

Wherein Lies the Equilibrium in Political Empowerment? Regional Autonomy for the “Indigenous Nationalities” versus Representation Rights of “Non-Indigenous Communities” in Benishangul-Gumuz

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After the implementation of the post-1991 EPRDF government's program of ethnic regionalism, local ethnic rivalries have intensified among indigenous nationalities and non-indigenous communities of Benishangul-Gumuz. The quest for regional autonomy of the indigenous nationalities, especially to profess their need of self rule, has not resonated very well with the political representation rights of the non-indigenous communities. In this regard, the paper argues that the problem is mainly attributable to the fact that the Constitutional guarantees provided under the FDRE Constitution have not been seriously and positively implemented to bring about a balanced political empowerment. Making the matter even worse, the Regional State's Constitution by which the indigenous nationalities are considered to be the 'owners' of the Regional State coupled with an exclusionary political practice, relegating others to a second-class citizenship, has undermined the notion of "unity in diversity" in the region. Thus, striking a delicate balance between the ambitions of the indigenous nationalities regional autonomy, on the one hand, and extending adequate share of the regions political power to the non-indigenous communities, on the other, is a prerequisite for a balanced political empowerment.

Introduction

Benishangul-Gumuz is one of the nine federated states of the Ethiopian federation. It has a total area of 50,380 square kilometers with a population size of 670,847 inhabitants (Federal Democratic Republic of Ethiopia Population Census Commission, 2008). It is administratively divided into three zones of *Assosa*, *Metekel* and *Kamashi*.

The region is a sparsely populated one in contrast to other Regional States of the country. Most of its territory is characterized by unhealthy and warm climatic conditions which at times made it to be considered as the “corridor of death” by anthropologists (Ruibal and Martinez, 2006: 67). Due to its topographic and climatic conditions, the region has been one which has been secluded from the central arm of government. The hot lowland areas of the Ethiopian Empire including Benishangul-Gumuz were very much neglected by the central government (Teshale, 1995).

With respect to the ethnic composition of the region, not only is it inhabited by different ethnic groups, but is also a home to different cultural and ethno-linguistic identities. In this sense, the Regional State can appropriately

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be described as a multi-ethnic state within a multi-ethnic country. The region's native identities are the Berta, Gumuz, Shinasha, Mao and Como. These groups have been identified as the indigenous nationalities of the Regional State, pursuant to Article 2 of its Constitution. The region is also inhabited by a large number of non-indigenous communities². The non-indigenous populous nationalities include the Amhara, Oromo, Agew, Tigray, Fedashe, Kambata, Hadiya, and Gurage, each of which are found territorially concentrated in some areas and scattered in others within the region.

The three indigenous nationalities of Berta, Gumuz and Shinasha taken together account for 54.6% of the total population while the Mao and Como each have a few thousand members and are in relation to the other indigenous nationalities, not only tiny in number, but are also politically non-dominant. Similarly, the indigenous communities together account for 57.46% of the population while the non-indigenous groups account for 42.54% of the Regional State's population (Federal Democratic Republic of Ethiopia Population Census Commission, 2008). However, this rich ethnic diversity of the region has been more of a curse than a blessing.

The crux of the problem is the competing interests between the indigenous nationalities and the non-indigenous population which takes up various forms. The issues range from political representation, resource competition, civil service administration and at times to religious conflicts. Especially, the Regional State's Constitution stipulation in which the indigenous nationalities are considered to be the "owners" of the Regional State coupled with an exclusionary political practice, relegating others to a second-class citizenship, is seriously undermining the notion of "unity in diversity". In this regard, at least the constitutional guarantees provided under the FDRE Constitution should have been seriously and positively implemented to bring about a balanced political empowerment.

This article seeks to address two interrelated concerns. First, what are the nature and content of the problems indigenous nationalities and non-indigenous communities face in light of political empowerment? Precisely, the piece discusses the peculiar nature of the formation of the region in light of indigenous/non-indigenous dichotomy. This dichotomy is then elaborated to show the existence of inequitable share of political power in the region between the indigenous nationalities and the non-indigenous communities. Second, having articulated the presence of political power imbalance in the region, the article goes on to examine the constitutional design of the region and its ability in managing its

2 The terms non-indigenous communities, highlanders, non-indigenous regional minorities and exogenous groups are used in the whole text to connote identical situations of minorities in Benishangul-Gumuz which do not belong to the Regional States indigenous nationalities which are majority/ies and the politically dominant group/s.

diversity. This will be followed by a discussion on how such a disparity in political representation between the indigenous nationalities and the non-indigenous communities could be counterbalanced.

The Making of Benishangul-Gumuz Regional State and the Genesis of Political Power Disparity

After 1991, the regional administration of Benishangul-Gumuz was established by elites from the five indigenous nationalities under the leadership and dominance of the Berta political elites (Berhanu, 2007). The dominant role of the Berta ethnic group was due to its close co-operation with the TPLF and EPLF during the times of armed struggle against the Derg (Berhanu, 2007). The Berta controlled key administrative and political offices like presidency of the region until 1996. However, after 1996, due to the disagreement of the Berta ethnic group with the TPLF, the dominant role of the Berta's was reduced and replaced by the Gumuz (Baylis, 2003-2004).

Since the implementation of the post 1991 EPRDF government's program of ethnic regionalism, local ethnic rivalries in the region have intensified and to this effect the regional government largely remains weak (Young, 1999). Even though there is a long history of conflicts between the indigenous and the non-indigenous communities of the region, after the implementation of the national self determination principle by the EPRDF, ethnic conflicts have intensified in a manner not witnessed before (Wolde-Selassie, 2002).

