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**Protection of indigenous minority voting rights in
the Ethiopian electoral system:
The case of Harari National Assembly**

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Abstract. During the time of the election, indigenous minorities face enormous problems and difficulties. At times, their basic democratic rights are not always freely exercised. This paper explores the challenges encountered by one of Ethiopia's indigenous minorities, the Hararis, during the sixth national election in Ethiopia. A descriptive, qualitative research method was used to investigate the nature of the problem and resolutions came up. Primary data (published legal documents, court cases and formal letters) were collected from various sources. The National Election Board of Ethiopia has inadvertently attempted to prevent the rights of indigenous minority Hararis (living in other parts of the country) from voting for candidates that form the Harari National Assembly. The basic reasons for the National Election Board to do so have no legal justification and are challenged by the federal and regional constitutions, particularly by articles explicitly addressing minorities and Hararis residing outside the Harari region to vote. The final decisions made by the federal cassation court were found to be correct, fair, acceptable, and in concurrence with the federal and regional constitutions. The study found out that the federal and regional constitutions of the country play a prominent role in protecting the rights of minorities to vote.

Keywords. Indigenous minorities; Harari National Assembly; Election; National Election Board of Ethiopia; voting rights.

JEL. F21, F68, O53, K23.

1. Introduction

It is obvious that the participation of citizens in a free and fair election is a precondition for the establishment of a democratic state. Some of the basic and mandatory rights that citizens in democratic nations exercise include the right to give their vote freely without any interference, to form a political party, to be a member of a political party, to be elected and to form a government for self-administration after winning an election.

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Participation and protection of citizens' rights during elections, especially those of indigenous minorities, is very crucial since decisions made at local and national government levels affect their lives. Several international human rights declarations (United Nations Declaration on the Rights of Indigenous Peoples, Universal Declaration of Human Rights, and International Covenant on Civil and Political Rights) clearly emphasize and guarantee the participation of minority ethnic groups in the electoral process.

Ethiopia, located in the eastern part of Africa, is a country endowed with diverse ethnic groups, whereby more than 90 different tribes with 86 languages are spoken. Ethiopia is Africa's second most populated nation with distinct ethnic, linguistic, religious, and minority groups that have co-existed for centuries. The current Federal Democratic Republic of Ethiopia (FDRE) constitutes the federal government's state members (ten regions and two city administrations). Harari People's Regional State (HPRS) is one of the smallest member states located in the eastern part of the country with estimation of more than half a million population. It is one of the most ancient City (next to Axum) with various cultural heritages, including the walled city of "Jegol", which was registered in 2003 by UNESCO as one of the world's heritages. The indigenous inhabitants that established the city before 1200 belong to the Harari ethnic tribes. The Hararis are the founders of the walled city "Jegol" and are considered as indigenous minority groups due to the small number of their population (estimated to be less than 15%) compared to other ethnic groups in the region.

The indigenous Hararis used to administer their territory for centuries with their own successive kings (about 72 kings). They used to have their own constitution and coins that contributed to the economic transactions of the eastern trade route that extended to Berbera, Zeyla, and India. However, the independent state of Hararis came to an end after its last king (Emir Abdullahi) was defeated by Minilik –II at the battle of Chellenko in 1887. After losing the war, the ancient city became part of the newly unified and established Ethiopia. The indigenous Hararis lost their freedom, land, and were forced into exile. After long years of oppression, injustice and discrimination, the Hararis once again got the chance to self-administer when the newly established federal democratic republic of Ethiopia was formed in 1991. Harar became one of the 10 regional states with the first democratic election being conducted and the voices of indigenous Hararis came to power. The Hararis formed their own regional state, started to self-administer and represented their ethnic group both at regional and federal levels.

As part of the FDRE, the newly established HPNRS formulated and implemented a regional constitution. According to article 51 of the regional constitution, the regional parliament/Harari people regional state council (HPRSC) is the highest authority with the power to "initiate every matter relating to economic, social, and developmental policy strategy". The

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HPRSC consists of 36 total seats reserved for political candidates freely and democratically elected by the inhabitants of the region. From these 36 total seats, 14 seats are reserved solely for the Harari National Assembly (HNA), for which indigenous minority Hararis run for election. According to article 50 (2) of the Harari regional constitution, members of the HNA are elected by Harari ethnic minorities living inside the Harari region and other regions of Ethiopia (including those living in the two administrative cities, Addis Ababa and Dire Dawa). And in the past five elections, Hararis who live outside the Harari region participated in elections by giving their votes to candidates that run for the 14 seats in the HNA. In addition, Hararis living inside the Harari region and other parts of the country were allowed to give their vote for one seat solely reserved for Harari ethnic groups in the federal parliament.

However, during the sixth national election (2021), the NEBE announced that Hararis who live outside the Harari region should not be allowed to vote for the 14 HNA seats and one federal parliament seat and banned the registration of Hararis living outside the Harari region for election. The current paper aims to investigate the challenges posed by the NEBE to indigenous Harari minorities living outside the Harari region and describes the event/situation in relation to the federal and regional constitutions of the country. The paper presents the details of the dispute between the NEBE and HNA, legal procedures followed by concerned bodies, court cases, and finally resolutions obtained.

2. Objectives of the Study

The objectives of this study are:

- 1) To assess how indigenous minorities, specifically Hararis, are recognized in Ethiopia's federal and Harari regional state constitutions.
- 2) What are the main challenges confronting the Harari National Assembly during the sixth national and regional elections?
- 3) How does the Harari National Assembly protect the rights of indigenous Hararis in future elections?

