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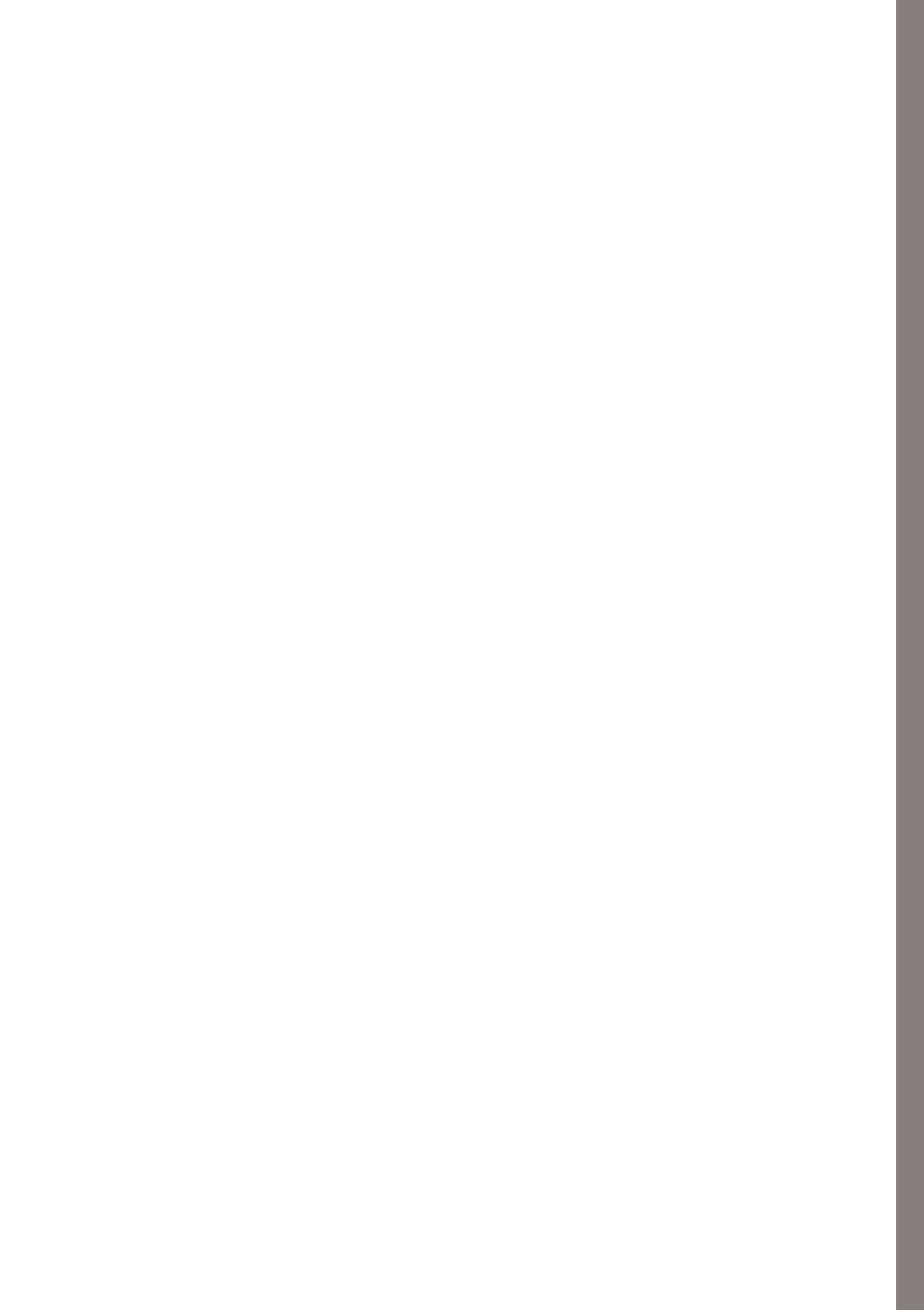

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The Implementation of Good Governance Practices in Service Provisions to the Citizens in Addis Ababa City Administration: The Case of Yeka Sub-City[1]

DABA MOTI[2] – CHUOL KOMPUOK[3]

Addis Ababa city administration is known for its poor implementation of good governance to the public. The main objective of the study is to assess the implementation of good governance while rendering services to the ordinary citizens. The research methodology employs both quantitative and qualitative approaches using data collection instruments with the IBM SPSS statistical packagxe vs. 21. The findings indicate favourable results in meeting the needs of citizens. To that effect, a number of issues are discussed: good governance that is effective and efficient, transparent and open, accountable; participation, leadership direction and strategic vision; fairness and equity; governance that is consensus oriented, responsive in service provision; and governance that follows the rule of law. Although the implementation process has brought tangible results, it is not free from some challenges. In conclusion, both achievements and failures were observed. Thus, understanding customers' expectations in service provisions, systematising customers' feedback, and continuously raising the staff's awareness are the recommendations identified for future development.

Keywords: governance, elements of good governance, service provisions, citizens, Addis Ababa, Yeka Sub-City

1 First and foremost, we are profoundly indebted to our university, the Ethiopian Civil Service University (ECSU), which sponsored the whole cost of covering all the expenses that helped us accomplish the study. The authors are also grateful to all the service users of the institutions in giving their own responses in accordance with the data collection instruments.

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Introduction – Background of the study

The good governance concept is incorporated in the Millennium Development Goals (MDGs) as the main component of the battle against poverty and for economic development. Good governance refers to the prevalence of government accountability, transparency in decision making, implementing the rule of law and regulations, early responsiveness to the demand of citizens, equity and inclusiveness among interest groups, effectiveness, and efficiency in resource utilisation in service delivery approach.[4] Governance is also a complex management practice through which citizens and interest groups of the country articulate their expressions and exercise their rights in the decision-making process. Good governance strategy is representative of a successful public sector institutions reform program, its implementation process is complex.[5] The concept of public or civil service sector reform and good governance has evolved from isolated occurrences and is now seen largely as a global issue. The practice of governance associated with public sector reform programs has led to the formalisation of good governance.[6] The Mo Ibrahim Foundation defines good governance as the service provider in relation to political, social, and economic public goods and services. Each of these contains sub-categories under which various indicators have been organised that provide quantifiable measures of the overarching dimensions of governance.[7]

