

# Autonomy Regimes for Minorities: Analysis of the Ethiopian Situation

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## I. INTRODUCTION

This paper mainly aims at examining the idea of autonomy regimes for minorities and exploring the human rights perspective to the issue of autonomy regimes in its both notional and realistic stages. To fruitfully accomplish this, the paper begins with enlightening the concept of autonomy regime. This first section will briefly discuss the definition of autonomy regime. In doing so, it will present the views of various scholars and shows the disparities and will parcel up with comments on the various characterizations of autonomy regimes. Then, as a fraction of the conceptions on autonomy regimes, the paper will succinctly consider the extent of self rule that suffices to autonomy. It will also try to distinguish between federal system and an autonomous regime, very briefly.

After that, the paper continues to identify and articulate the commonly known types of autonomy regimes. The different decisive factors that each types of autonomy regime should comprise will be discussed and followed by this the paper will outline few drawbacks and strengths of each types of autonomy regimes. Then, human rights perspective to the issue of autonomy regimes as right will be glanced at. Finally, a critical appraisal of Ethiopia situation will be made from both perspectives of territorial and cultural autonomy regime features. The paper ultimately winds up by summarizing the discussions and linking it to its fine-tunings.

## II. THE CONCEPT OF AUTONOMY REGIME

### A). Definition

The term autonomy is derived from two Greek words: 'auto' and 'nomos' which connotes 'self' and 'rule' respectively. Autonomy, therefore, is generally taken to mean self-government or self rule. As autonomy is an ambiguous concept (Thomas, 2006: 5), various scholars defined it in their own way. Hauten and Wolff defined autonomy regime in the following words:

*“the legally established power of distinctive, non-sovereign ethnic communities or ethnically distinct territories to make substantial public decisions and*

*execute public policy independently of other sources of authority in the state, but subject to the overall legal order of the state” (2004: 4).*

According to this definition autonomy stands for the exercise of exclusive jurisdiction by distinctive non-sovereign ethnic communities or the population of ethnically distinct territories. Thomas defines the term as ‘means of power sharing in which regions or areas of a state which possess some ethnic or cultural distinctiveness have been granted separate powers of internal legislation and can enjoy a different degree of autonomy in its political decision making process’ (2006: 6). Maria Ackren’s definition is even wider. She sees autonomy as the granting of internal self-government to a region or a group of people that is acknowledged as a partial sovereignty in relation to the national government (2009: 11). In my perspective, the definition by Hauten and Wolff is a more comprehensive one as it is determined to include both political (territorial) and cultural autonomy. Thomas’s definition, however, seems to focus on the political autonomy which is only a single wing of the autonomy regimes. But, all the definitions of autonomy provided above, except Thomas’s, haven’t included one most essential attribute of autonomy regimes. That is, an autonomy regime should be conferred with an extraordinary measure of self-government. Akin to Thomas, Deinsten also considers that an autonomy regime should be based on a preferential, non-homogenous treatment of a selected area or areas (Denstein, 2011: 438). I personally share Deinsten’s view because I think that, without this element even it would become impossible to differentiate an autonomy regime from federation. I will return to show some arguments on the distinction between the two after the next topic.

### B). What extent of self rule suffices to autonomy?

In the field of minority rights, autonomy denotes limited self-rule which can range from self-government in limited areas to complete self-rule just short of independence. For Thomas a mere local self-administration cannot be regarded as autonomy. For him autonomy refers to transferring as many powers as possible to a certain territory permanently, giving their population the possibility of self-government (2006: 5-6). Roger Suso,

on the other hand, emphasizes that to make one's own laws should be an indispensable implication of 'autonomy'. According to him, if parts of the state's territory are authorized to govern themselves in certain matters by enacting laws and statutes, but without constituting a state of their own, it constitutes autonomy (2010: 11). The peculiar competencies required from each type of autonomy will be demonstrated subsequent to the following section.