3. Methodology

In order to achieve the intended purpose, it is mandatory to clearly explain the appropriate methodology used in this study. A descriptive, qualitative research method was used to investigate the nature of the problem and resolutions came up. Primary data (published legal documents and formal letters) were collected from various sources, including the federal and regional constitutions, the House of People's Representative Office (HoPRO), HNA, the election board, and the federal supreme and cassation courts. Systematic data analysis was conducted and reported chronologically.

4. The concept of indigenous and minority people

Indigenous and minority people have many similarities and share many common characteristics. For example, Shaheen & Javaid (2001: 7) noted in support of this argument that "from a substantive and practical standpoint, indigenous people tend to exemplify the minority syndrome—historical records attest to systematic persecution, discrimination, and genocide suffered by minorities and indigenous peoples in tandem." Furthermore, according to the report of Minority Rights Group International (1997), a number of minority groups, like the indigenous people, were exterminated, while the survivors were conquered or subjugated.

In fact, as for many other terminologies, there is no universally accepted identification criterion to determine which societies are indigenous and which are not in each state. Nonetheless, after Second World War, different countries used the terms in reference to human societies in their own unique local context. In western countries, the dividing line between indigenous peoples and others is not clear or precise. In some states, the extent to which a group has played a role in the process of state formation is an important distinguishing feature for determining whether certain people are indigenous or nonindigenous (Kymlicka in Kymlicka & He, 2005, 48). This criterion, however, is not universally applicable in all western countries.

The special UN rapporteur Mr. Martinez Cobo (1972) defined the term indigenous people as follow: "Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a state structure which incorporates mainly national, social and cultural characteristics of other segments of the population which are predominant".

The term indigenous is associated with colonialism in the context of international laws such as the ILO Convention, UDHR, ICESCR, ICCPR, and DRIP, particularly colonialism undertaken by external states while excluding domestic aspects of colonization. Hence, Kymlicka connected this view with the '*saltwater thesis*' of European colonization of other states (Kymlicka in Kymlicka & He, 2005). Therefore, pertaining to the assumption, all Indian and white people residing in South Africa by colonial operation have been considered as nonindigenous people, while only the black South African people are indigenous people in the context of South Africa. Based on the above mentioned international laws, one can clearly claim that all Ethiopian nations, nationalities and peoples can be considered as indigenous people because Ethiopia is the only African state which was not colonized by an external body.

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Others associate the term “indigenous people” with political exclusion, economic marginalization, cultural vulnerability, geographical isolation, and long-standing settlement (Kingsbury 1995, 1999). To be precise, the basic criterion to define certain groups as indigenous and non-indigenous is not uniform in all countries; the terminology has been used in different countries and enshrined in international laws. Recognition of the rights of indigenous people in international law is often framed as a condition of deepening democratic citizenship. Hence, some countries in the world accept the usefulness and validity of the term as others continue to resist it. "But the term punctuates the political landscape in developed and developing countries, in the east and in the west. Its politics revolves around four different types of claims: participation and representation; access to resources; autonomy and self-government; and the protection of language and culture" (Jung, 2008, 184).

Despite numerous attempts to develop a definition of the term "minority", no agreement has been reached on the definitional issue. The most recent and significant effort to define a "minority" was made by Special Rapporteur Francesco Capotorti. According to Capotorti, a minority is “a group numerically smaller than the rest of the population of the state to which it belongs and possessing cultural, physical, or historical characteristics, a religion, or a language different from the rest of the population” (Capotorti, 1978, 7). Therefore, according to Capotorti's definition of minority, no single ethnic group constitutes a majority in Ethiopia. Beken (2010) also noted in this context that under Capotorti's definition, all “nations, nationalities, and peoples” in Ethiopia can be considered ethnic minorities. At this point, we can also conclude that Ethiopia is a collection of ethnic minorities because no single ethnic group constitutes 50+1 percent of the country's total population.

In contrast, according to Capotorti's definition, a single ethnic group constitutes the majority in some Ethiopian regional states. For instance, Tigray is the majority in Tigray regional state, Amhara in Amhara regional state, Oromo in Oromia regional state, Afar in Afar regional state, Somali in Somali regional state, and Sidama in Sidama regional state. On the other hand, no single ethnic group constitutes a majority in the remaining four regional states (i.e. Benishangul Gumuz, Gamballa and Southern nation nationalities regional states), including Harari national regional state. As a result, in terms of the minority and majority scenarios, the Harari regional state is comprised of ethnic minorities.

5. Mechanisms of the protection of minority rights

Ethnic diversities are viewed as a burden in African countries. However, diversity as a social fact always existed in the world-at-large but it becomes a "problem" mainly when it exists within the territory of a state (Akhtar *et al.* in Watts & Chattopadhyay, 2008). There are two main reasons why ethno-linguistic diversity within the state territory becomes a problem. One, when social, cultural, or racial differences become the basis

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of group inequality (Akhtar *et al.* in Watts & Chattopadhyay, 2008). Two, when different groups perceive one another as inferiors or superiors. Hence, in the current political dynamics, particularly since WWII, managing diversity has emerged as the foremost overarching and urgent issue in ethnically heterogeneous states. There are different mechanisms that can be used to protect the rights of ethnic minorities in plural states. For instance, recognition, representation, providing autonomy and power sharing.