The Ethiopian federal system of government that was adopted resulted in open, transparent, and democratic governance that respects the right of all citizens; the introduction of the decentralisation process gave power to regional governments to implement development policies and strategies and provided the opportunity for residents to participate in development programs.[8] The Ethiopian government has begun implementing reform in good governance due to service delivery dissatisfaction of citizens of the country and growing consensus that it is the root cause of all-round crises in the public sector.[9] The civil service reforms taking place in Ethiopia are meant for building the capacity for the implementation of good governance in the

4 S Dibaba, 'Opportunities and Challenges for Good Governance in Ethiopia,' *The Ethiopian Herald*, October 8, 2015. Available: https://allafrica.com/stories/201510091427.html (20. 03. 2020)

5 M Worku, *Assessment of the Prevalence of Good Governance in the Public Sector: the Case of Selected Public Institutions in the Addis Ababa City of Ethiopia*, MA Thesis, Addis Ababa, Ethiopia, 2013.

6 'Good Governance', Wikipedia. Available: https://en.wikipedia.org/wiki/Good_governance (05. 03. 2020.)

7 Z Umar, 'Constructing the 2017 Ibrahihm Index of African Governance', Index Report, Mo Ibrahim Foundation, October 11, 2017. Available: https://mo.ibrahim.foundation/news/2017/constructing-2017-ibrahim-index-african-governance (12. 07. 2020.)

8 K Yirga, *Assessment of the Prevalence of Good Governance in the Public Sector: The Case of Public Institutions in Debre Birhan Town*, MA Thesis: Mekelle University, Ethiopia, 2010.

9 MC Amedie, *The Significance and Practice of Good Governance in Addis Ababa, Ethiopia. The Case of Bole Sub-city*, MA Thesis, Addis Ababa: Indira Gandhi National Open University, 2014.

country.[10] Yeka Sub-City, one of the Addis Ababa City Administrations spearheads the provision of services to its citizens. Ostensibly, Yeka administration and government appeared to have committed its resources to achieve political and socio-economic development through positive implementation of good governance.

1. Problem statement

Ethiopia has been faced with challenges in implementing good governance in the country. To address the challenges in building good governance, the government developed a multi-sectorial national capacity building strategy.[11] Despite the fact that Ethiopia is endowed with resources that can help bring about economic miracles for the country, poor governance has contributed to the country's lowest economic and social indicators.[12] According to Alemu and Lemma, the inefficiencies and ineffective processes of organisational structure, management practices, outdated work processes and procedures affected the governance system of the public sectors in Ethiopia.[13] Addis Ababa City Administration doubled as the city is the seat of the Africa Union (AU) with various international organisations, and the capital city of Ethiopia, that is providing services to its citizens. Addis Ababa city organised its Administration institutions' levels in ten sub-cities, with Yeka Sub-City included. Although achievements of the good governance implementation process in the city administration have been observed, the institutions are not free from the challenges of bad governance.

According to Amedie, the performance of Addis Ababa City Administration indicated that there is poor accountability, lack of transparency, poor customer satisfaction, and ill commitment of leaders at all levels of the administration.[14] The poor capacity and absence of skilled staff resulted in poor service delivery processes. The magnitude of the challenges is more reflected at the district administration office level where services to citizens within the city are required. Because of these research facts, it requires more efforts to practice good governance in the government institutions to respond to the needs of the citizens. Therefore, this study attempts to identify the gaps of the prior research by examining the performance of the implementation of good governance and the root causes of these problems. The study will also make an important attempt in identifying the current trend and factors hindering the implementation of good governance in public service institutions of Addis Ababa City Administration. The variables that would be treated in the study

10 ECSU, *Institute of Leadership and Good Governance. Engendering Economic Governance.* Addis Ababa: Addis Ababa University, 2017.

11 A Bekele, *The Challenges and Prospects of Good Governance in Africa: The Case of Kenya*, MA Thesis, Addis Ababa: Addis Ababa University, 2013.

12 Dibaba, 'Opportunities and Challenges'.

13 T Alemu and M Lemma, 'The Contribution of Service Delivery Reform to Promote Good Governance: A Case of Addis Ababa', *Ethiopian Journal of Public Management and Development* 2, no 1 (2011).

14 Amedie, *The Significance and Practice*.

include effectiveness and efficiency, transparency, accountability, participation, leadership direction, fairness and equity, responsiveness, and rule of law. Based on this background information, the study used the following basic research questions.

a) What are the practices of good governance in the studied area?
b) What are the implementation performances of the elements of good governance?
c) What challenges the institutions face in implementing the elements of good governance?

The main objective of the study is to assess the implementation of good governance practices while rendering services to the citizens. Public institutions of Addis Ababa city administration have been providing services at each bureau, sub-city and district administration office levels. Since it is difficult to investigate all the levels of the city administration, the study focused only on Yeka sub-city. From this sub-city, three district administration offices were selected for the study. Due to the unknown real number of customers / service users of the administration offices, the number of respondents was restricted to be selected randomly using the probability approach. The findings of the study will help decision-makers and members of the administration in improving good governance which can lead them to efficiency and effectiveness.

2. Conceptual frameworks of good governance

Good governance is defined in various international studies. It stresses the importance of participation of several actors in government affairs so that everyone be entitled to an international order in which the rights and freedoms can be fully realised.[15] Good governance refers to the prevalence of government accountability, transparency in decision making, implementing the rule of law and regulations, early responsiveness to the demand of citizens, equity and inclusiveness among interest groups, effectiveness, and efficiency in resource utilisation in service delivery approach.[16] Good governance has to address the interest of stakeholders in policy initiatives.[17] Good governance is the mechanism through which citizens articulate their legal rights, responsibilities and meet their obligations. The voices of the poorest, disadvantaged class and the most vulnerable communities are heard in decision-making process over the allocation of resources and decisions passed. Good governance depends on the interaction among stakeholders and leaders and requires the exercise of legal frameworks that

15 A Legas, *Parliamentary Oversight and Its Role in Ensuring Accountability. The Case of Caffee Oromia*, MA Thesis, Addis Ababa: Addis Ababa University, 2015.
16 Dibaba, 'Opportunities and Challenges.'
17 R Dayanandan, 'Good Governance Practice for Better Performance of Community Organizations – Myths and Realities!!' *Journal of Power, Politics & Governance* 1, no 1 (2013), 10–26.