### C). Federalism and autonomy

Both federalism and autonomy regime share the principle of integration of separate entities within the single political fabric of a State. However, in federalism the state is characterized by the equality or at least parallelism of all the federating units in the degree of self government while in an autonomy regime, an extraordinary measure of self-government is conferred on a chosen region or regions and similar powers are not enjoyed by other parts of the country. According to Denstein, "*an autonomy regime is an exception to the rule: it is based on a preferential, non-homogenous treatment of a selected area or areas*" (2011: 438). Conversely, Hauten and Wolff argue that groups or regions can have autonomy in a symmetrical form of federalism or decentralization. According to them, regions, federations or forms of 'indirect rule' may also be considered as autonomy arrangements if the federal units are ethnically defined (2004: 4). There are also authors who argue that territorial autonomy and federalism are concepts that are virtually linked, while others argue that they should be seen as totally different from each other. Authors who say these concepts are interconnected with each other, have the perspective that federalism includes territorial autonomy as a form of federacy or quasi-federal arrangement (Ackren, 2009: 3). I think as long as autonomous entities enjoy a special status in relation to (some) other sub-national territories within the state, it would be difficult to imagine territorial autonomy and federalism as concepts that are virtually linked.

## III. TYPES OF AUTONOMY REGIMES

Autonomy regimes, based on the purpose for which it established, may be classified as follows:

### A). Territorial autonomy

Territorial autonomy (TA) is generally granted in response to the demands for political self-administration or self-government. (Thomas, 2006: 6). TA is a special status granted to a territorial unit which makes it possible for the residents of that territorial unit to regulate their own affairs by themselves through autonomous legislation, government, administration and judiciary (Ibid: 7). The locally elected legislative body should also be empowered with a minimum power to legislate in some basic domains, in addition to, an elected executive which implements this legislation (Ibid: 6). Ackren, however, argues that an entity, which is territorially defined and furnished with some decision-making powers,

could also be described as a TA (Ackren, 2009: 3). She, however, argue that TA should enjoy a special status within the state in relation to the majority of other sub-national territories (Ibid: 19).

Thomas further argues TA must fundamentally include those areas of competence which are necessary for the national minority to maintain its cultural identity such as: to determine its educational system, to hold its cultural institutions and programs, to display of their own emblems, to administer the use and control of natural resources, taxation, social services and police (Thomas, 2006: 7).

### B). Cultural autonomy

Cultural autonomy (CA) is granted to allow an ethnic or cultural minority community to respect its customs, practices, languages, religion, and social structures from interventions on the part of the central or sovereign government (Ibid: 6). CA provides for the members of an ethnic community to be governed through institutions and/or their own legislation and allows minorities a significant degree of autonomy and cohesion even when minorities are dispersed throughout the territory. In CA, the autonomous special status is granted to a group of persons, not to a unit of area, which constitutes a form of union (Ibid: 8). Roger Suso defined CA as the de jure specific civil rights and duties for persons belonging to certain communities to carry out their cultural activities (2010: 12). Similarly Ackren considered CA as specific rights based on membership of a particular group (2009: 1).

CA is often related to minority issues and indigenous rights (Ibid: 1). But CA is not necessarily linked to the protection of ethnic minorities (Thomas, 2006: 8). CA is appropriate when national minorities do not form the majority of the population in areas in which they reside or when they do not consider the claim for TA to be of use (Ibid).

### C). Local autonomy

Local autonomy refers to when residents of an administrative unit are guaranteed the possibility of looking after their own matters themselves. Under this form of autonomy the administrative entity manages national minority-related issues beyond the responsibilities that are normally legally assigned to it. Such issues may include those matters which essentially lie exclusively or predominantly in the interest of the local community (Ibid).