In Ethiopia, ethnic-federalism has been opted as the institutional arrangement primarily to address the challenges of ethnic diversity. Regional states are also responsible in this context for recognizing and promoting existing diversity based on their own local context. When seeking better constitutional accommodation within a multinational state, the aspirations of sub-state national societies touch upon both legal and political elements (Stephen, 2004). One example of the former is the amendment (or the re-interpretation) of the formal constitution, whereas the political elements can be identified in the refinement of constitutional conventions, practices and principles, or the political culture and value system informing the given constitution (Stephen, 2004). There are various mechanisms that can be used to manage ethnic diversity. The major areas to which sub-state national societies aspire regarding diversity management. Such as providing regional autonomy or constitutional devolution of power, constitutional recognition of diversity, power sharing or consociationalism, and representation or participation in various institutions.

5.1. Federalism or allowing territorial autonomy

With the exception of Canada and Switzerland, most of the early federations did not use federalism to address issues of ethnic diversity. However, after the cold war, many multinational states attempted to use federalism as a tool to manage ethno-linguistic conflicts. Federalism as a political idea has become increasingly important as a way of peacefully reconciling the principles of unity and diversity usually in multi-national states. Actually, federalism is a very important state structure for achieving both unity and diversity by accommodating, preserving and promoting distinct identities within a larger political union (Elazar, 1987). In supporting this argument, as stated earlier, Anderson (2008: 12) also asserted that, "federalism seems suited to democracies with large populations or territories with highly diverse populations that are regionally concentrated". Various scholars continuously claim that one of the most important and effective means to manage the ethnic conflicts in multinational societies is a federal system. Federalism is a constitutional device that could be used in managing ethnic diversity.

Naturally, federal solutions for managing ethno-linguistic diversity are inextricably linked to territorial approaches to diversity management. It is a mechanism aimed at granting a certain level of territorial autonomy to a

group that differs from the majority of the state's population and though constitutes the majority in a specific region (Lapidoth, 1997). Accordingly, this mechanism includes the right for the population of the designated autonomous territory to elect its own legislature. It also gives them the authority to take charge of executive, judicial and administrative functions. Nevertheless, the applicability of a federal solution depends, therefore, on the degree to which ethnic diversity is geographically concentrated and so can be territorially demarcated (Watts, 2000).

According to Stephen (2004), sub-state ethnic groups demand asymmetry, or self-governing rights, in the context of autonomy. Autonomy in this context means that regional or sub-national societies might seek additional or distinctive powers in comparison to the rest of the country, and these powers should be constitutionally entrenched. These powers usually allow regional societies to autonomously manage specific issues that are of particular interest to them and that are limited to domestic policy areas (from education to social policies, economic development and cultural aspects, etc. (Nicola & Lecours, 2008). In other words, these groups demand some form of political autonomy or territorial jurisdiction, so as to ensure the full and free development of their cultures and the best interest of their people (Kymlicka, 1995). Some scholars have talked in this regard of strengthening the minorities' voice at the periphery (Nicola & Lecours, 2008) and this can be done through different tools, including devolution of powers or a federal system (in cases where a federal structure is not yet in place) (Nicola & Lecours, 2008). In both cases, this solution might entail a significant change in the structure of the state (Nicola & Lecours, 2008).

There are a number of arguments that scholars usually advance to refute asymmetrical treatment for national societies (Stephen, 2004). According to the first theory or idea, a modern developed government should be more concerned with political efficiency rather than with cultural or national recognition (Stephen, 2004). The second argument resists asymmetry on the ground that it might endanger the mono-national vision of the state; consequently, symmetrical solutions are encouraged so that sub-state national societies are not perceived as distinctive (Stephen, 2004). Finally, according to the third idea, asymmetry should be discouraged since it might help promote secessionist tendencies inside the given territory, (Stephen, 2004) or create "first-and second-class citizens" (Kymlicka & Norman, 2000). Thus, asymmetrical solutions are not always easy to implement, and at times they might not be easily accepted by the rest of the country: In fact, one other problem that can emerge, in addition to the three described above, is that asymmetry might fuel sentiments of suspiciousness and hatred among those communities who do not belong to the regional state.

5.2. Constitutional recognition of diversity

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Constitutional recognition of diversity is one of the mechanisms for managing diversity in a multicultural state. The struggle of sub-state ethnic groups for increased or improved recognition is inextricably linked to autonomy and representation (Stephen, 2004). Usually, scholars use this term to refer to the desire for constitutional recognition of a sub-state national society's language or other symbolic issues such as flags, anthems, or other totems (Stephen, 2004). In multinational states or federations, where linguistic cleavage is a major component, official bi- or multi-lingualism is actually a preferred tool to give minorities a platform to express their voice at the centre, and this type of policy can also increase minority representation in such institutions such as parliament, the courts, the army and the bureaucracy, as it facilitates advancement for linguistic minorities (Nicola & Lecours, 2008). In other words, recognition is inextricably linked to the alleged distinctiveness of the sub-state national group, its behaviors, traditions, and traits that allow clearly identifying and distinguishing one sub-state national group from the others. Taylor praises recognition in general because it shapes one's identity. Consequently, [n]onrecognition or misrecognition can cause harm and be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being (Taylor, 1994, 25). Taylor considers due recognition to be a "vital human need" and, accordingly, he believes that misrecognition can inflict a severe wound, leaving victims with crippling self-hatred (Taylor, 1994, 26).