are enforced impartially to ensure equity among citizens. In this regard, rules and regulations that are implied should be clear and friendly enough to the public.[18]

The implementation of good governance has eight major elements.[19] These are accountability, transparency and openness, early responsive manner, equity and inclusiveness of the interest groups, effectiveness and efficient utilisation of resources, applying the rule of law, following participatory approach in the decision-making process, and being consensus-oriented among interest groups. On the other hand, according to Khanna, the good governance framework consists of seven basic principles as shown in Figure 1 below.[20] Even though different kinds of literature describe a different number of elements of good governance, almost all of them have similar concepts. Thus, according to the ESCAP[21] and Khanna,[22] the following seven elements or principles and practices would become common tools for improving the service delivery and management strategy for achieving good governance as well as filling gaps that may exist between the current and desired state of governance affairs.

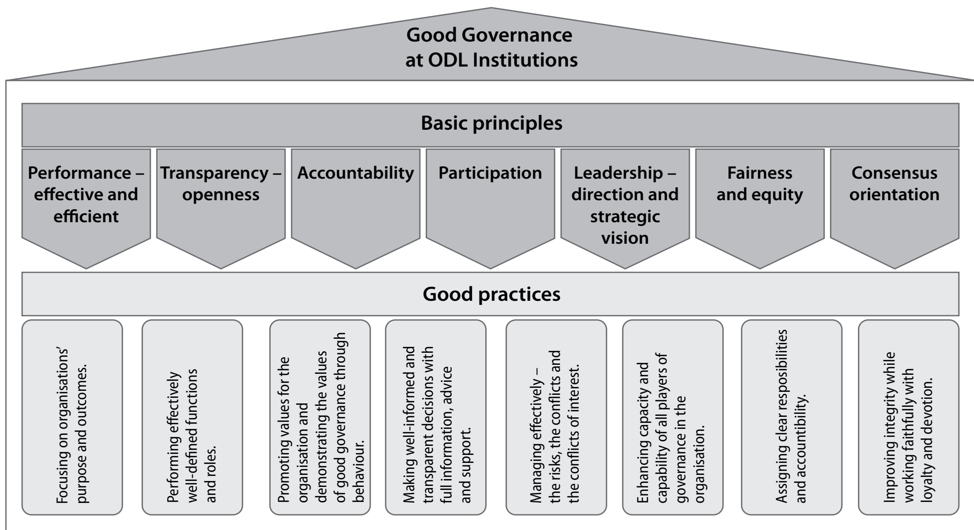

Figure 1. Good governance framework. Source: Khanna, 'A Conceptual Framework.'

18 Bekele, *The Challenges and Prospects.*

19 *ESCAP Annual Report 2014*, United Nations, Economic and Social Commission for Asia and the Pacific.

20 P Khanna, 'A Conceptual Framework for Achieving Good Governance at Open and Distance Learning Institutions', *Open Learning: The Journal of Open, Distance, and e-Learning* 32, no 1 (2017), 21–35.

21 *ESCAP Annual Report 2014.*

22 Khanna, 'A Conceptual Framework.'

3. Research methodology

3.1 Study design

The study deals with the assessment of the implementation of good governance practices while rendering services to the citizens. This type of inquiry favours the use of an explanatory type of research. This study used two kinds of data collection methods, quantitative and qualitative, with closed and open-ended questionnaires, interviews, and focus group discussions (FGDs) to capture in-depth and wider data for the analysis. Interviews provide data very different from observations. Thus, an unstructured interview was conducted with service providers. Focused group discussions and document reviews were also used to support the results obtained from the structured questionnaires. The questionnaires were distributed for the respondents to be filled in with the help of data collectors.

Although the results of the research might highly be dependent on the primary data that were gathered through the questionnaires and discussions, document reviews were also important to clearly understand the concepts and results of the implementation. Instead of concentrating only on the responses of the structured questionnaires, the researchers triangulate the data gathered from different sources. Thus, the triangulation constitutes a rigorous scientific approach to compensate for the weaknesses in the collection and analysis of the data, and make the research findings reliable.

Data quality was assured using appropriate data collection process techniques such as giving orientation to data collectors about the contents of the questionnaires and frequent supervisions; data collectors assisted the respondents in case of difficulties; reported problems were countered at the time of data collection immediately by the researchers; appropriate measures were taken. Questionnaires were checked for missing values and inconsistency. Those found to have many missing values and inconsistencies were excluded from the study and considered as non-respondents. Finally, data coding and entry were made by the principal investigators with the help of data entry professionals.

3.2 Population and sample size

The target population of this study was all customers receiving services from city administration offices. For the data collection, through purposive sampling, the Yeka sub-city was selected. This type of purposive selection was because of consistency, time, and cost for the study. From this sub-city, three district administration offices were selected. Finally, respondents were randomly chosen. To come up with

conservative sample size, as cited by Sisay,[23] Kothari[24] advises researchers to take the value of p = 0.5 where n would be the maximum and the sample would yield at least the desired precision. This would be the most conservative sample size assuming a 95 per cent confidence level and P to be 50 per cent. In this regard, Cochran provided a simplified formula to calculate a sample size when information about the population is not available.[25] Here, it is difficult to get information about the total population of the study area who is being served permanently from the institutions.

$n = p\, q\, z2 / e2$

where n = desired sample size;
p = population proportion (0.5);
Z = confidence level (1.96);
q = the value derived (0.5);
e = acceptable error (0.05).

The sample size in this study is 384 respondents and has been calculated drawing on the above formula. To compensate for non-responses, additional (40 per cent) respondents were included in the study. Accordingly, 538 copies of the questionnaires were distributed to the respondents. The respondents focused on those customers of the institutions that have been served on the particular days of data collection. After collecting and cleaning the data, 520 questionnaires were used for the analysis.