## IV. ADVANTAGES AND DRAWBACKS OF THE AUTONOMY REGIMES

Houten generally considered autonomy regimes are considered as salient instruments of conflict resolution, because they are often the best possible result for conflicting parties operating under particular constraints (2004: 4). Baubock however considers only

CA as a means for deescalating national conflicts and stabilizing borders (2001: 33). Xanthaki even argues that territorial autonomous regimes may be followed by the clashes between collective will and individual rights. He also argues that it may also result in the separation and alienation of indigenous communities from the rest of the population of the States (2011: 1).

TA is advantageous in providing a population of a sub-state unit a means by which it can express its distinct identity and run its own affairs in certain spheres (Ackren, 2009: 19). It is also very important for preserving minority languages (Baubock, 2001: 9). TA also gives national minorities sufficient powers to secure their regional majority and will deter much immigration from other parts of the country (Ibid: 16). CA is very useful as it protects minorities against coercive assimilation by regionally dominant groups; and it formally acknowledges the multinational character of a state without giving rise to territorial claims (Ibid: 1). It also enables the nation to enjoy collective political powers as a corporation of persons regardless of their place of residence (Ibid: 9). A major virtue of CA seems that it can apply to dispersed as well as to concentrated groups. Groups whose internal cohesion is based on a myth of common descent or a set of religious beliefs may not need a territorial basis for reproducing themselves over generations. National minorities, however, whose markers of collective identity are a regional language or a tradition of distinct legal and political institutions will be often unable to maintain these without TA (Ibid).

One weakness of TA is that it is not a viable option for managing conflicts as it fuels ethnic mobilization; fosters separatism and triggers armed conflict (Suso, 2010: 14). The status of internal minorities is a challenge for TA while the question does not arise under CA arrangements (Baubock, 2001: 16). In multinational states territorial devolution may also pave the way for secession (Ibid: 27). As a limitation, CA may reproduce inequalities of resources between national groups (Ibid: 14). The other danger of CA is that its reliance on external protection will reinforce the political alienation between communities (Ibid: 18). CA would not also respond to most other minority grievances in multinational states. CA is more difficult to combine with representation of minorities in federal government (Ibid: 26). Some writers argued for a general preference for TA on grounds of justice between groups, individual liberty within groups and political integration of multinational polities, even though they recognize contextual justifications for introducing certain elements of CA (Ibid: 30).

## V. HUMAN RIGHTS PERSPECTIVE TO THE ISSUE OF AUTONOMY REGIMES

Dinstein argues general international law does not impose an obligation on any State to create an autonomy regime anywhere within its territory. Mostly, the establishment of an autonomy regime is derived from the internal constitution or legislation while in certain cases, it may also be initiated either by treaty or by the recommendation

of international organization organs, for example, the United Nations General Assembly or Security Council (2011: 438). Even though autonomy could grant the minorities a high degree of internal self-determination, today there is neither a right to autonomy nor a duty to grant autonomy to national minorities (Thomas, 2006: 4).

However, there are international human rights provisions which provide for minority protection. For example, article 27 of the ICCPR provides that cultural liberties are universal human rights that apply equally to all cultural minorities (Baubock, 2001: 5). Article 1 of both the ICCPR and the ICESCR indicates that self-determination is both a civil and political right and an economic, social, and cultural right. However, it is a debatable issue whether the minorities can enjoy the right of self-determination under Article 1 of the covenants. Some argue it cannot be dealt as the rights of minorities are ensured in a separate provision of the ICCPR, Article 27 (Mhango: 11). Haileyesus, however, argues that from the whole study of the international instruments it is possible to say (indigenous) minorities are given the right of self-determination or autonomy (Pentassugalia, cited in Haileyesus: 2012: 10). Articles 3-5 of the UN Declaration on the Rights of Indigenous Peoples have also recognized indigenous rights to cultural self-determination, autonomy and distinct institutions (Xanthaki, 2011:2).

