

*Review*

## **Minority rights protection under the second house: The Ethiopian federal experience**

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**Right after the overthrow of dictatorial military regime since 1991, Ethiopia underwent a remarkable change of political system. It has restructured the society based on federal state arrangement which creates nine self-administered regional government taking linguistic, settlement pattern, and consent of the governed into consideration. Addis Ababa and although not mentioned in the constitution, Dire Dawa become autonomous city administration outside regional sphere of competence but administered and responsible to the federal government. The federal arrangement further creates Bi-cameral federal institutions, House of People Representatives and House of Federation for the site of regional people representatives and minorities that are found within the regional government, respectively. Under the house of people representative, out of 548 seats, 20 are lefts and reserved for minority groups. Under house of federation, this is commonly understood as the house of minorities in which every nation, nationality and people of Ethiopia have representative that reflect the interests of their minority groups. Every nation, nationality and people has a minimum of one representative and possibly to have additional representative based on their population number. The house with its entrusted power to interpret constitution, enables safeguarding the constitutionally granted minority rights. Such recognition of cultural diversity and the institutionalization of minority rights is a critical factor that acts as the viability of ethnic based federalism in Ethiopia.**

**Key words:** Ethiopian federalism, house of federation, minority rights, minority rights protection.

### **INTRODUCTION**

The Ethiopia federal system is given due emphasis for the rights of nation, nationality and people of the country. The preamble of the constitution acknowledge them and begin by stating "we nation, nationality and people of Ethiopia," (FDRE Constitution, Art (1)). It also strengthen it by giving sovereign power on the hands of Nation, Nationality and People of Ethiopia and it declared that the constitution is the direct expression of their sovereignty which is

exercised by them through their representatives (FDRE Constitution, Art (8)). Moreover, the constitution also grants them the right to self-determination including the rights to session and the right to establish institutions of government in their jurisdiction. They also have the right to have equitable representation both in state and federal governments' houses so as to protect their constitutional rights (FDRE Constitution, Art (39)).

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In order to realize the above-mentioned rights of nations, the FDRE constitution established the house of people representative (HPR)- which represent the people of the regions and House of Federation (HoF)- a none law making body composed of the representatives of each nation, nationality and people. The constitution provides the mandate to promote equality among nation, nationality and people of Ethiopia and, to interpret the constitution, deciding on issues related to constitutional disputes and budget allocation (Art 62). But, in theory, an impartial body, not constitutionally beholden to any of the ethnic groups, is required to resolve or handle the aforementioned sensitive issues (Magbako et al., 2008:291). However, the HoF, which is composed by the majoritarian ethnic groups that also form the ruling party, is mandated to carry out the above-mentioned functions. But, how could the minority groups in the HoF exercise their rights if they are overridden (outnumbered) by the more populated groups that forms the ruling party, who have more seats in the house, since the simple majority is a requirement to pass all decisions in the house. Thus, though the HOF is meant to protect minority ethnic groups, reflect the diversity of the Ethiopian people and promote equality and unity among Ethiopia's various ethnic groups, this cannot be fully realized due to the unbalanced representation of ethnic groups in the HoF or HOF's majoritarian make-up (Tsegaye, 2004). As indicated in Assefa (2007) *"in the areas of fiscal transfer, the rights of national minority are rarely protected due to the majoritarian nature of the house"*.

In a nutshell, constitutional adjudication by the political organ which fall under the influence of ruling party that lacks complete independence from the EPRDF and the executive branch of government and composed by majoritarian ethnic group is seem not in a right track to adequately protect the rights of minorities (Magbako et al., 2008:285). Hence, the objective of this article is to investigate the political representation of minorities in HoF, and the role, appropriateness and effectiveness of the HoF in protection of minority rights in Ethiopia.

### **Representation of minority in the house of federation**

One of the most important component pillars of minority rights is the representation and participation of minorities in the decision-making process at federal institutions. This is very critical, in a sense that it helps the minority groups to enjoy, protect and promote their own rights. Accordingly, the Ethiopian federal political system provides the opportunity of representation of all minorities in the houses of federation (FDRE, 1995, Art 62 (2)).