3.3 Data collection instruments

Primary and secondary data were gathered using data collection instruments. Primary data were collected using data collection instruments that include structured and unstructured questionnaires, interviews, and questions for focused group discussions. The secondary data were collected from different related documents from the administration offices. In the questionnaires, there were both close-ended and open-ended non-numerical questions. The closed-ended quantitative method was organised using the Likert five scale format (considered on a 1–5 points scale, where 1 represents the lowest level of satisfaction or high disagreement, whereas 5 represents the highest level of satisfaction or high agreement). The points of scale indicate the degree of satisfaction or agreement level of the respondents. It is also used to increase the response rate and response quality along with reducing respondents' frustration

23 A Sisay, A Dvivedi and B Beshah: 'Determinants of Job Satisfaction in Ethiopia: Evidence from the Leather Industry', *African Journal of Economic and Management Studies* 9, no 4 (2018).
24 CR Kothari, *Research Methodology: Methods and Techniques* (New Delhi: New Age International, 2004).
25 W Cochran, *Sampling Techniques*, 3rd Ed. (New York: Wiley, 1977).

level. The secondary data were gathered from the documents of the institutions and research findings of various scholars on the topic under investigation.

3.4 Data processing and analysis method

After the completion of data collection, coding and organising the data was used for data analysis. Data editing and entering happened while checking the consistency and validity of data collected with different tools. Both quantitative and qualitative data were used for the analysis. The IBM SPSS statistical package version 21 was used to make the quantitative analysis of data that was collected through questionnaires. The SPSS statistical frequency was used for descriptive analysis. Qualitative analysis was employed for the data collected through interviews and focused group discussions (FGDs). The qualitative analysis was done to supplement the quantitative analysis. The results of the study analysis were expressed in number, percentage, and qualitative expression.

4. Results and discussions

4.1 Background information

In this chapter, details are given on the items of the assessment of implementation of good governance in service provisions to the citizens. Different items are used for the assessment. Thus, the study focused on the customers of the institutions. There has been extensive deliberation about the best way to quantify items of the assessment. As a result of the difficulty in defining measurement methodologies of assessment, different approaches have been emerged. Assessment of the implementation process includes perceptions of how well the results have been achieved. The customers' perception in the assessment process is used as an instrument for identifying the gap between the desired results and achieved results in the implementation process of good governance in the institutions. Thus, the study focused on structured questionnaires, focused group discussions and interviews.

The background information of the service providers is important regarding professional responses from the respondents. The information includes position, total work experience, educational background of service providers. Most of the service providers (83.3 per cent) are experts and team leaders who are familiar with services provided for the customers of the institutions. In terms of educational background, most of them (97.6 per cent) were first degree holders. The data also shows that most of the respondents (31 per cent) have service experience of above five years in their current institutions.

As indicated in the methodology section, 600 questionnaires were distributed to the respondents, out of which 520 were correctly filled and returned. In addition to the structured questionnaire, three focused group discussions and interviews were

conducted with the customers of the institutions. The data analysis, interpretation and results are described as follows.

4.2 Good governance is effective and efficient

Good governance requires all concerned institutions to be performed effectively and efficiently as per the functions, operations, roles, and responsibilities assigned. This implies that, the implementation of good governance at the institutions yield significant outcomes, impacted positively on the lives of stakeholders, while considering the efficient use of the available resources. As can be observed from Table 1, the respondents are indicated in the items related to efficiency and effectiveness. The responses of the individual items in Table 1, however, reveal differences among respondents. Accordingly, 25.7 per cent of the total respondents are below the moderate level, while 74.3 per cent of them are on the moderate and above levels. The findings show that the institutions' efficiency and effectiveness are good.

Table 1. Effective and efficient governance

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do institutions work effectively as per the customers' request?	Frequency	44	214	162	80	20	520
		Percentage	8.5	41.2	31.2	15.4	3.8	100
		Cumulative percentage	8.5	49.7	65.1	96.2	100	
Q2	Do institutions use public resources effectively?	Frequency	171	124	147	33	45	520
		Percentage	32.9	23.8	28.3	6.3	8.7	100
		Cumulative percentage	32.9	56.7	63	91.3	100	
Q3	Do institutions provide quality services to their customers?	Frequency	156	191	89	34	50	520
		Percentage	30	36.7	17.1	6.5	9.6	100
		Cumulative percentage	30	66.7	83.8	90.4	100	
Q4	Do institutions have follow-up and supporting systems?	Frequency	166	145	96	77	36	520
		Percentage	31.9	27.9	18.5	14.8	6.9	100
		Cumulative percentage	31.9	58.9	77.4	92.2	100	
Average percentage			25.83	32.40	23.78	10.75	7	100
Overall cumulative percentage			25.83	58.00	72.33	93	100	

Source: Survey by the authors, 2019.

According to Hailu,[26] Meretu[27] and Alemu,[28] the inefficiencies and ineffective processes of organisational structure and management practices affected the governance system of the public sectors in Ethiopia. Dibaba said that despite the endowed resources of the country that can bring about economic miracles and development in the country, due to poor governance, the economic and social indicators of the country are among the lowest.[29] Thus, the findings of this study support Dibaba's analysis. The institutions' performance in effectiveness and efficiency is not better than acceptable. The institutions do not work effectively as per the customers' demand; use no public resources effectively; do not provide quality services to their customers and have a poor follow-up and supporting system. Though the performance shows favourable results, focused group discussions and interviews identified problems that include lack of infrastructures; low awareness in the system of resource utilisation; low commitment of service provisions; lack of service quality; and lack of basic necessary knowledge, skills, and attitude of service providers.

4.3 Good governance is transparent and open

Transparency indicates that public information should be accessible in an easily understandable system that should be freely available and directly accessible to stakeholders or citizens who will be affected by the policies, strategies and practices of the government. Openness as a leadership quality has many important things in it. The importance of transparency and openness in the organisation is the acceptance of the new ideas by the leadership. As can be observed from Table 2, responses from the individual items in the table reveal different reactions among respondents. Accordingly, 68.7 per cent of the total respondents indicated a value below the moderate level, while 31.8 per cent of them agree to a moderate level and above. As prior findings, this also shows that the institutions have the governance system that is not transparent and open while providing services to the clients.