5.3. Representation in political institutions

The institutional design of regional states in Ethiopia is the main determinant factor for responding to the challenges of internal minorities and accommodating multi-cultural societies at the local level (Yonatan, 2008). Therefore, an accommodative institutional setup of regional states guarantees the right to self-administration and the right to take part in any administrative units, and the right to political participation of ethnic groups of the regional state (Yonatan, 2008). The institutional accommodation and fair representation of ethnic cleavages of the regional state can be used as the best indicator for inclusive political participation of the existing diversity in the region. In diverse states, the institutional response that suggests a state shift away from the nation-state paradigm and toward a politics of recognition and accommodation is presented as a promising alternative (Yonatan, 2008). The acceptance of institutional measures that supplement and provide practical effect to the act of recognition is a corollary of the decision to adopt the principle of recognition (Yonatan, 2008). Policymakers and academics advocate a variety of institutional reforms that would allow multi-ethnic states to accommodate ethnic demands without jeopardizing their political integrity (Yonatan, 2008). The institutional principles that embody core values and can respond to the needs of an ethnically diverse state through a carefully orchestrated pragmatic application (Yonatan, 2008).

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In this context, representation refers to situations in which the ethnic diversity inherent in the regional state is reflected within regional and local institutions; in other words, the presence of representatives from various ethnic groups within regional and local institutions is enhanced. In this regard, enhancing the voice of each ethnic group in the regional state, so that the regional state is perceived as a compact of people rather than a single ethnic community. Hence, representation occurs in a variety of ways. Regional bureaucratic positions tailored to the region's ethnic diversity could be created. It can also occur through the establishment of a regional chamber representing the interests of the region's various cleavages, or through some form of representation within the region's constitutional interpretation council.

6. The protection of minority rights under the FDRE constitution

Every nation, nationality, and people have equal rights, status, and recognition under the FDRE constitution. For instance, Article 39 of the FDRE constitution provides explicit recognition that "every nation, nationality, and people in Ethiopia has an unconditional right to self-determination, including the right to secession. Every nation, nationality, and people in Ethiopia has the right to speak, to write, and to develop their own language; to express, develop, and promote their culture; and to preserve their history. Every nation, nationality and people in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and federal governments "(refer to Article 39 (1, 2 & 3) of the FDRE constitution).

Furthermore, the preamble and Article 8 of the FDRE constitution also make a commitment to protect the legitimate interests of the Ethiopian nation, nationalities and peoples. The constitution's preamble declares that: 'We, the Nations, Nationalities and Peoples of Ethiopia: Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development' (refer the preamble of FDRE constitution). The preamble commits to making adequate provisions to protect Ethiopia's legitimate interests of nations, nationalities, and peoples. A reading of the constitution's preamble reveals the drafters' enthusiasm to recognize the existence of diverse ethnic, linguistic, and cultural groups in Ethiopia: One phrase in particular stands out: '...full respect of individual and people' fundamental freedoms and rights, live together on the basis of equality' and without any sexual, religious or cultural discrimination'. Similarly, Article 25 of FDRE constitution states that "all persons are equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, language, religion..." According to

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Article 8 of the FDRE constitution, "All sovereign power resides in the Nations, Nationalities, and Peoples of Ethiopia" and the constitution is an expression of their sovereignty. In addition to this, Article 47 (2) of FDRE constitution recognized that nations, nationalities and peoples within the States enumerated in sub-Article 1 of this article have the right to establish, at any time, their own States (Article 47 (1) of FDRE constitution). On this basis, one could argue that the FDRE constitution refers to various ethnic groups as "nations, nationalities, and peoples."

In contrast, the constitution makes no distinction between ethnic groups in terms of minority and majority. The constitution does not define the terms minority and majority in terms of ethnic group. However, without making a clear distinction, Article 54 (2) and (3) of the FDRE constitution attempt to describe the special representation of minority nationalities and people in the House of People's Representatives. In this context, Article 54 (2) and (3), for example, specifically stated that "members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation for minority Nationalities and Peoples. Members of the House, on the basis of population and special representation of minority Nationalities and Peoples, shall not exceed 550; of these, minority Nationalities and Peoples shall have at least 20 seats. Particulars shall be determined by law". The term "minority nationalities and peoples" appears in the FDRE constitution (refer, for example, Article 54 (2) and (3)), but no clear description of who constitutes a minority nationality or people in Ethiopia.

However, Article 13 of Proclamation No. 1162/2019, on the other hand, addressed the issue of constituencies. The following was stated in Article 13 (b, c, and d) of this Proclamation regarding minority representation in the House of Peoples' Representatives. Article 13 (b) of this Proclamation, for example, states that "the country shall have one representative per constituency to be elected to the House of Peoples' Representatives, where the total number of constituencies shall not exceed 550; and the constituencies shall be determined on the basis of population and the number of minority nationalities and peoples with special representation." Except in the case of constituencies for the representation of minority nationalities and peoples, the population of the constituencies must be comparable, with the highest average population deviation between constituencies not exceeding 15%." In addition, Article 13 (c & d) of the same Proclamation declared that "there shall be constituencies for the representation of minority nationalities and peoples whose number is not less than 20 and which are deemed to require special representation in accordance with Article 54 of the Constitution." Minority nationalities deemed to require special representation shall be determined by the House of Federation based on predetermined criteria."