According to Art 61(1) of the FDRE constitution, house of federation is composed of representatives from among each nation, nationality and people of Ethiopia. However, there is a unique arrangement, for the more populous ethnic groups in the house. The nation that has more population

will have more seats in the house. This arrangement however, deviates from international practices. In USA, there is equal state representation in the second chamber, senate (each state has two representatives). Under the Canadian, each province has the right to have equal representation in the senate, and the same rule is also applied in Australia federation. In Switzerland, the upper house is composed of 46 representatives, two from each 20 full canton and one from half cantons (Bogale, 2012:77; Dafflon, 1992). But, though there are more than eighty ethno-linguistic groups in Ethiopia, there are nations who do not have seats in the house. In contrast, the four more populated and relatively economically advanced ethnic groups Amhara Oromo, Somalia, SNNP and Tigray constituted the largest seats which accounts for 61 seats out of 135 seats by the principles of additional seat for extra one million populations. Thus, such kinds of arrangement provided by the constitution might create domination of the minority ethnic groups by the largest groups in the house. As some scholars lament, though the House of Federation is mandated the responsibility to settle the disputes that may arise between regional states and to promote and consolidate the unity of Nation, Nationality and Peoples of Ethiopia based on equality and their mutual consent, practically, the house however has little power in policy formulation and legislation at the federal level (Haileyesuse, 2012: 8).

Consequently, the representative of each nation, nationality and people, that is, the minorities have no strong influence on the legislation, policy formulation and implementation processes of the federal government. However, as Haileyesuse mentioned, principally, minorities have possibilities of influencing central decisions.

By taking into consideration the development and decision on federal-state budget transfer formula and the constitutional interpretation as the basic responsibilities of the second house and the possibility of representation of minority nationalities in the house of peoples representatives, it is possible to argue that, minorities have wider possibilities to bring their case forward and to influence the decision making process at the federal level (Haileyesuse, 2012: 8).

However, the major elements taken into consideration for the degree of influence on decision making is party politics. Due to this reason, minority issues are also strictly linked to the party political arrangement in the country and the current unavoidable coalition of regionally organized parties may give a chance for the minorities to promote their issues, as a coalition partner (Haileyesus, 2012:8).

Because of the aforementioned fact, the minority groups, who have less seats in the house of federation also has less representative in the house of people representatives, oppressed and dominated by the majority ethnic groups since all decision in the houses are held based on simple majority. Beyond this, "Ethiopian constitution of 1994 contains no provisions that guarantee

representation for different ethnic groups in the federal executive," this also undermines the protection of minority rights since every rights listed in the constitution and decision made by the HoF require an enforceable body that stands strongly on the side of minority groups (Beken, 2007:111). As Getachew, 2011 notes:

*In the process of implementation of the constitutional right to self-rule by the majority ethnic groups in their respective vicinity, rights of minorities within the ethnic regional states and sub-state administrative units could be violated by those dominant ethnic groups exercising political, social and economic powers.*

The establishment of the upper house seems to have more of political intention than promotion of equality among nations. Because, if only the majority ethnic groups are beneficial in both chambers than the minority, the Ethiopia government is needed to establish the two chambers. Even, Article 13(1) of the FDRE Constitution states that the judiciary has the duty to enforce the fundamental rights and freedoms in the constitution. In practice, however, "the judiciary has been stripped of one of its most powerful tools in guarding against the infringement of constitutionally guaranteed human rights-the power of judicial review" (Magbako et al., 2008). If this is the case, why does the constitutional framers want to give the power of constitutional interpretation for non-independent and partial political organ? According to Assefa (2007), the rationale for vesting the power of interpreting the constitution in the HoF, and not in the regular court like USA or a special constitutional court like Germany, is mainly emanated due to the main reasons of; firstly, the constitutional framers considered the Constitution as a '*political contract*' or the reflection of the '*free will and consent*' of the nationalities, since the preamble of the constitution begin by saying we nation, nationality and peoples of Ethiopia, the constitutional interpretation should be vested in the hands nationalities. Secondly, "empowering the judiciary or a constitutional court may result in unnecessary 'judicial adventurism' or 'judicial activism' in which the judges would in the process of interpreting vague clauses of the constitution put their own preferences and policy choices in the first place. Thus, the framers argued, this might result in hijacking the very document that contains the 'compact between the nationalities' to fit the judges' own personal philosophies" (Assefa, 2007: 10).