The institution should also evaluate the progress of the implementation made towards the targets and disclose information along with other relevant information as required by the citizens. The service providers in the concerned institution should be as open as possible about all the decisions and actions that they take. According to Hailu[30] and Legas,[31] the institutions have not been found effective in transparency and openness. Ostensibly, this study found the same results. The findings indicate

26 S Hailu, 'Challenges and Prospects of Good Governance in Ethiopia: The Case of Kemisie Town, Ethiopia', *International Journal of Political Science and Development* 6, no 4 (2018).
27 TM Abuhay, 'Assessing the Prevalence of Good Governance in Public Sectors in Gedeo Zone: Case of Yirga Cheffe Town Administration', *Journal for Studies in Management and Planning* 1, no 8 (2015), 37–49.
28 Alemu and Lemma, 'The Contribution'.
29 Dibaba, 'Opportunities and Challenges'.
30 Hailu, 'Challenges and Prospects'.
31 Legas, *Parliamentary Oversight*.

that institutions have policies and strategies, but failed to distribute all information openly and timely to the public. The participants of focus group discussion and key informants reflect the same outcomes as in the quantitative findings in Table 2.

Table 2. Transparent and open governance

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do institutions have policies and strategies of service provisions?	Frequency	198	160	94	36	32	520
		Percentage	38.1	30.8	18.1	6.9	6.2	100
		Cumulative percentage	38.1	68.9	87	93.9	100	
Q2	Do institutions transparently distribute all information?	Frequency	146	201	86	63	24	520
		Percentage	28.1	38.7	16.5	12.1	4.6	100
		Cumulative percentage	28.1	66.8	83.3	95.4	100	
Q3	Do institutions openly distribute timely information to the public?	Frequency	189	192	88	35	16	520
		Percentage	36.3	36.9	16.9	6.7	3.1	100
		Cumulative percentage	36.3	73.2	90.1	96.8	100	
Q4	Do institutions openly accept questions and provide services to the customers timely?	Frequency	186	157	87	68	22	520
		Percentage	35.8	30.2	16.7	13.1	4.2	100
		Cumulative percentage	35.8	66	82.7	95.8	100	
Average percentage			34.58	34.15	17.05	9.70	4.52	100
Overall cumulative percentage			34.58	68.73	85.78	95.48	100	

Source: Survey by the authors, 2019.

4.4 Good governance is accountable

Accountability is a fundamental requirement of good governance. An institution should report, explain, and be answerable for the consequences of decisions it has made on behalf of the community it serves. As can be observed from Table 3, the respondents responded to the items related to accountability. The responses to the individual items in the table were different. Accordingly, 68.45 per cent of the total respondents indicated a value below the moderate level, while 31.55 per cent indicated a value at moderate level and above. The findings indicate that institutions have not been practicing accountability.

Government institutions are accountable to the applicable rules of law. According to Legas,[32] accountability is an important quality for effective leadership. Though the implementation of accountability is representative of a successful public sector institutional reform program, its implementation process is complex.[33] According to Bekele,[34] the autocratic or patron–client relations in the political process, the involvement of public servants in private business, poor service conditions, a decline of professionalism, and ethnicity contributed to the deterioration of the accountability in Ethiopia. Thus" this study reveals similar results. The findings of the study indicate unfavourable results in terms of accountability. Therefore, informants and focused group discussions identified weak accountability in decision-making processes; high level of corruption and discrimination.

Table 3. Governance that is accountable

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do institutions pass decisions timely and are accessible to customers?	Frequency	195	172	104	21	28	520
		Percentage	37.5	33.1	20	4	5.4	100
		Cumulative percentage	37.5	70.5	90.5	94.5	100	
Q2	Do institutions have practical accountability systems?	Frequency	196	141	89	68	28	520
		Percentage	37.7	27.1	17.1	13	5	100
		Cumulative percentage	37.7	64.8	81.9	94.9	100	
Q3	Do institutions understand that they are accountable to their customers?	Frequency	199	181	78	35	28	520
		Percentage	38.3	34.8	15	6.7	5.2	100
		Cumulative percentage	38.3	73.1	88.1	94.8	100	
Q4	Do institutions understand their rights and duties?	Frequency	205	135	82	83	15	520
		Percentage	39.4	26	15.8	16	2.9	100
		Cumulative percentage	39.4	65.4	81.2	97.2	100	
Average percentage			38.23	30.25	16.98	9.93	5	100
Overall cumulative percentage			38.23	68.45	85.43	95	100	

Source: Survey by the authors, 2019.

32 Legas, *Parliamentary Oversight*.
33 Worku, *Assessment*.
34 Bekele, *The Challenges and Prospects*.

4.5 Good governance is participatory

Participation refers to a process whereby leaders invite citizens or stakeholders on their issues. Citizens have to have access to information, ask for their opinion, give the opportunity to make recommendations and be part of the decision-making process. This will improve the overall development of the country. In other words, everyone concerned would have an opportunity to participate freely in the governance of the institution. As a result, such goodK participation would help the administrative management in creating an environment of good governance.[35] Participation by both men and women in their concerns, either directly or through legitimate representatives, is a key cornerstone of good governance. As observed in Table 4, the respondents responded to the items related to participation. The observation of the individual items in the table, however, reveals different responses among respondents. Accordingly, 70.05 per cent of the total respondents indicated a value below the moderate level, while 29.95 per cent indicated a value at moderate level and above. The data shows that the institutions have not been implementing the participatory approach while making public decisions.

Table 4. Participatory governance

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do institutions let customers participate while making core decisions?	Frequency	224	169	88	22	17	520
		Percentage	43.1	32.5	16.9	4.2	3.3	100
		Cumulative percentage	43.1	75.6	92.5	96.7	100	
Q2	Do institutions listen to the voice of customers?	Frequency	231	125	95	56	13	520
		Percentage	44.4	24	18.3	10.8	2.5	100
		Cumulative percentage	44.4	68.4	86.7	97.5	100	
Q3	Do institutions provide customers their rights?	Frequency	209	167	80	43	21	520
		Percentage	40.2	32.1	15.4	8.3	4	100
		Cumulative percentage	40.2	72.3	87.7	96	100	
Q4	Do institutions provide customers their rights to express their ideas freely?	Frequency	197	117	106	77	23	520
		Percentage	37.9	26	15.8	16	2.9	100
		Cumulative percentage	37.9	63.9	79.7	95.7	100	
Average percentage			41.4	26.65	16.6	9.83	3.18	100
Overall cumulative percentage			41.4	70.05	86.65	96.48	100	

Source: Survey by the authors, 2019.