It is also true that the meaning of minority nationalities and people adopted by the drafters of the FDRE constitution is not clear. The FDRE constitution, as well as any other formal written laws and regulations, did

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not provide a comprehensive and concise definition of a minority nationality or people in contemporary Ethiopia. Thus, an examination of the above-mentioned definitional considerations of which nation, nationalities, and people constitute a minority reveals the concept's ambiguity in the country. Nonetheless, in order to provide minority nationalities and peoples with a voice in the House of Peoples Representatives, Article 54 (2) and (3) of the FDRE constitution reserved twenty seats for minority nationalities and peoples. Minority groups with a population of at least 20 people have the right to have a representative in the House of People's Representatives, where one Member of Parliament currently represents 100,000 people. In this context, the representation of Harari people in the House of Peoples Representatives has been executed based on Article 54 (2) and (3) of the FDRE constitution. In addition to this, FDRE constitution clearly recognized that each nation, nationality and people shall be represented in the House of the Federation by at least one member (refer to Article 61(2) of FDRE constitution). We can conclude from this constitutional provision that numerically smaller ethnic groups have guaranteed representation in the House of Federation. The reason is that the constitution stipulates that each nation, nationality, and people have at least one representative in the House of Federation. Thus, the Harari ethnic group has had one seat in the Federal House of Federation since the country's federal state structure was established.

7. The protection of Harari people under Harari regional state constitution

Ethiopia now has ten regions, including the newly formed Sidama regional state. Harari is one of these regions that was established to offer the Harari people autonomy over their own affairs. The Constitution of the FDRE declares that the Harari regional state is one of the nine member states of the FDRE (refer to Art 47 (1) of the FDRE constitution). According to the FDRE constitution, nations, nationalities, and people can govern themselves. In this regard, the present National Regional State of Harari was established immediately upon the ratification of the FDRE constitution in 1994. It should be noted that the Harari region was created primarily for the Harari people. In light of this, Article 8 of the Harari regional state constitution stipulates that all sovereign power resides with the people of Harari (refer to Article 8 of the 2004 revised Harari regional state constitution). The Harari regional state constitution, which was revised in 2004, recognized the Harari people beginning with the preamble, and created a conducive environment for the Harari people to govern themselves. For example, the second and third paragraphs of the 2004 revised Harari regional state constitution explain the following. Recognizing the need for a special representation strategy due to the fact that the Harari people have been displaced due to the movement and struggle of the Harari community at various times to end the oppressive

regime in the country. It is clear from this provision that the constitution of the Harari regional state clearly recognizes the indigenous minority Harari community and that there should be a special system of representation for the Harari people within the state.

In addition to the above mentioned, Article 39 of the revised Harari regional state constitution clearly states that the Harari people have the right to self-government and the right to secession. Hence, Article 39 (1, 2 & 3) of the Harari regional state constitution stipulates that "the people of Harari have the right to preserve their national identity, to preserve their heritage, and to use their language to develop their language and to express their culture. The people of Harari have the right to self-determination within their own geographical territory and to participate effectively and equitably in the Federal Government of Ethiopia in a free and fair manner. The Harari people have the right to self-government and have the right to establish self-governing institutions in their own lands and to have balanced representation in federal administrations".

Since September 1995, the Harari regional state has had its own regional state constitution that has been enacted and enforced. However, despite the fact that the region is designated as a Harari People's region, the Harari population is very small in comparison to the rest of the region's residents. As a result, two separate chambers of parliament were formed with the intention of the people of Harari implementing themselves. Accordingly, one of the councils was the sole representative of the Harari ethnic group and was empowered to legislate and administer the culture, language, and heritage of the nation. The second council, which represents the people of the region, has been able to tax, economic police, and govern the region's internal administration and executive branch. Accordingly, the Harari Nationalities Council has a total of 36 members in the 14-member Jegol Special, 4 members of the Jogol regular constituency and 18 members of the constituency outside of Jogol. This was done in the belief that it would provide an affirmative measure for the Harari people and provide a lasting solution.

Article 49 (3) and 50 (2) of the 2004 revised Harari regional state constitution vividly stipulates that "the Harari National Assembly is elected by the Harari ethnic group members found within the region and outside the region in different Ethiopian cities and regions". This regional state constitutional provision has been supported by the decision of the house of people's representatives. For example, the Ethiopian transitional government House of Peoples Representatives conducted the 102th ordinary meeting dated 24 Mar 2003 during which it approved such articles as part of the Harari regional state constitution. Members of Harari ethnic groups from outside the Harari region were elected to the HNA in all five national elections. Members of the Harari ethnic group living in Addis Abeba, Dire Dawa, Chiro, Deder, Fedise, Haromaya, Kombolcha, Guresem,

and Gigiga cities were elected to the HNA for five consecutive national elections, according to tangible evidence.

8. Dispute between National Electoral Board and Harari Region: Its contents and outcomes

The prevailing empirical evidence shows that Harari people from outside Harari Regional State voted for the HNA in five consecutive Ethiopian elections. However, the NEBE has rejected that members of the Harari ethnic group living outside of Harari regional state are not eligible to vote for the Harari National Assembly members in Ethiopia's sixth election ([Letter from the National Electoral Board of Ethiopia to the Harari Regional State Council \(09 Apr 2021\)](#)). In response, the Harari People's Regional State Council, the Harari National Assembly, the Harari People's Regional State Secretariat, the Office of the President of the Harari People's Regional State, and the Harari Regional State Prosperity Office wrote a formal letter to the NEBE to correct the decision issued by the NEBE. However, the NEBE replied by arguing that the official letter written by the above-mentioned bodies was not acceptable and had no constitutional and legal basis. Consequently, the NEBE has attempted to respond in detail, by outlining the reasons why Harari people living outside of the region are not eligible to vote for HNA members.