### **The effectiveness of house of federation in the protection of minority rights**

The house of federation is the primary organ mandated to promote equality and unity among peoples (FDRE Constitution, Art 62 (4)). As per the intention of the constitutional framers, the house is uniquely constituted so

as to protect and promote the rights of nation, nationalities or minority groups. It is also the responsibility of the house of federation to guarantee the observance of the constitution which enshrines rights of national minorities. The HoF is specifically mandated to deal with the quest self-determination including secession (FDRE Constitution, Art 62 (3)). However, the HoF has not specifically been mandated to combat ethnic discrimination or ensure racial equality. "*The HoF also suffers from serious capacity constraints, and its efforts in terms of promoting tolerance are limited to organizing cultural festivals and shows*" (ibid). It has not taken a proactive role in terms of identifying discriminatory practices and systematically combating them, or understanding causes of ethnic conflicts and providing sustainable solutions (ibid). The Ethiopian human rights council stated its limitation as follows:

The HoF has never responded to reports by local nongovernmental organizations working on human rights on incidences of ethnic conflict or recommended measures to address problems (Ethiopia Human Rights Council, 2009).

The aptness of the HoF to protect and promote the rights of minority should be examined in relation with identity, competence, organization and structure of the institution. The role assigned to the house of federation- protection of minority rights as well as promotion of equality of nations, interpretation of the constitution, deciding on issues related to and fiscal equalization requires well organized competent and impartial organ (Temesgn, 2012:35). When we see the house of federation in light of competency and impartiality, the house of federation is inappropriate organ to protect, promote and enforce minority's right in Ethiopia federation due to the reason that the house of federation is a political organ that fall under the influence of ruling party (Magbako et al., 2008:291). Hence, it is difficult to expect that the more sensitive political issues are decided in the unbiased and impartial manners by the house of federation since the house is under the influence of and loyal to the ruling party in power, it could not expose the wrong doing of their members. "*A political body, which represents the various interests of the ethnic groups, is not in a position to resolve such matters*" (ibid). Most of the power entrusted house makes the federal or state government to be the parties in dispute. It is also true that the determination of the rights of minority groups in one way or other is related to socio economic and political aspects. Hence it will be far from truth that such institution will settle on disputes with one level of government, a party impartially. Moreover, it is unlikely such organ can force one level of government and protect minority rights since there is a political affiliation and the house is the part of government (Bogale, 2012: 106).

The second reason is that its majoritarian nature also hindered the house to protect minority interests. As it is explained interpretation of the constitution, deciding on the

rights of minority nations and determination grant should be decided based on the majority vote which may override the voice of minority groups in the house. Such has been experienced in determination of subsidies to the region in the past years. It is also important to note that the manner of election of the members of the house might make them members to stand in favor of the states interest at the expense of minority rights (Yohannes, 2010:60). The third reason which makes the house inappropriate to protect minority is its competence. "*House of Federation (HoF) is a political body which often lacks competence and expediency in deciding on constitutional disputes*" (Ethiopia Human Rights Council, 2009: 3).