35 Khanna, 'A Conceptual Framework'.

Hailu[36] and Legas[37] found that societal participation is in progress but the participants of women and youth are constrained by harmful traditional practices. Thus, the findings of the study indicate unfavourable results in terms of participation. The institutions do not involve all customers while making core decisions; do not listen to the voice or ideas of the customers and the customers do not have the practical right to express their ideas freely. Therefore, weak accountability in decision-making processes and unfair opportunities in participation were the major problems identified.

4.6 Leadership direction and strategic vision

Leadership is about setting the directions, developing the culture of the organisation, determining its principles and values, and motivating the people in the organisation to commit themselves to those principles and values. The respondents responded to the items related to leadership direction and strategic vision. The responses on service providers, which encompasses commitment, leadership skills, institutional vision, and equal treatment of customers, were different. Accordingly, 66.58 per cent of the total respondents indicated a value below the moderate level, while 33.42 per cent indicated a value at moderate level and above. The result shows that the institutions' practice in leadership direction and strategic vision is not being practiced as well.

Leaders are expected to plan and direct an appropriate strategy. They are also expected to make effective arrangements to ensure that a good management system, including a decision-making system, is in place for the satisfactory operation and management of the institution.[38] According to Amedie,[39] the performance of Addis Ababa city administration indicated that there is an ill commitment of leaders at all levels of the administration. The poor capacity and absence of skilled staff resulted in poor service delivery processes. The magnitude of the challenges is more characteristic of the woreda administration office level where more services are required by the citizens in the city. Lack of effective leadership is the main cause of Africa's lagging from the rest of the world.[40] The findings of the study indicate favourable results in terms of leadership style with some limitations. The institutions have work commitment; have leadership skills; have an institutional vision, and treat all customers equally. The problems identified were lack of leaders' administrative skill and knowledge; lack of implementing policies directed from the regional government; weak interaction and relationship between people and leaders; low awareness in understanding the vision of the institutions; and lack of strategic planning for the implementation processes.

36 Hailu, 'Challenges and Prospects'.
37 Legas, *Parliamentary Oversight*.
38 MO Onolememen, *The Impact of Leadership on the Governance of Infrastructure Development in Nigeria*, PhD Dissertation, Walden University, Nigeria, 2015.
39 Amedie, *The Significance and Practice*.
40 Bekele, *The Challenges and Prospects*.

Table 5. Direction and strategic vision of leadership

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do leaders set direction & strategic vision?	Frequency	185	205	100	20	10	520
		Percentage	35.5	39.4	19.2	3.8	2	100
		Cumulative percentage	35.5	74.9	94.1	98	100	
Q2	Do leaders treat customers with care?	Frequency	170	165	98	40	47	520
		Percentage	32.5	31.7	18.9	7.7	9	100
		Cumulative percentage	32.5	64.2	83.1	90.8	100	
Q3	Do leaders have skills to direct organisations?	Frequency	150	201	89	50	30	520
		Percentage	28.9	38.7	17.1	9.6	5.7	100
		Cumulative percentage	28.9	67.6	84.7	94.3	100	
Q4	Do leaders motivate employees at the organisations?	Frequency	165	145	96	100	14	520
		Percentage	31.7	27.9	18.5	19.2	2.6	100
		Cumulative percentage	31.7	59.6	78.1	97.3	100	
Average percentage			32.15	34.43	18.05	10.08	4.83	100
Overall cumulative percentage			32.15	66.58	85	95.10	100	

Source: Survey by the authors, 2019.

4.7 Fairness and equity

The institutional framework that prescribes the procedures and policies of the concerned organisation would be fair and enforced effectively to create an environment of good governance, whereas equity implies being fair and just to all concerned. As observed in Table 6, the respondents responded to the items related to governance fairness and equity. The observation of the individual items in the table, however, reveals different responses among respondents. Accordingly, 72.65 per cent of the total respondents indicated a value below the moderate level, while 27.35 per cent indicated a value below at moderate level and above. The findings describe that the institutions have not been practicing the fairness and equity considerations as well.

According to Worku,[41] public sector institutions were poor in considering gender equality while providing services. Therefore, the performance results indicate that the institutions have not been practicing fairness and equity considerations. On the other hand, the interview and focus group discussions supported the quantitative

41 Worku, *Assessment.*

data findings. Based on focused group discussions and interviews, lack of equal opportunity and fair treatment and discrimination between rich and poor were the major problems pinpointed.

Table 6. Governance with fairness and equity

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do institutions provide fair decisions to their customers equally?	Frequency	190	200	76	27	27	520
		Percentage	36.5	38.5	14.6	5.2	5.2	100
		Cumulative percentage	36.5	75	89..6	94.8	100	
Q2	Do institutions consider gender equality while providing services?	Frequency	161	206	76	59	18	520
		Percentage	31	39.6	14.6	11.3	3.5	100
		Cumulative percentage	31	70.6	85.2	96.5	100	
Q3	Do institutions consider religion equality?	Frequency	232	145	70	52	21	520
		Percentage	44.6	27.9	13.5	10	4	100
		Cumulative percentage	44.6	72.5	86	96	100	
Q4	Do institutions consider culture equality?	Frequency	180	197	64	62	17	520
		Percentage	34.6	37.9	12.3	11.9	3.3	100
		Cumulative percentage	34.6	72.5	84.8	96.7	100	
Average percentage			36.68	35.98	13.75	9.60	4	100
Overall cumulative percentage			36.68	72.65	86.40	96	100	

Source: Survey by the authors, 2019.

4.8 Good governance is responsive in service provisions

Responsiveness is the quality of being responsive and reacting quickly with quality service provisions. The respondents responded to the three items related to the institutions' responsiveness in service provisions. The observation of the three items – the provision of an early response to the questions of the customers; provision of quality services timely with the fair cost; and having knowledge, skills, and a positive attitude to serve the customers – reveal different responses among respondents. Accordingly, 74.03 per cent of the total respondents indicated a value below the moderate level, while 25.97 per cent responded to a moderate level and above. The findings show that the institutions have not been implementing timely responsiveness.