Furthermore, the African (Banjul) Charter under art 20(1) has also provided that all peoples shall have the unquestionable and inalienable right to self-determination and that they shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. The debate is again on the criteria of the right of self-determination which is centered on the definition of “peoples”. Some holds that “peoples,” means all the people of a country (Mhango: 12) while others argue that it denotes groups of people that have an identifiable interest, members of ethnic groups or even other social groups (Mhango: 13).

## VI. AN OVERVIEW AND BRIEF ANALYSIS OF THE ETHIOPIA’S CURRENT SITUATION

### A). *General Overview*

Birhanu describes Ethiopia as a culturally diverse and regionally balanced ‘nation of ethnic minorities. According to him, Ethiopia has neither an ethnic majority nor an ethnic plurality of the national censuses (2005: 2). Haileyesus similarly and more strongly argued that, in whatever criteria minority is defined, Ethiopia is a land of minorities. In his view, taking the composition of the Ethiopian population at the national level, there is no any nation, nationality and people which forms a majority (2012: 3). Haileyesus further argued that, even if it established the minority-minority relations at the federal government, the FDRE Constitution tries to create majority ethnic groups at the sub national levels of Amhara, Tigray, Oromiya, Afar, and Somali, by making ethnicity in congruent with the territorial demarcation of

the constituent units of the federation. Thus, he articulates that 'this ethno - territorial organization left a number of ethnic groups as a minority outside their designated ethno - territorial setting' (Ibid).

More to the point, Haileyesus considered that Ethiopian minorities are granted with the right to self-determination provided under article 39 of FDRE constitution as long as they identified themselves as Nation, Nationality or Peoples and fulfill the defining objective and subjective criteria the provision provides. Thus, he argues, the Ethiopian Constitution may seemingly be characterized as one of the most minority-friendly constitutions in Africa, or even internationally (2012: 7). Beken further considered that the federal constitution, under article 54(3), provides for a guaranteed representation of 'minority nationalities and peoples' to the first chamber of parliament and reserved a minimum of 20 seats for

minority nationalities and peoples (2007: 109). It is also notable that a wide ethnic representativeness is guaranteed in the institution competent for constitutional review - the House of Federation. The FDRE constitution, however, contains no provisions that guarantee representation for different ethnic groups in the federal executive. (Ibid: 111).

The different mechanisms developed by the federal constitution in order to ensure the right to self-determination of the Ethiopian minorities, however, cannot be realized by the efforts at the federal level alone. It will also largely depend on the ways the regional states constitutions treat their respective minorities. The following table shows the commitments of four regional states constitutions' to ensure the right to self-administration of their minorities.

Table 1 Source: Beken, 2007: 118 - 138

	Amhara	Oromiya	Benishangul-Gumuz	SNNP
The supreme power resides	In the peoples of the Amhara region	In the people of the Oromo Nation		In the people of the state as a whole
Special territorial entity	Limits the exercise the right to self-determination to endogenous groups (the Oromo, Himra and Awi)	Minorities have no right to territorial self-administration	Limits the exercise of the various aspects of the right to self-determination to endogenous groups (It has established the administration of nationalities)	Only endogenous groups that have been granted their own territorial entities (It has established Zonal or special Wereda administration )
Minorities representation in the State council	The Oromo, Himra and Awi are represented	No guarantee	Guaranteed representation of endogenous minorities (with special consideration to Mao and Komo nationalities)	Guaranteed representation of endogenous minorities to the parliament and to the council of nationalities
Minorities representation in Constitutional Interpretation commission /Nationality Council in SNNP	Represented	No guarantee	Limited to the endogenous groups - the Berta, Gumuz, Shinasha, Mao and Komo.	All endogenous groups of the region are represented in the Nationality Council
Representation of the minorities in the regional executive institutions	No guarantee	No guarantee	No guarantee	No guarantee



As it can be observed from the above table, the common feature in the case of most regions is that the constitutional accommodation and the protective mechanisms (such as the creation of an administrative entity) of minorities is limited to endogenous groups i.e. those ethnic groups who have been living in the region for a long time (Ibid: 125). For example this has caused the minorities in Oromiya not to appeal for the right to territorial self-administration, as all the minorities in the region are considered as exogenous minorities' i.e. internal migrants who have moved to the region in the recent past (Ibid: 119).