Since they are the members of the ruling party, this assures that most of them lack technical competence so as to protect and promote minority rights effectively (Bogale, 2012:107). More importantly, members of the HoF are more of political expert than legal expert that perform its function with the support of Council of Constitutional Inquires (CCI)<sup>1</sup>. The competence of the council remain an advisory role, they can merely hear and decide those cases that does not need constitutional interpretation. In other words, the CCI is required to submit its recommendations' to the HoF or pass a decision if it finds there is no need for constitutional interpretation. Regarding its decision, if party is dissatisfied with the decision of the CCI, it may appeal to the HoF. Thus, it is clear that the CCI is merely an advisory body to the HoF, lacking the competence to give a binding decision. The HoF even has the liberty to disregard the CCI's opinions in some cases. The ultimate power of constitutional interpretation is vested in the hand of political expert than legal expert (Assefa, 2009).

Moreover, the HoF also meet twice a month, if there is a case of how it can solve many issues from various ethnic groups within a short period of time in unbiased manners and promote equality among Nation, Nationality and Peoples of Ethiopia. The constitution of some regional government could not recognize the existence of minority group. For example, the preamble of the Oromo constitution refer to 'we Oromo people' not to the peoples of the Oromia region, whereas that the Amhara constitution give due attention to the position of ethnic minority groups by providing a guaranteed representation of "*minority nationalities and peoples.*" As we understand from the above statement, Oromia constitution clearly reflect discrimination between the Oromia peoples and the minority groups. It is obvious: such kinds of constitutional contradiction result resentment and conflict, however, the HoF give deaf ear to settle the constitutional disputes among region (Beken, 2007; Revised Constitution of

Oromia and Amhara State, 2002).

As a result, as there are not even two states with same population size and ethnic diversity, it is inevitable that the states would differ from each other in their representation in the House of Federation. Constitutionally speaking, the HoF is designed to represent nation, nationalities and peoples of Ethiopia. However, in this scenario, it can be realized that each state is indirectly represented by the number of nation, nationalities and peoples it hosts and additional member for extra one.

As discussed above in regions like Oromiya, Afar and Somali, since the respective regional state constitution does not recognize other ethnic groups, their representation in the house is only estimated by the number of their total population. While in others, in addition to population number, the diversity of the regions also has a considerable impact on getting seats in the house. For instance, in Amhara regional state, there are five ethnic groups including the dominant Amhara; similarly in Benshangul Gumuz there are five ethnic groups, in Tigray there are three ethnic groups, in Gambella, there are four ethnic groups, more surprisingly in SNNP there are about 56 ethnic groups. This implies that in these regions, before considering their population number, they will have five, three, five, four and fifty six representatives, respectively.

As shown in Table 1, there is incomparable representation of regional states in general and ethnic groups in particular. It ranges from high represented region of southern amounting to 61 to low represented regions of Harari and Afar with one and two representatives, respectively. On the other hand, regional states that have an ethnically very diverse population (such as the Southern state) or those inhabited by large ethnic groups (such as the Amhara and Oromia regions) are more strongly represented in the HoF (Beken, 2009). Hence, three states (the Southern state, Amhara and Oromia) together have 111 of the 134 representatives in the House of the Federation. While the other three regional states such as Harari, Gambella and Benshangul-Gumuz together has only 10 representatives. Hence, the house that is entrusted with the responsibility to promote the equality of the peoples of Ethiopia and consolidate their unity faces difficulties of performing the task because of its composition.

Unlike other federations such as the American federation where each state has equal representative in the upper house which enable them to have equal say in influencing decision, the Ethiopian federation under this asymmetric representation, it is undoubtedly true that regions with few representative in the second house has no equal capacity to put pressure on issues raised within the house that affects the interests of their respective regions.

### **The status of less represented regions in decision making process at the house**

As seen above, the composition of the house of federation

<sup>1</sup>The Council of Constitutional Inquiry (CCI), consisting of eleven members among others, comprises the Chief Justice and his deputy of the federal Supreme Court, who also serve respectively as chairman and vice chairman of the CCI, six other legal experts appointed by the President of the Republic with the recommendation of the lower house, as a matter of practice coming from different constituent states, and three persons designated by the HoF from among its members.

**Table 1.** Ethnic composition of the regions and their number of representatives in the house of federation (second house).