The history of the non-indigenous communities that settled in the region is not as such a recent phenomenon; rather the communities have a long history of existence (Young, 1999). Presently, they not only are non-dominant in the region politically, but, also suffer from violation of their basic human rights as a result of marginalization by the dominant groups. Despite their long history of existence, the current practice of ethnic exclusivism appears to suggest that there is what seems to be settling scores of the past by the newly empowered indigenous nationalities (Wolde-Selassie, 2002).

The state sponsored re-settlement programs of the 1980's, as they were conducted with no prior consent of the settlers and the host community, is believed to have resulted in animosities and violent clashes among the host communities and the settled families (Belay, 2004). Additionally, the now governing political atmosphere in the region seems to imply that the factors that led to the diversification of the region have not been taken into consideration in designing the power balance.

The Regional State's accommodation of diversity, especially with respect to its politically disempowered non-indigenous communities, has not been an impressive one. For one thing, the electoral law of the country which was appar

ently considered necessary to protect the interests of Ethiopia's long suffering indigenous peoples (Young, 1999)³ has resulted in the non-representation and under representation of non-indigenous groups in the various elections in the post-1991 era.

Against the backdrop of this brief historical background of the region, the article proceeds to examine the notions of indigenous and non-indigenous classification of the region in light of theoretical as well as practical considerations.

A Conceptual understanding of Indigenous Peoples and its Bearing for Ethiopia

The international community has not yet adopted a definition of indigenous peoples. In fact, the position of most international bodies charged with examining or addressing the rights of indigenous peoples is that a strict definition of indigenous peoples is neither necessary nor desirable (Errico, 2007). It is therefore much more relevant and constructive to try to outline major characteristics which may help us identify who indigenous peoples are at the international and regional level.

The notion of 'indigenship' in international law has been largely associated with the vestiges of colonialism. Cobo's definition of indigenous peoples is the most frequently cited one in this regard⁴. He labeled indigenous peoples as descendants of pre-colonial societies which consider themselves distinct from other people who prevail on the territories they reside and are non-dominant in the region by now" (cited in Hossain, 2008:11). In addition, Hossain states that indigenous peoples have one thing in common, that is, "they share a history of injustice" (p. 10). They have been denied the right to participate in the governing process of their own territories and resources. Conquest and colonization have attempted to steal their dignity and identity as indigenous peoples as well as their fundamental right of self-determination.

Kymlicka (2008), in this regard, describes indigenous peoples as "peoples whose traditional lands have been overrun by settlers, and who have then been forcibly, or through treaties, incorporated into states run by people they

3 Young in here is noting the cumbersome requirement made by Proclamation No 111/1995, A proclamation to make the Electoral Law of Ethiopia conform to the Constitution of the Federal Democratic Republic of Ethiopia, *Negarit Gazeta*, 54th Year, No. 9, 23rd February 1995, Article 38 (1) (b) which at the time required a candidate to be versed with the vernacular of the region in which he/she intends to run for political office. This at the time was interpreted to mean the indigenous nationalities language which totally excluded the non-indigenous communities even to stand as a candidate.

4 Martinez Cobo's definition first appeared in 1986 in his study of the problem of discrimination against indigenous populations (UN Doc E/CN.4/Sub.2/1986/7)

regard as foreigners” (p. 208). While other minority nationalities dream of a status like nation states, with similar economic and social institutions and achievements, indigenous peoples typically seek something rather different which is the ability to maintain certain traditional ways of life and beliefs while nevertheless participating on their own terms in the body politic of the state (Kymlicka, 2008). In addition to the autonomy needed to work out that sort of project, indigenous peoples also typically require from the larger society a respect and recognition to begin to make amends for indignities because they suffered for decades as second class citizens. Eide contends that “indigenous peoples are those who are culturally very different from the dominant section of the country in which they live, not only in dress, religion, language, and cultural practices but also in their way of life and in their use of natural resources” (Eide, 1990:1320). These indigenous peoples have, to a large extent, maintained their own culture and consid

ered others as intruders and carriers of an entirely different culture.

Indigenous peoples are, in many instances, classified as both minority and indigenous at the same time, although indigenous people’s rights are far more extensive, stronger and detailed than minority rights (Hossain, 2008). This was due to the fact that the protection of minority groups was insufficient to protect indigenous peoples as well. Indigenous peoples are subjected to additional problems not shared by other minorities. Therefore, it is possible to identify a body of law that may be termed specifically ‘indigenous rights’ as distinct from the rights that apply to persons belonging to racial, linguistic, religious and other minorities at least in the international level (Hossain, 2008).

In contradistinction to this understanding of indigenous peoples at the international level, the African Commission on Human and Peoples Rights accorded special and separate recognition to the existence of indigenous peoples in Africa. The Commission clarified that in Africa, ‘indigenous population’ does not refer to ‘first inhabitants’ in reference to aboriginality as opposed to non-African communities or those that come from elsewhere (Advisory Opinion of the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous peoples, 2007). Pursuant to the reasoning of the Commission, the principal criterion for determining indigenous peoples in Africa is historical marginalization and isolation from mainstream politics and economic life, and spiritual or cultural attachment to land and the natural resources thereon, rather than original or first occupation (Adem, 2012). The Commission consolidated this argument in the *Endorois* case, where it refuted the commonly held belief that all Africans are autochthones and therefore indigenous (Center for Minority Rights Development (Kenya) and Minority Rights

Group International on Behalf of the Endorois Council v Kenya, 2010).

Sharing the preceding thoughts to the context in Ethiopia however makes the analysis a little complicated. First, the fact that Ethiopia was never colonized and doesn't share a history of colonialism like many African countries makes the direct applicability of indigenous peoples rights as framed in the international level challenging. Secondly, the characterization of indigenous peoples followed by the African Commission by using historical marginalization and isolation is not without its own drawbacks. This is especially when one reckons the lack of consensus on the historical foundation of the Ethiopian state and its peoples (Teshale, 1995).