#### *B). Analysis of the Ethiopian Situation*

From the above discussion one can observe that in Ethiopia there were and are endeavors to recognize and protect national minorities both through constitutional arrangements and by providing other special national laws. Examining the situations in Ethiopia in relation to the explanations made above under the concept of autonomy regimes, one may come to a conclusion that the right to minority autonomy regime is only at beginning. The practical trends in our country lack clarity; as there are diverse ways of treating minority groups from region to region. The next section will examine this point from the different concepts of autonomy regimes discussed at the beginning of this paper.

### VII. ANALYSIS FROM THE PERSPECTIVES OF TERRITORIAL AUTONOMY REGIME FEATURES

In the strict sense of the term, it is also difficult to recognize the federating units of the FDRE as autonomy regimes. The reason is that most of the regions are not ethnically distinct territories. So, looking in the lens of the above definitions of autonomy regime, the territorial demarcation of Ethiopia's regional states which is not congruent with ethnicity does not render the states to be characterized as autonomy regimes. Even in (relatively) ethnically homogenous regional states such as Amhara, Tigray, Oromiya, Afar, and Somali, where the constitution created majority ethnic groups at the sub national levels, it is difficult to claim the existence of autonomy regimes. This is because, as Denstein and Ackren pinpointed, an autonomy regime should be based on a preferential and non-homogenous treatment of a selected area or areas. And coming to our case article 47 (4) of FDRE constitution stipulates that the member States of the Federal Democratic Republic of Ethiopia shall have equal rights and powers. So in light of the above conception of autonomy regime, yet again it is impossible to consider the five regional states as autonomous entities as far as they given similar rights and powers with other federating units of the country.

To the contrary, one may argue that not only the regional states but also minority self-administration Specialized Zones and Weredas in the SNNP region and Nationality Council administrations in Benishangul-Gumuz and Amhara, etc can be considered as autonomous entities since they are given some forms of self-rule which can fit

to this wider perception of autonomy regimes. This argument, is perhaps, supported by Hauten and Wolff's view of autonomy. As it was discussed above, Hauten and Wolff consider the power-sharing for particular groups and regions, and federations or forms of indirect rule as autonomy arrangements as far as it is ethnically defined. So, according to this understanding of autonomy regime, for instance, the self-administering Nationality Council of the Oromo, Himra and Awi in Amhara which have ethnically defined territories, can be considered as autonomous entities. Compatible with Thomas's characterization of TA, these self-administering entities also do have the competences which are necessary for the national minority to maintain its cultural identity, as they can for example, learn and work in their own language, hold their cultural institutions and programs, administer the use and control of natural resources and other social services in their territory.

But according to Thomas and Suso, territorial autonomous regimes have to be granted separate powers of internal legislation. Coming to our case, all the federating units of FDRE including the city councils of Addis Ababa and Dire Dawa can fit to this criterion. Therefore, viewed from this perception of TA also, these bodies might be considered as autonomous entities. Nonetheless, the Specialized Zones and Weredas and Nationality Council administrations aforementioned could not be considered as autonomous entities for they have no separate powers of internal legislation. However, one may argue that the self-administering entities which are guaranteed representation in the regional parliament such as the Oromo, Himra and Awi can be considered as autonomy regimes because they have the opportunity, although it is through the state council, to take part in the enactment of laws applicable to their community.

My view in relation to the above argument is that, the Specialized Zones and Weredas and Nationality Council administrations in the different regions of the country whose territories are defined ethnically, at least deserve to be called local autonomy regimes. Contrary to Thomas, I argue that local self-administration should deserve to be labeled as autonomy regime as long as it guarantees residents of an administrative unit to look after their own (national minority-related) matters which essentially lie in the interest of the local community. To be called autonomy regimes, I also think that these ethnic local self-administration entities should be engaged in the promotion of values, cultures and languages of their specific communities beyond its regular responsibilities.