Member states	No. of ethnic groups	Seats in HoF
Tigray	3	7
Afar	1	2
Amhara	5	24
Oromia	1	26
Somali	1	5
Benshangul Gumuz	5	5
SNNPRS	55	61
Gambella	4	4
Harari	1	1
Total	76	135

Source: House of Federation representation document, 2017.

exhibits a wide asymmetry in seizing of seats (votes) among regional states. It ranges from 61 seats of SNNP up to only 1 seat of Harari regional state. All decision of the house in general is decided by simple majority votes. Therefore, it is hardly possible to imagine that the interest of minorities are prevailed or protected unless and otherwise other special law or practices are promulgated.

As a result, in the process of passing decision, there is huge disagreement among member states especially between less populated and populous regions. The minorities (in this case 'minority'-refers to those ethnic groups that have less population number) are easily snowed under in decision making process as they hold insignificant voices and because there is no special law which protects them. As the source indicates that political negotiation is the only mechanism to smoothen contentions among member states and until now, the HoF encounter not severe difficulties in solving disagreements appearing among member states in relation to determining the subsidy allocation formula because the dominant party controls the federal government and all regions (Asnake, 2009). Yet, it is difficult to imagine how the HoF would devise acceptable decision that would be welcomed by all states, when rival political parties in a multiparty context come to control the regional governments.

In Ethiopia when a federal system has been put in place, formal bicameralism was envisaged. However, though the constitution creates a bicameral legislature, a more serious analysis suggest that the constitution take up bicameralism in form not in practice because it is a two house parliament and both chambers involved in the federal law-making process with one usually requiring the consent of the other to pass legislation. But in the case of Ethiopia, the second chamber, namely the HoF is not functioning as a legislative body and not involved in law making process. As a result, it is very difficult to consider the second house in Ethiopia as a bicameral and effective institutional arrangement able to protect minorities (Berhanu, 2007). To be called a bicameral as discussed in

the theory, the involvements of the two chambers in the legislation process is needed. But in Ethiopian federation, the legislation process resides only in the House of People Representative and it has powers to legislate alone in all matters assigned by the constitution to federal jurisdiction. Unlike other federations, the FDRE second chamber participation in law making process that affects the interest of minorities is restricted only in limited cases. Therefore, instituting bicameral legislature in form and unicameral in actual operation is the other unique feature of Ethiopian Federalism that incapacitate the effective protection of minorities rights by enacting laws that can directly affect and benefit them.

## CONCLUSION

The HoF is a political organ that fall under the influence of the ruling party and composed of the majority ethnic groups or unbalanced representation is mandated to promote the equality of nation, nationality of Ethiopia. However, since the HoF is under the influence of legislative and executive branch of ruling party, it lacks complete independency and impartiality to get the heart and mind of the minority, thus, it is not in a right track to promote and protect the minority rights. Unless the constitutional adjudicators are independent and impartial, the constitutional adjudication would not meet or attain the objectives of promoting and protecting minority rights. The HOF's inefficiency and political subjectivity in interpreting the FDRE Constitution, and the numerous avenues for abuse, have led and will lead to failure in protecting the fundamental rights and freedoms of the right of citizens in general and the right of minority in particular. That is why the most sensitive political issue raised by different ethnic groups to the HoF is postponed for a long period of time and become unsettled. Thus, the power of constitutional interpretation should be taken away from the HOF and given for an independent and impartial body, that is, the judiciary organ that must undergo judicial reforms. Unless due to its unbalanced representation or majority make-up sum up with its political interest and incompetence of the house by the more populated ethnic groups that form coalition and establish a ruling party, it is foolish to think the right of minorities are well protected and promoted. Because every decision taking place in the HoF requires the simple majority, in which the minority interest is always suppressed and oppressed by the dominant ethnic groups and since they are put in that position by the vote of their ethnic groups, the majority ethnic group representative in the house stand for the interest of thr majority at the expense of the minority.

## CONFLICT OF INTERESTS

The authors have not declared any conflict of interests.

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