However, at least for the moment, the Benishangul-Gumuz Constitution has clearly identified five ethnic groups as indigenous despite the lingering controversy over the concept of indigeness in Ethiopia. This is particularly true in the case where Article 2 of the state's Constitution simply conferred the term 'indigenous nationalities' to Berta, Gumuz Shinasha, Mao and Como ethnic groups without, however, giving any lead as to why that is done so. Such a categorization will even make it harder to assert whether or not such a nomenclature is intended to extend a protection accorded to 'indigenous peoples' within the international and regional human rights framework. Principally, as discussed above, since the application of 'indigenous peoples' rights are far more extensive than simple political empowerment as witnessed in Benishangul-Gumuz, such a categorization runs a high risk of misapplication.

Additionally, the classification of certain ethnic groups as indigenous in Ethiopia, given the fact that everyone is a native to Ethiopia, is very far from settling, especially, on account of citizenship rights. And the question is whether one should be accorded a second class citizenship when he/she lives outside of his/her ethnically identified region. On the contrary, looking at the Benishangul-Gumuz identification of indigenous nationalities, one might speculate that such identification might relate to the historical marginalization of the five ethnic groups and probably might resonate very well with the decision of the African Commission. Nevertheless, this cannot still be a ground to create a huge political imbalance between the residing ethnic groups within the region.

Who are non-indigenous peoples? The Ethiopian Context

A typical illustration of non-indigenous peoples in Ethiopia is the case of peoples who have moved from their original place of residence to the various parts of the country due to the resettlement and villagization program undertaken by the Ethiopian government in the 1980's (Belay, 2004)⁵. Non-indigenous peo

⁵ It should be noted here that the particular classification of the peoples of Benishangul-Gumuz as indigenous and other peoples as adopted by the Regional State's Constitution is far from be-

ples, at least for the sake of this article, are therefore those “which consist of groups that have moved into the territories of the indigenous peoples through migration, in need of a better living standard and securing jobs or groups which have moved into this territories in exercising their freedom of movement or descendants of groups which were on these territories or groups that were forced to move” (Tsegaye, 2009).

The term ‘exogenous group’ is also sometimes used in describing the particulars of such a category of people. In this regard, Getachew (2008) describes exogenous groups as “groups that live in states to which they are not indigenous but into which they moved over the last one hundred fifty or so years” (p. 9-10). By this, he identifies indigenous groups as those groups that are believed both legally and politically to be the owners of the territories in which they are found.

Such movements of populations coupled with circumstances where non-indigenous populations have already overwhelmingly settled in the indigenous people’s territories made the EPRDF to take a political decision of solitarily empowering indigenous groups by ignoring non-indigenous communities. Af firming to this state of fact, former Ministry of State at the Ministry of Federal Affairs stated that the very purpose in which the states of Harari, Gambella and Benishangul-Gumuz have been created is for the purpose of ensuring the political dominance of the indigenous groups⁶.

However, this choice of solitarily empowering indigenous peoples has made the non-indigenous communities to be considered as unwelcomed guests. It has also reinvigorated the assertion that the indigenous group considers itself to be the only owner of a given territory and the only group entitled to exercise a right over it. Additionally, in countries like Ethiopia where the formation of states is based on a dominant and/or majority ethnic group/s, from which indigenous groups have benefited, made the non-indigenous groups to occupy a position of minority status. This is attributable to the fact that no adequate guarantee was put in place for minorities or individual groups who happen to find themselves in ethno-regions not named after them or do not include their ethnic groups (Getachew, 2008).

Taking into consideration the dichotomy and pitfalls of indigenhsip and non-indigenhsip in the manner prescribed in the preceding two sections, the subsequent section deals with the general implication of political power imbalance

ing controversial. For example, the Agew nationalities argue that they are indigenous to the land they occupy in the region and they are no less indigenous to the ones which have been classified as such by the region’s Constitution.

6 Speech made by Dr. Gebreab , former Ministry of State at the Ministry of Federal Affairs at the 1st National Conference on Federalism, Conflict and Peace Building, Addis Ababa, May 5-7,2003 quoted in Assefa Fiseha, Constitutional Adjudication in Ethiopia, 1 Mizan Law Review1, (June 2007), 26

in the ethno-regions thereby leading to majority-minority tensions.

The Construction Sub-National Units and their Majority/Minority Dilemma

The attempt by the Ethiopian federal system to create ethnically homogenous sub-national units has been frustrated by the existence of minorities within minorities scattered and/or concentrated in every Regional State, though their degree of presence does vary from one another.

In terms of numerical superiority and political dominance of an ethnic group, the nine Regional States can be classified in the following manner. In the first category are the Tigray, Afar, Amhara, Oromia and Somali States in which the Tigray, Afar, Amhara, Oromo and Somali ethnic groups respectively are dominant numerically as well as politically (Van der Beken, 2007). In the second category is the state of the Southern Nations, Nationalities and Peoples which it is created as an amalgam of different ethnic groups in which there exists no numerical majority. But with respect to political dominance, it is contended that not all ethnic groups within the Regional State are active and have equitable share of government power⁷. In the third category is the Regional State of Harar which many refer to as an anomaly in the Ethiopian federation (Aalen, 2002). The Harari Regional State is formed in favor of the Harari ethnic group. What is surprising in this Regional State is that the Harari are the ones which are a numerical minority. However, they are made to occupy the key political positions thereby making them politically dominant over other ethnic groups within the region.