### VIII. ANALYSIS FROM THE PERSPECTIVES OF CULTURAL AUTONOMY REGIME FEATURES

Article 39(2) of the FDRE constitution provides that every Nation, Nationality and People in Ethiopia have the right to develop their own language, to express and promote their own culture and to preserve its history. Article 41 (9) of the constitution also provides the State with the responsibility to protect and preserve historical and cultural legacies, and to contribute to the promotion of the

arts and sports. These provisions can be considered as a necessary frame work for the minority groups to enjoy CA regimes. But the constitution has not provided minorities with the right to found CA regimes. As far as I know there is no other law in the country which provides so. The different countries which allow minorities to set up CA regimes usually have specific laws which offer for cultural self-administration. In Estonia, for example, National Minorities Cultural Autonomy Act which entered into force in 1993 has provided national minorities with a population of over 3000 to establish cultural autonomy bodies and their own institutions of cultural self-administration (section 2). As far as such an authorizing law is not endorsed, it is impossible to say there is CA regime in our country.

As Thomas has also pointed out, it is this form of autonomy which is appropriate when national minorities do not form the majority of the population in areas in which they reside. So in my view, in some parts of our country where there are highly dispersed ethnic groups such as the Gumuz in Benishangul-Gumuz, installing this form of autonomy regime might be far-sightedness. The creation of ethnic based territorial administrative entities is proved to be inappropriate, for instance, to some Ethnic groups in Benishangul-Gumuz. Because, the lack of territorial concentration renders it impossible, for example for the Gumuz, to establish their own territorial entity in the region and to exercise their right to self rule.

## IX. CONCLUSION AND RECOMMENDATION

In the field of minority rights, there is no universally agreed definition of autonomy regime. So, different writers use the term minority autonomy regime to indicate a self-rule which can range from self-government in limited areas to complete self-rule just short of independence. In the international law also there is no explicit obligation on any State to create an autonomy regime anywhere within its territory. This may indicate that there is no right to autonomy regime to national minorities, except where national states provided for it in their legal framework or guaranteed it through binding treaties. However, the major international and regional human rights instruments including ICCPR, ICECSR and the African (Banjul) charter included clauses on the right to self-determination, although in all cases it is contentious whether these provisions intend to benefit minority groups. In addition to this, ICCPR (art. 27) has also provided for cultural liberties of minorities. The UN Declaration on the Rights of Indigenous Peoples has clearly recognized the rights to cultural self-determination, autonomy and distinct institutions of indigenous minorities.

The FDRE constitution has also recognized the right to self determination of Nations, Nationalities and Peoples of Ethiopia which includes establishing one's autonomy regime. It can be argued that national minorities can be considered as among the recipients of this right as long as they identified themselves as Nation, Nationality or Peoples and fulfill the defining criteria of the provision.

This may imply the FDRE constitution provides for the right to autonomy regime, even though not unequivocally. In the actual fact, there are few minority groups which have even achieved the right to establish territorial self-administration entities of their own. Moreover, the regional states constitutional accommodation and their protective mechanism of minorities is mostly limited to endogenous groups. It is also contentious whether the existing self-administering minority entities extent of self-rule can be labeled as autonomous regime. Furthermore, this strategy of establishing territorial self-administration entities in the regional state constitutions could not respond to some dispersed minorities such as ethnic groups in Benishangul-Gumuz (for e.g. Gumuz). So, I suggest the government is required to attune appropriate form of autonomy regime i.e. cultural autonomy and send-off its territorial strategy (which needs territorial concentration) for such dispersed communities. I also urge the government to arrange territorial self-administration entities and render on them the appropriate power to self-rule for all enthusiastic minority groups which have territorial concentration. These also necessitates the enactment specific laws.

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