Territorial Minority Rights

As I try to explain above, the Oromia regional Constitution is blamed for the lack of protection of non-territorial minorities in the regional state. The phrase used in the preamble of the constitution, “we Oromo Nation…….” is enough to show for the loss of constitutional protection of the Non-territorial minorities in the regional state. Even though the regional constitution recognizes the existence of Non-Oromo groups of peoples under Article 2 (1) of the regional constitution, the sovereign power of the region is in the hands of the Oromo ethnic group as stated under article 8 of the regional constitution.

Withstanding what Oromo is under article 39 (6) of the constitution which defines as "…… people who speak the Oromo language, who believe in their common Oromo identity, who share a large measure of a common culture as Oromo’s and who predominantly inhabit in a contiguous territory of the Regional State", it shows that the regional constitution does not give room for the non-Oromo groups of people in the regional states.

3. Conclusion and Recommendation

No matter how federalism is considered as the best mechanism for the protection of the rights of diverse groups of peoples especially minorities by creating counter majority, it is also blamed that federalism creates regional tyranny which is the main treats for the rights of minority rights. What is going on in Ethiopia is the same to the universal critics of federalism. The non-territorial minorities are engulfed by the territorial groups of peoples who are legally and politically empowered to for their self-administering institutions and system while the non-territorial did not.

As the case of Oromia regional states, since the Oromo use the regional autonomy for identifying their ethnic group, the non-territorial minorities clearly lack legal and institutional protection in the regional states. Even though the non-territorial minorities have the right to take part in voting, because they lack constitutional recognition and the language requirement which sated by the NEB, they did not have the right to contest in election and have their own representative in any level of the government.

However, as recommendation, the non-territorial federalism at least for those non-territorial dispersed minorities can lightened the problem of minority rights in the territorial federal regional states. In fact, the non-territorial federalism is the direct pervers of territorial federalism at least principles especially for the case of, however, it not mean that the two principles can never go together. For example, the Harari peoples have the territorial regional council of representative which elected by the Harari peoples of the region, and Harari peoples council which elected by Harari Ethnic groups who live in the regional state and outside the regional states as representative of all Harari ethnic groups. Therefore, it is possible to develop the institutional set up both territorially ad non-territorially for the better protection of dispersed minorities in the country.

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49 Regional constitution of Oromia, Article 39 (6)
4. Reference

- Beza Desalegn. “The right of Minorities to political participation under the Ethiopian Electoral system” Mizane Law, vol.7 No.1 (2013)
- Mengie Legesse. “Federalism for unity and Minorities’ protection: (Comparative Study on the constitutional principles and their practical implications: US, India and Ethiopia).” Central European University (Department of Legal studies), Budapest, Hungary (November 2010)
- Timo Makkonen. “Identity, difference and otherness; the concept of ‘people’, Indigeneous people’ and ‘minority’ in international law”: (2000)
- The 1995 FDRE constitution
- The Amended Oromia Regional State Constitution
- The Ethiopian housing and population census 2007