In the fourth category are the multi-ethnic sub-national units of Benishangul-Gumuz and Gambella. While no single ethnic group is a numerical majority in these regions, the politically dominant indigenous nationalities numerically added together to constitute a slight majority over the non-indigenous communities.

It is from the above modalities of Regional State formation that the conception of regional minorities emanates. Thus, majority/minority status at the regional level is articulated by way of a certain ethnic group/s numerical majority as well as political dominance over the others or the presence of political dominance only irrespective of numerical foundations like the Harari. In one way, regional minorities under the Ethiopian context may be described as those groups which differ from the regionally dominant ethnic group/s. Their relegation and the dominance of majorities may be expressed in terms of political hegemony and/or numerical majority of an ethnic group/s.

⁷ One can simply deduce this from the fact that since 1991 the Regional States presidency has only been oscillating between the Wolaita and Sidama ethnic groups.

This dilemma of minority-majority tension in the regions has not been explicitly dealt within the Constitution, and what is worse, the exercise of government power in the Regional States has been an exclusionary one. The dominant and/or majority ethnic group considers itself to be the owner of the Regional State while other ethnic groups are relegated to a status of second class citizens⁸. The degree to which these regional minorities are denied their rights varies from being marginalized politically to economic relegation (Yonatan □ Van der Beken, 2013). This situation has been described by some scholars as a condition of creating 'local tyranny' (Assefa, 2006).

More specifically, Benishangul-Gumuz and Gambella have constitutionally dichotomized the various ethnic groups in their respective regions by identifying those indigenous to the region thereby impliedly leaving the rest to be nothing but non-indigenous. Whereas, in the regions of Amhara, Tigray, Somali, Afar, Harari and Oromia, though an explicit identification of indigenous does not exist per se in their Constitutions, such a dichotomy is clearly implied from two circumstances. Firstly, from the nomenclature of the Regional States it is obvious that the region of Amhara is for the Amhara ethnic group, Oromia for the Oromos, Afar for the Afars, Harari for the Harari, Tigray for Tigrayans and Somali for the Somalis. Apart from this, a look at the provision dealing with the sovereign power of each of these regions reveals that sovereign power is exclusively vested to the dominant ethnic group and not to all the residents of the region.

Hence, it will not be surprising if one asks the extent of the applicability of the right to equitable representation enshrined under the federal Constitution and its power of inclusion of all ethnic groups (FDRE Constitution, Art 39 (3)) with respect to regional minorities. These being issues at a glance, subsequently, scrutiny of the structure of the Regional State of Benishangul-Gumuz Constitution is made in light of its ability to accommodate its diversified population.

Constitutional Design and Recognition of Ethnic Diversity in Benishangul-Gumuz

The Ethiopian Regional States have been endowed with the competence to adopt their own Constitutions (FDRE Constitution, Article 52 (2) (b)). To this end, all Regional States have effectively used this autonomy and adopted their own Constitutions. Similarly, the Regional State of Benishangul-Gumuz first adopted its Constitution in 1996 and then revised it in 2002.

In assessing the level of the Benishangul-Gumuz's Constitution recognition of ethnic diversity, it is worth clearly identifying the terms "peoples", "other

⁸ The Constitutions of the Regional States of Oromia, Afar, Somali, Harari and Tigray which vest sovereign power solely on the dominant ethnic group is an excellent account to this.

peoples” and “indigenous nationalities” as used in the text of the Constitution. For instance, Article 9 of the Constitution uses the term peoples in ascribing sovereign power of the Regional State by stating that “the peoples of the Benishangul-Gumuz Regional State shall be the ultimate authority of the Regional State. Again if one looks at the preamble of the Constitution it begins with the statement “We, the nationalities and peoples’ of the region of Benishangul-Gumuz...”

On the contrary, Article 2 sets the clear distinction between indigenous nationalities which are the “owners” of the Regional State and other peoples who are recognized as residents of the region. However, apparently considering the later as guests hosted by the former. This is further corroborated by the existence of Article 39 of the Constitution which clearly delineates the various aspects of the right to self determination to extend only to the indigenous nationalities. The same is once again true if one goes on to examine the organization of the region’s Constitutional Interpretation Commission under Article 71(1). The commission is organized with a total seat of twenty members in which each indigenous nationality sends 4 representatives. On the contrary, Article 45 (3) states that representation of other peoples of the region shall be given special consideration in which the particulars shall be determined by law.

From these provisions it will be plausible to argue that the region’s Constitution makes an intentional stratification between indigenous nationalities and non-indigenous communities of the region. Again, from this stratification it is also possible to deduce that the term “peoples” is supposed to refer to both the indigenous nationalities and the non-indigenous communities. This is because the Constitution uses the term “indigenous nationalities” for the region’s native identities and “other peoples” for the non-indigenous communities. In the same way, it will be possible to argue that, since Article 9 of the Constitution uses the term “peoples” to confer sovereign power of the region, it is inclusive of the indigenous nationalities as well as the non-indigenous communities. Affirming to this stance, Article 45 (3) of the Constitution stipulates for the promulgation of additional laws following the Constitution so as to protect the special need of representation of the non-indigenous communities in the region. The recognition given to the non-indigenous communities can also be firmly argued from the preamble of the Constitution which mentions both the “...nationalities and peoples” of the region. Therefore, an argument that the Constitution of the region only recognizes the existence of the indigenous nationalities will be misplaced. Through purposive interpretation of Constitutions, one can firmly contend that whenever the Benishangul-Gumuz Constitution wanted to differentiate between the indigenous nationalities and the non-indigenous communities it has done so explicitly and not implicitly.