Table 7. Responsive governance in service provisions

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do institutions response early to customers' questions?	Frequency	199	220	55	40	6	520
		Percentage	38.3	42.3	10.6	7.7	1.2	100
		Cumulative percentage	38.3	80.6	91.2	98.8	100	
Q2	Do institutions provide quality services to the customers timely?	Frequency	170	210	80	28	32	520
		Percentage	32.7	40.4	15.4	5.4	6.2	100
		Cumulative percentage	32.7	73.1	88.5	93.9	100	
Q3	Do institutions have knowledge of the cost customers' incur?	Frequency	250	140	99	21	10	520
		Percentage	48.1	26.9	19	4	1.9	100
		Cumulative percentage	48.1	75	94	98	100	
Q4	Do institutions have a positive attitude toward serving customers?	Frequency	165	188	90	47	30	520
		Percentage	31.2	36.2	17.3	9	5.8	100
		Cumulative percentage	31.2	67.4	84.7	93.7	100	
Average percentage			37.58	36.45	15.58	6.53	3.78	100
Overall cumulative percentage			37.58	74.03	89.6	96.10	100	

Source: Survey by the authors, 2019.

According to Dayanandan,[42] good governance ensures a proper and prompt response from both sides, that is, service providers to service users. These guarantees effective and efficient utilisation of available resources and reduces or helps to avoid conflict. However, public institutions' results indicated slow and very slow speed in response to customers. The authors' study results indicated the existence of poor governance in the responsiveness. The findings of this study based on the open-ended questions, focus group discussions and interviews also prove the existence of poor governance in the responsiveness.

42 Dayanandan, 'Good Governance Practice'.

4.9 Good governance follows the rule of law

Table 8. Governance that follows the rule of law

No.	Items		Responses					Total
			Str. disagree	Disagree	Moderate	Agree	Str. agree	
Q1	Do institutions make decisions in accordance with the rule of law?	Frequency	215	130	79	66	30	520
		Percentage	41.4	25	15.2	12.7	5.8	100
		Cumulative percentage	41.4	66.4	81.6	94.3	100	
Q2	Do institutions provide assurance to customers of good governance in complaint handling?	Frequency	160	195	120	30	15	520
		Percentage	30.8	37.5	24	5.8	2.9	100
		Cumulative percentage	30.8	68.3	92.3	98.1	100	
Q3	Do institutions have the competence of decision-making in service provisions?	Frequency	200	148	105	55	12	520
		Percentage	38.5	28.5	20.2	10.6	2.3	100
		Cumulative percentage	38.5	67	87.2	97.8	100	
Q4	Do institutions respect the code of conduct and enforced impartiality?	Frequency	176	197	96	31	20	520
		Percentage	33.9	37.9	18.5	6	3.9	100
		Cumulative percentage	33.9	71.8	90.3	96.3	100	
Average percentage			36.15	32.23	19.48	8.78	3.72	100
Overall cumulative percentage			36.15	68.38	87.85	96.63	100	

Source: Survey by the authors, 2019.

Rule of law means that the decisions are consistent with the legislation. Good governance requires government institutions to process design and implement the service delivery approach to serve the best interests of stakeholders within a reasonable quality and timeframe. The consistency of decisions made in accordance with the rule of law and the legal competence of decision-making government bodies and individual functionaries are the important factors for the legitimacy of the decisions and therefore for the assurance of good governance. Laws, regulations, and codes of conduct should be fair and

enforced impartially. The respondents responded to the items related to the following: the governance follows the rule of law issues that include understanding the rules and regulations of service provisions; provision of services according to rules and regulations of the institutions; and having compliant handling systems. The observation of the individual items reveals different responses among respondents. Accordingly, 68.38 per cent of the total respondents indicated a value below the moderate level, while 31.62 per cent indicated a value at moderate level and above. The results show that the institutions have not been considering the rule of law as well.

The institutional framework that prescribes the procedures and policies of the public institutions are expected to be fair and are enforced to effectively create an environment of good governance. Thereby compliance with legal requirements that involve equal opportunities, consensus, and anti-discrimination would be achieved. The consistency of decisions made in accordance with the rule of law is the legal competence of decision making government bodies.[43] However, Legas[44] found that public institutions are characterized by poor performance in practicing the rule of law. On the other hand, the findings of this study indicate unfavourable results in terms of the rule of law. The institutions do not provide fair decisions according to rules and regulations of the institutions. The findings from previous research and this study reveal similar results in the implementation of the elements of good governance. Therefore, at interviews and focused group discussions, lack of continuity in applying the rule and law of the institutions were pinpointed as problems.

Conclusion and recommendations

The overall practices of good governance in the study area show that the institutions have not been found perfectly effective or failed in light of the elements of good governance: effectiveness and efficiency, transparency and openness, accountability, participation, leadership direction, fairness and equity, responsiveness and rule of law. Instead, the practices were found effective in some of the elements and ineffective in some others. The quantitative performance in the implementation of all the elements of good governance is acceptable. However, the interviews and focus group discussions showed both positive results and limitations. The positive practices dominate the limitations. Although implementation practices of the principles of good governance have brought about tangible results, it is not free from some limitations: lack of infrastructures; low awareness in the system of resources utilisation; low commitment in service provisions; lack of service quality; weak accountability in decision-making processes; high level of corruption and discrimination; unfair opportunities in participation; lack of service provision on skill and knowledge of staffs; Low awareness in understanding the vision of the institutions; and lack of continuity in applying the rule of law were the challenges pinpointed.

43 Amedie, *The Significance and Practice.*
44 Legas, *Parliamentary Oversight.*

Therefore, the institutions should highlight success parts of the implementation process that should be developed and limitations that should deserve the attention of concerned bodies of the institutions to take corrective measures. Based on the findings and conclusion made, we have come up with the following recommendations.