At this point, the NEBE stated that it had investigated the case and the presented documents along with the previous elections with respect to the constitution and had issued a decision on April 9/2021. The main reasons for the request's rejection, according to the NEBE, were as follows. First, according to the FDRE constitution, the council members under the government structure of a region should be elected by the votes of residents within the region. There is no constitutional provision that indicates that members of a nationality found outside a region can elect the members of a regional council for a nationality with a small number of members. And there is no special procedure that should be implemented for members of this nationality.

Second, the Ethiopian transitional government's house of peoples' representatives convened their 102th regular assembly on 24 Mar 2003 and issued a decision stating that members of the nationality found outside the region could elect members of the national assembly of Harari by referencing an article of the constitution supporting the decision. The board has acknowledged that this action should not be taken into consideration in the decision. Additionally, one of the conditions indicating that the decision that was said to have been rendered by the 102th regular assembly of the house of peoples' representatives on 24 Mar 2003 is that the council's seal is not affixed to the decision. On the other hand, following the 24 Mar 2003 decision of the house of peoples' representatives, the board was said to have issued a detailed directive that was implemented in the past five

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elections according to the decision. This directive was not found within the board's office.

Third, although the national election board may have been letting members of the Harari ethnic group found outside the region elect members of the national assembly of Harari for the previous five elections, according to the election reform being conducted by the board, such traditions and procedures which fail to have a constitutional and election law basis should be abolished to fulfill its objective. If the board decides that the practice of having members of the nationality outside the region elect members of the HNA as in the past five elections should continue, and if other nationalities with small population numbers request the participation of their members found outside the region, and if the board is willing to comply, the issue could make the neutral and fair election administration of the board questionable. The board is obligated to adopt previous practices that are supported by the constitution. Thus, with respect to the constitution and the implemented election laws and directives, a decision has been issued by rejecting the petition.

The HNA has petitioned the Ethiopian Federal High Court to reverse the decision of the NEBE regarding the voting rights of Harari ethnic group members living outside the Harari regional state for the HNA. Accordingly, in this paper we will attempt to explain the main points of the HNA's appeals to the Federal High Court. The main point posed by the HNA was that a decision was made at the 102th regular assembly convened by the House of People's Representatives of the transitional government regarding the voting rights of Harari ethnic group members living outside the Harari regional state for the HNA, which is a member of the Region's Council. As a result, the members of Harari ethnic groups outside the Harari region have taken part in all five national elections. Consequently, the HNA has presented its request by stating that the NEBE should conduct the sixth national election in a similar manner to the previous elections.

The additional critical concern appealed by the HNA to the Federal High Court was that the regional constitution's article 50 (2) stipulates that "the HNA is elected by the Harari ethnic group members found within the region and outside the region in different Ethiopian cities and regions". Furthermore, in support of the above mentioned claim by the HNA, the House of Peoples Representatives has also written an official letter to the NEBE to correct its decision on the case. In its official letter, the House of Peoples Representatives attempts to point out the Ethiopian transitional government's House of People's Representatives decision rendered at the 102th ordinary meeting held on 24 Mar 2003. The gist of the official letter was that the members of the Harari ethnic group living outside of Harari regional state could have the right to vote for the Harari National Assembly members in Ethiopia's sixth election. Thus, the HNA tried to incorporate and show in its appeal to the Federal High Court, the official letter written by the House of People's Representatives regarding

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the issue (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). Thus, based on this appeal, the Federal High Court decided in favor of the HNA.

The essence of the decision of the Federal High Court demonstrated that the practice of which members of the Harari people residing outside of the region, including in different regions and city administrations, are allowed to elect members of the two councils named in electing the HNA should be reserved since such rights have been protected by legal frameworks, including the demand of regional governments (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). In this context, the Federal High Court issued the decision by indicating that the sixth national electoral process shall be conducted by the NEBE pursuant to the regional constitution as well as the decision of the Ethiopian Transitional Government House of People's Representatives at its 102th ordinary meeting dated 24 Mar 2003 (HNA, NEBE No. 207036. High Ct. of Ethiopia, 27 May 2021 6/8 2021). Therefore, the NEBE should execute its mandate accordingly (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021).

However, the NEBE appealed its complaint to the federal cassation court by stating that the decision issued by the Federal Supreme Court Session Bench with File No. 205809 on the date of 27/4/2021 was claimed to have a fundamental legal flaw (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). Accordingly, the NEBE presented its complaint by stating that the Federal High Court lacks the relevant jurisdiction to preside over the case and by requesting the decision issued on the core issue to be reinforced (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). The appellate bench inspected the arguments of the parties and: first, since the provisions of the Harari region's constitution article 550 (2) contradict the FDRE constitution's article 50 (3), and since the case brings about constitutional enquiries, the respondent (the current petitioner) has presented a statement by indicating that the court doesn't have jurisdiction to preside over the case (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). In this regard, the NEBE has raised the issue by stating that the regional constitution's article 50 (2) provisions contradict the provisions of the FDRE constitution's article 50 (3) and that the issue raises a constitutional concern. Thus, the NEBE claimed that the case should be resolved by the House of Federation instead of the court (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021).