However, analyzing the identification of the indigenous nationalities and the rights accorded to them makes the above argument that non-indigenous communities have to some extent been recognized by the Constitution futile. Importantly, looking at Article 2 which states that the indigenous nationalities are the owners of the Regional State and Article 39 which only permits indigenous nationalities to benefit out of the right to self determination in the region leaves the non-indigenous communities as second class citizens. Despite their presence being recognized, when it comes to the practical reality of political representation, they will only have to be subservient. Particularly, when it comes to the establishment of the administration of nationalities which is one way of professing self governance (Proc. No. 73/2008),⁹ they have not been made to be beneficiaries (Van der Beken, 2007,:2009).

Moreover, in light of examining the region's Constitution from the prism of the electoral system it has adopted, the issue remains that non-indigenous communities are still underprivileged. Like its federal counterpart, the State's Constitution makes the Regional State Council a majoritarian house. It states under Article 56(1) that "unless otherwise provided for in the Constitution, all decisions of the Regional State council shall be passed by majority vote of the members." Additionally, members of the Regional State council are elected through the first-past-the-post electoral system (Benishangul-Gumuz Constitution [BGC], Art. 48(2)). Even though the members of the Regional State council shall be the representative of the people as whole (BGC, Art. 48(3)), the representation of the non-indigenous communities is almost close to zero. Regardless of the multi-ethnic character of the region, the Constitution has also not opted to provide a mechanism for the representation of the non-indigenous communities, at least by establishing an upper house which may serve the purpose of counter balancing majoritarian dominance.

More specifically, the representation of the non-indigenous communities in the Regional State's council from the 2000 G.C. elections up to now remains appalling. For instance, in the 14 May and 31 August 2000 Regional State council elections the Benishangul-Gumuz People's Democratic Unity Front (BGP-DUF) took 71 seats from a total of 80 seats allocated to the state council. The remaining seats were taken by independent candidates (http://www.africanelections.tripod.com/et_2000state.html#Benishangul). Subsequently, in the 15 May and 21 August 2005 Regional State council elections, BGPDUF took 85 seats out of the 99 seats. The rest was shared between Coalition for Unity and De

⁹ Even though administration of nationalities are yet to be practically established in the region, Special Woreda Mao-Como has been established specifically for the small numbered indigenous communities of Mao and Como ethnic groups. The Pawe Special Woreda which was created specifically for the non-indigenous communities was however abolished by the Regional State under the guise that it has no Constitutional basis.

mocracy (CUD), Ethiopian Berta People's Democratic organization ((EBPDO) and independent candidates. CUD won 11 seats while EBPDO won 1 seat and independent candidates took 2 seats (http://www.africanelections.tripod.com/et_2005state.html#Benishangul). In an increase of political dominance by the indigenous nationalities, during the 23 May 2010 Regional State council elections the Benishangul-Gumuz People's Democratic Party (BGPDP) won 98 seats from the allotted 99 seats. While the only left seat was secured by the All Ethiopian Unity Organization (http://www.africanelections.tripod.com/et_2010state.html#Benishangul).

Balancing the Autonomy Rights of Indigenous Nationalities with the Right to Political Representation of Non-Indigenous Communities: In Search of an Equilibrium

Surely two competing interests are at play in the Regional State of Benishangul-Gumuz. On the one hand, is the right of the indigenous nationalities to regional autonomy; while on the other, is the right to adequate political representation of the non-indigenous communities. Henceforth, any suggested way out should be able to balance this two competing interests. Simple political empowerment of the non-indigenous communities aimed at counterbalancing the dominant role of the indigenous nationalities not only threatens the power balance of the indigenous nationalities, but also defeats the very idea of federalism in which the country relies upon. To be fair however, it will also not be acceptable to allow the current status quo of under (no) representation of the non-indigenous communities to continue unabated. At the moment, the indigenous nationalities are exercising more than their fair share of the Regional State's political power. It is therefore high time serious concessions start to take effect to ensure political stability in the Regional State.

To this end, the subsequent sub-sections try to address the specific issues articulated in the previous chapters by formulating possible way out to the problems.

The FDRE Constitution's Protection of Non-indigenous Communities within Regional States

In discussing Constitutional mechanisms employed by the FDRE Constitution in protecting equitable representation of ethnic groups in the regions in general and in particular the rights of non-indigenous communities, two methods are worth mentioning. The first one emanates from Article 39 of the FDRE Constitution. In this regard, Sub article 3 of the same provision provides for a mechanism of protecting ethnic groups which are not-indigenous to a particular region and

are stripped off of their right to self governance and equitable representation.

This provision is particularly useful to ethnic group/s found in Regional States outside of their own regions or to ethnic group/s which do not even have a region of their own. In the words of Article 39 (3) of the FDRE Constitution, these ethnic groups have the right to full measure of self government and equitable representation in the region they currently reside. Particularly, the fact that a certain ethnic group already has an established Regional State is by no means a justification to deny self governance or equitable representation at its current resident State. This should especially be the case in circumstances where that ethnic group is living outside of its mother state. This is clearly the virtue behind Article 39(3) of the FDRE Constitution. A typical example could be Oromos, Amharas and Tigryans found in Benishangul-Gumuz. The fact that Oromos, Amharas or Tigryans already have their own region is by no means an impediment for Oromos, Amharas or Tigryans residing in Benishangul-Gumuz to demand their right to full measure of self governance and equitable representation in the State Council of Benishangul-Gumuz.

At this juncture, the point that directly crosses one's mind is the status Article 39 of the Benishangul-Gumuz Constitution which restricts the right of the non-indigenous communities to self governance and equitable representation in the region in light of the Federal Constitution. The argument is that even though states are granted the power to enact their Constitutions, it should be done in a manner consistent with the purpose and spirit of the FDRE Constitution. In doing so, they should take the FDRE Constitution as a minimum threshold for providing better protection to their citizens (Getachew, 2003). But if they are going to fall below this minimum standard, then, by virtue of Article 9(1) of the FDRE Constitution, their stipulations will yield no effect. Thus, it can be argued that Article 39 of the Benishangul-Gumuz Constitution which limits the rights of the non-indigenous communities to internal self-determination is inconsistent with Article 39 of the Federal Constitution.

The second mechanism of protection originates from Article 47, Sub articles 2 and 3 of the FDRE Constitution. This article grants ethnic groups the right to establish, at any time, their own states. Hence, it could be plausibly argued that an ethnic group (which may or may not be indigenous to the region it is residing) that is aggrieved by the situations of the Regional State has the right at any time to establish its own region. However, the particular relevance of these provisions to the problem in Benishangul-Gumuz could be controversial for two reasons. First, the three most populous non-indigenous communities of Amhara, Oromo and Tigray already have regions established in their favor. It could be largely unconvincing to have twin Amhara regions within the current federal setup and the same for Oromia and Tigray. Second, the remaining non-indigenous commu

nities in Benishangul-Gumuz apart from the populous ones are too small numerically to realize a separate statehood.

An additional mechanism by which non-indigenous communities found in the regions may ascertain their right to representation in the body politic of regions could be by seeking a remedy through the House of Federation. Particularly, from the joint reading of Articles 62 (1) and (3) of the Federal Constitution, the House of Federation is empowered to decide on issues of self determination, if necessary, by interpreting the provisions of the Constitution. Through this power of interpretation, the House can declare any subordinate law including Regional State Constitutions as null and void, provided they are found contradicting the Federal Constitution.

In a move towards this direction, the non-indigenous communities of Benishangul-Gumuz petitioned to the House that their representation rights be respected in the well know Constitutional case of the right to elect and be elected in Benishangul-Gumuz. Apart from their famous petition of challenging the language proficiency requirement, they also demanded that they be fairly and equitably represented in the regional and national administrative hierarchies and as well be regarded as distinct ethno-national identities of the Benishangul-Gumuz Regional State. Sadly, the House only deliberated on the question of the language proficiency requirement and overlooked the rest. In the particular case, the non-indigenous communities have even gone to the extent of requesting repatriation to regions or places where they can have their rights respected and be able to preserve and develop their culture and language (Getachew, 2008).

A Human Rights Approach to the Problem: Resort to Citizenship Rights

The right to political participation is a universal human right which entitles citizens to take part in government decision making directly or through freely chosen representatives. Political participation is a condition for realizing the needs and aspirations of especially minority community members in various realms of public life (Bieber, 2002-2003). In this respect, political participation includes, but is not limited to, such activities as electoral participation and voting; contacting elected bodies and government officials; taking part in establishing and running political organizations; campaigning; standing for office; performing duties of a representative in elected and consultative bodies (Steiner, 1988). Political participation is therefore essential for realizing the basic values and objectives that minorities have. It provides minorities with multiple means for strengthening their self-organization, securing adequate representation, and achieving political and policy goals (Bieber, 2002-2003).

Minorities' right to political participation however cannot be fully realized without minorities' ability to have control over their own affairs. The degree of this control and its forms depend on the specific circumstances of minority groups (Bieber, 2002-2003).

Against this background, it is worth noting that the right to political participation has been guaranteed by various international human rights instruments. The foundational legal articulation of this right can be found in the UN's 1948 Universal Declaration of Human Rights (UDHR), and it has been further formalized and elaborated in later treaties, most notably the International Covenant on Civil and Political Rights (ICCPR) (Fox, 1992). Article 21 of the UDHR provides, "[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives." Elsewhere, Article 25 of the ICCPR declares that every citizen shall have the right and opportunity "to take part in the conduct of public affairs...; To vote and be elected at genuine periodic elections...; To have access, on general terms, to public service..." Of particular importance to the case at hand is the General Comment by the UN Human Rights Committee (HRC), concerning Article 25 of the ICCPR, it stated that political participation covers not only the national government but also regional and local government levels (CCPR General Comment 25 para. 5, 1996). Additionally, the African Charter on Human and Peoples' Rights (ACHPR) under its Article 13 provides that "[e]very citizen shall have the right to freely participate in the government of his country, either directly or freely chosen representatives, in accordance with the provisions of the law."

The issue of political participation is also discussed in a number of other human rights documents, such as the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 5 obliges state parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee to everyone, without distinction, the enjoyment of political rights, in particular the right to participate in elections through voting and through the opportunity to stand for election on the basis of universal and equal suffrage. Eligibility on equal terms is hence explicitly at the core of Article 5(c) of the ICERD. The ICERD emphasizes non-discrimination, but it also contains an element of positive measures when establishing a guarantee of the right to participation for everyone without distinction as to race, color, or national or ethnic origin. In this respect the ICERD is of relevance for minorities of all kinds (Compendium of International Standards for Elections (CISE), 2007).

The ICERD – together with the Article 2 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in which the right of effective participation of minorities is mentioned – point out that there are certain disadvantaged groups in society

which may need special attention in terms of participation (CISE, 2007). It is of little help that these groups have equal right to vote, if nominated candidates contain nobody from these groups. Therefore, it might be possible to promote the participation of these groups already at the nominations stage, for instance by informing them of the necessity to avail themselves of the legal mechanisms to nominate candidates (CISE, 2007).

The preceding review of international and regional human right instruments on the right to political participation reveals that signatory states must adhere to a commitment of a representative government. Ethiopia has ratified all the three (ICCPR, ACHPR, and ICERD) binding treaties. By virtue of Article 9(4) of the FDRE Constitution these treaties become an integral part of the law of the land. From this it follows that, government both at the federal and regional levels have the duty to ensure that the right to political participation is respected and ensured throughout.