The decision of the Federal Cassation Court on the NEBE complaint was based on legal frameworks (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). The federal high court proclamation No. 25/1995 stipulates provisions shall be replaced by the federal high court proclamation No. 1234/2013, which shall be enforced beginning on January 20/2021 (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). As stated under both proclamations, the Federal High Court has the jurisdiction to render decisions with regard to disputes and such decisions

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shall be based on the constitution. Article 3 (1) and Article 3 (3–A) deal with the above issues respectively (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). In particular, the newly enacted Federal High Court proclamation No. 1234/2020 Article 3 (2) deals with the legal decisions of the federal high court and it is based on Article 9 (2) of the constitution which deals with enforcing constitutional provisions (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). Therefore, the Federal Cassation Court decided on the case that the issue appealed by the NEBE does not require interpretation of the constitution having constitutional basis to be handled by the regular courts and, therefore, the argument stated that the court has no jurisdiction has no legal support in this regard (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021).

The federal cassation court also conveyed the decision of the transitional government during its 102th ordinary meeting, which stated that following the implementation of the constitution, the decision shall continue to be implemented and shall be consistent with the principles of the constitution as understood from the council's minutes (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). This is why the federal constitution, which has been supplemented by the regional constitution, was created (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). The FDRE constitutional council held an ordinary meeting on 24 Mar 2003, during which it endorsed and approved the regional council's decision, and, as a result, the articles and principles of the regional constitution and the house of people representatives have been consistent with the articles and principles of the federal constitution (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). The Federal Cassation Court strengthens its decision on the case by citing the federal constitution, for example, Article 5 (1) 3, 39 (2), 91 (1) and 2, which deals with the protection of the rights and identities of Ethiopian nations, nationalities, and peoples, including protection of language, culture, heritage, and identity, for which the government provides protection and guarantee (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021).

Furthermore, the Federal Cassation Court stated that the country has accepted international conventions such as civil and political rights of groups or individuals, conventions and declarations on social, cultural, and economic rights, and conventions and declarations on minority rights and interests. Articles 1 and 27 of the International Covenant on Civil and Political Rights, as well as the UN General Assembly decision on December 28, 1999, under Decision No. 47/137, have been addressed in relation to the rights and interests of nations, nationalities, religions, or minority groups, as well as protection of their identity (NEBE, HNA No. 207036, Federal Cassation Ct. of Ethiopia, 27 May 2021). In addition, we can learn from the experience of developed nations and democratic societies that such rights must be protected and guaranteed. The Harari people have benefited from

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such rights and benefits, and the language, culture, identity, and heritage of minority groups will be protected, as stated in the constitution. The purpose of establishing the HNA under a different legal framework is to realize and attend to the constitutional rights of the Harari people, as well as to make it easier for Harari people members to participate in the electoral process.

In general, when we look at the decisions of the Federal High Court and the Federal Cassation Court, we can see that the decisions are legal and appropriate. This is due to the fact that Article 50 (2) of the Harari regional state constitution clearly states that members of the Harari ethnic group living outside of Harari regional state are eligible to vote for the HNA. Furthermore, after deliberating on the matter, a committee appointed by the House of Peoples' Representatives in 24 Mar 2003 to investigate the matter decided to keep the Harari people outside the Harari regional state for the HNA. This decision conveyed by the Federal High Court and the Federal Cassation Court has the potential to have a significant positive impact on the rights of Ethiopian minority groups. It truly breaks new ground for the millions of minority communities whose voting rights are still being denied by Ethiopia's National Electoral Board.

9. Conclusion and recommendation

Ethiopia's national minority protection situation has significantly improved since the adoption of a federal state structure, as various laws allowing national minorities to have more rights, such as establishing National Councils or using their mother tongues in the process of education or elsewhere, have been implemented. In addition to equal protection, the FDRE Constitution has protected collective rights for minorities, rights that are aimed at assisting minority groups in keeping and maintaining their identity, language, religion, and culture. The Harari regional state constitution and the FDRE constitution have acknowledged the need for the protection of collective rights of minority ethnic groups. However, it has become clear that additional measures may be required to better protect indigenous minorities' rights from discrimination, promote their identity, and assist them in preserving their culture and traditions. As previously stated, this is due to the fact that the attempt by the NEBE to refuse voting rights to members of the Harari ethnic group living outside of the Harari regional state for HNA members in Ethiopia's sixth election is a deliberate act aimed at violating indigenous minorities' rights. Thus, affirmative action measures for members of minority groups are often required to close the gap that discriminatory policies, where they were used in the past, created between the majority and those belonging to minorities. As a result, strong and institutionalized affirmative action is often required not only against acts of the state, but also against discriminatory acts of other parties within the state. These measures may also be required to ensure the survival and continued development of the minority's cultural, religious, and social identities.

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In a nutshell, elections are the mechanisms through which citizen preferences are translated into political leadership in a democracy. To understand how democracy works in an ethnically divided society, it is necessary to understand how voters behave during elections in a variety of settings. In this regard, it is undeniable that the NEBE has inadvertently attempted to resist the rights of indigenous minority Hararis (who live in other parts of the country) to vote for HNA candidates. The basic reasons for the NEBE to do so have no legal justification and are challenged by the federal and regional constitutions, particularly by Harari regional state constitutional provisions explicitly addressing minorities and Hararis residing outside the Harari region to vote.

The federal cassation court's final decisions were found to be correct, fair, and acceptable, as well as in accordance with the federal and regional constitutions. The federal and regional constitutions of the country played a prominent role in protecting the rights of minorities to vote. In relation to the decisions of the federal Supreme Court and the cassation court, both the Harari regional state constitution and the federal constitution played a significant role. In general, indigenous national minorities can easily participate or exercise their right to vote as long as the democratic rights of minorities to vote are adequately addressed in constitutions and the judiciary system functions freely and fairly.

Overall, the incident initiated by the NEBE could have led to unnecessary mass mobilizations, demonstrations, conflict, and bloodshed. However, the Harari regional government, the leaders, HNA, and the public managed the situation by taking the case to the courts to obtain justice and following legal procedures patiently.

References

- Anderson, D. (2012). *Federal Solutions to Ethnic Problems: Accommodating Diversity*. Routledge. doi. [10.4324/9780203082027](https://doi.org/10.4324/9780203082027)
- Benedict, K. (1995). Indigenous peoples as an international legal concept, In H.R. Barnes (Ed.), *Indigenous Peoples of Asia*, (p.13–34), Ann Arbor: Association of Asian Studies.
- Benedict, K. (1999). The applicability of the international legal concept of indigenous peoples in Asia. In J. Bauer & D. Bell (Eds.), *The East Asian Challenge for Human Rights*, (p.336–77), Cambridge: Cambridge University Press.
- Elazar, D. (1987). *Exploring Federalism*, Tuscaloosa, AL: University of Alabama Press.
- Francesco, C. (1978). Special Rapporteur, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Sales No.E78 XIV-I (1978). Reprinted in 1991 by the United Nations Centre for Human Rights, UN Sales No. E-91, XIV 2, P5.
- Kymlicka, W. (2005). Liberal multiculturalism: Western models, global trends, and Asian debates. In W.K. He (ed.), *Multiculturalism in Asia* (pp.22–55). New York: Oxford University Press. doi. [10.1093/0199277621.001.0001](https://doi.org/10.1093/0199277621.001.0001)
- Lapidoth, R. (1997). *Autonomy. Flexible Solutions to Ethnic Conflicts*. Washington, DC: United States Institute of Peace Press.
- Majeed, A., & Isawa, J. (2008). Building on and accommodating diversities. In R. Watts, & R. Chattopadhyay, (eds.), *Unity in Diversity Learning From Each Other (Volume 1) Building on and Accommodating Diversities* (pp.3-20). New Delhi: Forum of Federations.
- Mcewen, N., & Lecours A. (2008). Voice or recognition? Comparing strategies for accommodating territorial minorities in multinational states, No.46 *Commonwealth and Comparative Politics*. doi. [10.1080/14662040802005310](https://doi.org/10.1080/14662040802005310)
- Muluneh, K. (2021). *The Praxis of Unity in Diversity at Sub-National Governments in Ethiopia: An Empirical Analysis of Benishangul-Gumuz Regional State Practice*. Lap Lambert Academic Publishing.
- Minority Rights Group International. (1997). *World Directory of Minorities*, London: Minority Rights Group International.
- Rehman, S.S. (2001). *Indigenous Peoples and Ethnic Minorities of Pakistan Constitutional and Legal Perspectives*. Curzon Richnlond Surrey. doi. [10.4324/9780203824344](https://doi.org/10.4324/9780203824344)
- Taylor, C. (1994). The Politics of Recognition, in A. Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition*, (p.25-73), Princeton: Princeton University Press.
- Tierney, S. (2004). *Constitutional Law and National Pluralism*. Oxford & New York: Oxford University Press.
- Van der Beken, C. (2010). Minority protection in Ethiopia: unraveling and improving ethnic federalism. *Recht in Africa = Droit en Afrique = Law in Africa*, 13(2), 243–273.
- Van der Beken, C. (2015). Federalism, local government and minority protection in Ethiopia: Opportunities and challenges. *Journal of African Law*, 59, 150-177. doi. [10.1017/S0021855314000205](https://doi.org/10.1017/S0021855314000205)
- Watts, R. (2008). *Comparing Federal Systems*, 3rd edition. Montreal; Kingston; London; Ithaca: McGill–Queen’s University Press.
- Yonatan, T. (2008). *Institutional Recognition and Accommodation of Ethnic Diversity: Federalism in South Africa and Ethiopia* (PhD thesis). University of the Western Cape

Legal Documents

- Declaration on the Rights of Indigenous Peoples (DRIP).
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (DRPBNERLM), 1992.
- International Covenant on Civil and Political Rights (ICCPR), 1996.
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1996.
- International Labor Organization (ILO).
- Proclamation No. 1162/2019, The Ethiopian Electoral, Political Parties Registration and Election’s Code of Conduct Proclamation.
- The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, Federal Democratic Republic of Ethiopia (Addis Ababa, 1995).

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The Constitution of the Harari Regional state, Harari Negarit Gazeta, 1th Year Special Issue Harari, September 1995.

The minutes of 102th ordinary assembly of the Ethiopian transitional government House of Representatives, March 15/1995.

The Revised Constitution of Harari Regional state, Harari, September 2004.

Universal Declaration of Human Rights (UDHR), 1948.



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