Obviously, the Regional State of Benishangul-Gumuz has a duty to respect as well as enforce the commitment the country has entered as a result of its international treaty obligations. It goes without saying that the right to political participation of the non-indigenous communities in the region has been severely curtailed due to the political decision of solitarily empowering the indigenous nationalities and the subsequent laws barring non-indigenous communities from adequate representation¹⁰. It can be safely concluded here that the Regional State should do more to ensure the political representation of its non-indigenous communities by respecting the international human right obligations Ethiopia has ratified to implement.

The Role of the Electoral System

The FDRE Constitution, under article 54(2), declares that members of the HPR shall be elected from candidates in each electoral district by a plurality of the votes cast. This has further been consolidated by the amended Electoral Law of Ethiopia, which clearly puts that a candidate who received more votes than other candidates within a constituency shall be declared the winner (Proclamation No 532/2007, Article 25). The Constitution and the amended Electoral law emphasize that the country follows the plurality system (first-past-the-post), under which the candidate who receives more votes than any competitors within a con

10 The repealed Proclamation No 111/1995, Article 38 (1) (b) providing for indigenous nationalities language proficiency as a requirement for political candidature and the Regional State's Constitution of extending the right to self determination to the indigenous nationalities alone are cases in point.

stituency is declared the winner. This applies to all elections conducted in Ethiopia which include: General Elections, Local Elections, By-Elections, Re-elections and Referendums (Proclamation No 532/2007, Article 27). The Benishangul-Gumuz Constitution, similar to the stipulations of the Federal Constitution and the electoral law, stipulates that election to the Regional State Council is through a simple plurality of votes (BGC, Article 48 (2)).

The electoral system of Ethiopia, has presented ethno-linguistic groups especially regional minorities with a lot of tribulations, especially in light of their ambition to an equitable and adequate share of political power in the respective federal and state councils (Tafesse & Aklilu, 2007). The winner-takes-all (first-past-the-post) system has been a problematic approach for minorities who cannot get the majority of votes in an electoral constituency. This is basically because; a contested seat will simply be won by a candidate having a simple majority of vote. This in effect means, despite the number of votes cast, the candidate named the winner might not be the one who represents the interest of the majority of the given population (Beza, 2013).

Considering the specific case of Benishangul-Gumuz, the region has 7 regular (*Metekel, Kemashi, Sherkole, Daleti, Bambasi, Assosa megele*, as well as *Assosa Hoha and Hobesha*) and 2 special constituencies (Shinasha Special and Mao Como Special) for representation to the HPR¹¹. But in none of the nine electoral constituencies the non-indigenous communities constitute a numerical majority compared to the combined presence of the indigenous nationalities (Beza, 2009). Within an electoral constituency, either an indigenous nationality constitutes a numerical majority or the combined presence of two indigenous nationalities constitutes a numerical majority. For example, in Assosa zone, the Berta constitute the majority; in the Kamashi zone, the Gumuz constitute the numerical majority; and in the Metekel zone, the the Gumuz and the Shinasha combined constitute the numerical majority (Central Statistical Authority, 1996).¹²Since, members to the HPR are elected in accordance with the plurality of the votes cast in each electoral district; it will be difficult to expect a winner from the non-indigenous communities, especially, in a situation where ethnic voting is prevalent.

It could be suggested in here that electoral constituencies under the functioning electoral law should be re-established taking into account the high numerical presence of the non-indigenous communities (i.e. the intentional setting up of constituencies to give the non-indigenous communities a majority so as to

11 The three zones of the region (*Assosa, Metekel and Kamashi*) are the ones divided into 7 regular and 2 special constituencies for representation to the HPR.

12 The 2008 statistical report however does not contain numerical values of ethnic groups at the zonal and *woreda* levels.

concentrate their voting strength). Similarly, when electoral districts are drawn up, especially in areas where the non-indigenous communities are found territorially concentrated, constituencies should be formulated in a manner where non-indigenous communities will constitute numerical majority. This will particularly address the needs of the non-indigenous communities even within the first-past-the-post electoral system.

Furthermore, the implication of the problem with setting up electoral districts is also seen when one considers the representation of the non-indigenous communities at the Regional Council. Even though it is stipulated in the Benishangul-Gumuz Constitution that the number of members of the Regional State council shall be on the basis of the size of the population (BGC, Article 48 (3)), this has not been implemented in setting up electoral constituencies for representation at the regional level (Beza, 2009). Constituencies are not set up by taking the population size of the whole population; rather they are established by taking the *woreda* as an electoral constituency and consequently pre-determining the number of representatives from such a constituency.

This approach does not take population size as a basis and it will, in effect, be particularly disadvantageous to the non-indigenous communities because *woredas* are established in consideration of the rights of the indigenous nationalities only and this makes the non-indigenous groups numerical minorities in most of the electoral districts established for the purpose of representation at the Regional Council level. Since winning a contested seat at the regional level is also through attaining a simple majority of votes (BGC, Art. 48(2)), the non-indigenous minorities will not be able to secure a seat proportional to their numerical presence in the region.

In this respect, adopting the proportional representation system, particularly, at regional level of government structure seems a viable alternative. This is because in the proportional system of representation, a contested seat will not simply be won by a simple majority vote but will rather be proportionately distributed among candidates in accordance with the percentage of votes they have secured (Beza, 2013).

Apart from the above mechanism, an alternative for equitable and adequate political representation for the non-indigenous communities is what is stipulated in Article 45(3) of the Benishangul-Gumuz Constitution. It states, "Representation of other peoples of the region shall be given special consideration; particulars shall be determined by law."

This is an important clause for the protection of the political rights of the non-indigenous communities. But the problem is that particulars of the provision of the Constitution have not been determined by law yet. This may be attributable to many factors. But even if they come out, since they are to be promulgated

by the Regional State's Council in which the non-indigenous people do not have adequate representatives to make a serious bargain for their rights, it would be naïve to expect positive outcomes.

Nevertheless, determining the specifics of this constitutional provision provides an excellent opportunity in which serious concessions could be made from the indigenous nationalities in ensuring the representation rights of non-indigenous communities. However, the non-indigenous communities should not expect such concessions to be made in a way which totally disrupts the power balance of the Regional State. It goes without saying that a solution which reinstates the indigenous nationalities to a minority status in the particular region will not be a solution at best.

The Duos of Sharing Political Power: Cultural Autonomy and Consociationalism

Securing the rights of minorities created by autonomy arrangements is very crucial for the long term success of any federal arrangement (Ghai, 2001). The Ethiopian federal experiment of granting autonomy to the nine Regional States, albeit its ground breaking achievements, has however brought about new minority situations. Of particular importance is the situation of non-indigenous communities who suddenly found themselves on a non dominant position in the established regions. The limits of the Ethiopian federal formula, especially as it applies to equitable political empowerment should therefore be mitigated by deploying some sort of political power sharing between indigenous and non-indigenous groups. In this regard, the two responses of cultural autonomy and consociational power sharing could be used in diluting tensions between majorities and minorities¹³.

The proposal of cultural autonomy implies that ethnic groups have the right to establish legislative and executive councils that are not linked to a particular territory. The authority of institutions established by the non-territorial approach will be limited to the members of the concerned ethnic groups, but will extend to all members of the group regardless of where they live on the territory of the state (Yonatan □ Van der Beken, 2013). Cultural autonomy is an autonomy which is community-based and only extends to a particular cultural or linguistic group rather than extending universally to all members of a society (Tkacilk, 2008). In this design, a number of defined rights are contracted to the minority group to be implemented through the establishment of decision making bodies for the concerned community without having a power to rule over the

13 The classical federal arrangements of Belgium and Switzerland which are regarded by many as poster boys of consociationalism and cultural autonomy could be best examples in this respect.

entire population outside the group in question.

The question however remains, how does cultural autonomy apply to the problem in Benishangul-Gumuz. It is obvious that cultural autonomy would not help the non-indigenous communities to get additional seats in the Regional State council. However, it will enable the non-indigenous communities to establish institutions and decide on matters which are the exclusive concerns of non-indigenous communities within the region, particularly on matters of education, media, health facilities and civil service. Non-indigenous communities will have the ability to establish their own parliaments and this will not require them to have contiguity of territory other than their presence in the territory of the region. Even though this type of autonomy does not directly increase the representation rights of the non-indigenous communities, it will however reserve some rights to be decided by the concerned community, impliedly serving the purpose of representation. On top of this, the issue of financing the institutions of cultural autonomy and the presence of diverse non-indigenous communities within the region are some of the head-on obstacles.

The other mechanism that could be deployed is consociational power sharing. Consociationalism, which developed as a negation to the Westminsterian democracy, advocates for more than cabinet power sharing and mainly rests on four institutional components. These are grand coalition, proportional representation, segmented autonomy and minority veto and they rely on both institutional and cultural aspects to dilute majority-minority tensions (Lijphart, 1969).

Consociationalism, however, entails the representation and participation of all major segments in the governing process (McCulloch, 2012). Consociationalists advocate for widely inclusive institutions that allow all relevant social groups to participate in government and state institutions. Such an inclusion in consociations is achieved either through predetermining which groups will share power or by allowing groups to determine the extent of their participation. Consociationalism, with all its institutional components in place also requires cooperation and consensus among democratically legitimized elites, regardless of whether they emerge on the basis of group identities, ideology or other common interest (Lijphart, 2008).

The Ethiopian discourse of power sharing seems to have taken some virtues of consociationalism regarding sharing political power between regional majorities. As contended by Yared, the sub-national semi-consociational power sharing in the regions of Harari (between the Harari and the Oromo), Benishangul-Gumuz (between the Berta and Gumuz) and Gambella (between Anuya and Nuer) in which attempts were made to mitigate competition between two historically rival ethnic groups could be taken as steps in the right direction (Yared, 2011). However, such dialogues were only negotiated between regional

majorities themselves and no action was taken to include regional minorities and such positive actions are yet to have a trickledown effect between indigenous and non-indigenous groups. The Regional State of Benishangul-Gumuz should, therefore, use these initiatives to negotiate power sharing schemes between its indigenous and non-indigenous communities.

Concluding Remarks

The formation of the Regional States of the country under the FDRE Constitution without any mechanism of addressing issues that may arise out of majority-minority tensions made the framework of the Constitution of Benishangul-Gumuz to go to the extent of markedly differentiating between indigenous nationalities and other peoples of the region. This has given rise to the dichotomy of dominant indigenous nationalities and the relegated non-indigenous communities. For this reason, despite sizable numerical presence of non-indigenous communities, their right to political participation in the region remains appalling.

Therefore, in search of equilibrium between the indigenous nationalities and the non-indigenous communities, resort should be made both to the international human right standards as well as the FDRE Constitution. However, simple resort to legal provisions will yield no effect without taming the political atmosphere for a real political dialogue. In so doing, striking a delicate balance between the ambitions of the indigenous nationalities for regional autonomy, on the one hand, and adequate share of the regions political power to the non-indigenous communities, on the other, should be the core of the process.

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