- To bring effective and efficient performance, the institutions should use resources with commitment and evidence-based strategies for improvement in producing favourable results that meet the needs of the citizens. The institutions should improve efficient and effective service provisions by creating greater transparency, accountability, and applying resource maximisation principles. The institutions' staff should respect the rules and regulations of the institutions without any preconditions. Citizens have to proactively participate in all aspects of the governance process. Participation needs to be informed and organised, including freedom of expression and concern for the best interests of the stakeholders. Public institutions should allocate the citizens' resources fairly and reasonably to all without discrimination based on ethnic, gender, economic level, and political view.
- To practice transparency and openness, the institutions should build on the free flow of information. The institutions should be obliged to the rights and duties of the governance. The customers should be served with decisions that are consistent with the rules and regulations of the government. The institutions developed the goal that promote harmony among the multicultural customers and mitigated the objections of the minority to reach a broad consensus of what is in the best interest of the citizens. The customers should be responsively provided with their basic needs.
- To promote the participation of stakeholders, the institutions should practice community-based organisations. The institutions should have customers' feedback systems. The institutions should listen to customers, collect information, and analyse the data to see any trends in customers' expectations. The stakeholders who directly represent the society can strongly contribute to building good governance in the institutions.
- To provide early and timely responses to citizens, the institutions should automate the organisational structure at a one-stop shopping system. Institutions have to be proactive and quick in giving solutions for complaints of the customer. According to the rule of law of the public institutions, all service providers should be under the law. Government institutions should be abided by the laws of the city administration.
- To upgrade the knowledge, skills, and attitude of employees, institutions should provide continuous capacity building training in the area of good governance to the leaders and staff. Institutions in any of their activities are expected to be active. Institutions should correct delaying and long processes while serving the society.

References

Abuhay, TM: 'Assessing the Prevalence of Good Governance in Public Sectors in Gedeo Zone: Case of Yirga Cheffe Town Administration'. *Journal for Studies in Management and Planning* 1, no 8 (2015), 37–49.

Alemu, T and M Lemma: 'The Contribution and Challenges of Service Delivery Reform to Promote Good Governance: A Case of Addis Ababa'. *Ethiopian Journal of Public Management and Development* 2, no 1 (2011).

Amedie, MC: *The Significance and Practice of Good Governance in Addis Ababa, Ethiopia. The Case of Bole Sub-city*. MA Thesis, Addis Ababa: Indira Gandhi National Open University, 2014.

Bekele, A: *The Challenges and Prospects of Good Governance in Africa: The Case of Kenya*. MA Thesis, Addis Ababa: Addis Ababa University, 2013.

Cochran, W: *Sampling Techniques*, 3rd Ed. New York: Wiley, 1977.

Dayanandan, R: 'Good Governance Practice for Better Performance of Community Organizations – Myths and Realities!!' *Journal of Power, Politics & Governance* 1, no 1 (2013), 10–26.

Dibaba, S: 'Opportunities and Challenges for Good Governance in Ethiopia'. *The Ethiopian Herald*, October 8, 2015. Available: https://allafrica.com/stories/201510091427.html (20. 03. 2020.)

ECSU, *Institute of Leadership and Good Governance. Engendering Economic Governance.* Addis Ababa: Addis Ababa University, 2017.

ESCAP Annual Report 2014. United Nations, Economic and Social Commission for Asia and the Pacific. Available: www.unescap.org/sites/default/files/ESCAP-Annual-Report-2014.pdf (14. 12. 2020.)

'Good Governance'. Wikipedia. Available: https://en.wikipedia.org/wiki/Good_governance (05. 03. 2020.)

Hailu, S: 'Challenges and Prospects of Good Governance in Ethiopia: The Case of Kemisie Town, Ethiopia'. *International Journal of Political Science and Development* 6, no 4 (2018).

Khanna, P: 'A Conceptual Framework for Achieving Good Governance at Open and Distance Learning Institutions'. *Open Learning: The Journal of Open, Distance, and e-Learning* 32, no 1 (2017), 21–35. DOI: 10.1080/02680513.2016.1246246

Kothari, CR: *Research Methodology: Methods and Techniques*. New Delhi: New Age International, 2004.

Legas, A: *Parliamentary Oversight and Its Role in Ensuring Accountability. The Case of Caffee Oromia*. MA Thesis, Addis Ababa: Addis Ababa University, 2015.

Onolememen, MO: *The Impact of Leadership on the Governance of Infrastructure Development in Nigeria*. PhD Dissertation, Walden University, Nigeria, 2015.

Sisay, A, A Dvivedi and B Beshah: 'Determinants of Job Satisfaction in Ethiopia: Evidence from the Leather Industry'. *African Journal of Economic and Management Studies* 9, no 4 (2018). DOI: 10.1108/AJEMS-09-2017-0222

Umar, Z: 'Constructing the 2017 Ibrahihm Index of African Governance'. Index Report. Mo Ibrahim Foundation, October 11, 2017. Available: https://mo.ibrahim.foundation/news/2017/constructing-2017-ibrahim-index-african-governance (12. 07. 2020.)

Worku, M: *Assessment of the Prevalence of Good Governance in the Public Sector: the Case of Selected Public Institutions in the Addis Ababa City of Ethiopia*. MA Thesis, Addis Ababa, Ethiopia, 2013.

Yirga, K: *Assessment of the Prevalence of Good Governance in the Public Sector: The Case of Public Institutions in Debre Birhan Town*. MA Thesis, Mekelle University, Ethiopia, 2010.

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Tribal Conflict over Natural Resources on the Sudan – South Sudan Border: The Case of the Abyei Territory

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This paper explores the major causes, processes and consequences of natural resource conflicts between tribes across the Sudan – South Sudan border region, with the main emphasis on the Abyei territory. Data for the study have been gathered from primary and secondary sources. The research revealed that the conflict over ownership of Abyei's renewable and non-renewable resources has evolved as a contentious issue between Sudan and South Sudan. The situation was complicated by the relationship of the Humr Misseriya and Ngok Dinka and their governments, respectively. Moreover, lack of agreement about who should be considered a resident of Abyei derailed a referendum on the territory's status. The government of Sudan and Humr Misseriya have not yet accepted all proposals and agreements for resolving the conflict. Despite the fact that there are new and positive political developments between the two countries, mainly in 2019–2020, these have not been extended to the settlement of the final status of Abyei. For a durable peace in the Abyei region and its environment, both governments need to work toward realising mutual benefits based on the agreed principles and proposals stipulated in the Abyei Protocol of 2004–2005 and the African Union High-Level Implementation Panel of 2012.

Keywords: tribal conflict, natural resources, Abyei, Humr Misseriya, Ngok Dinka

Introduction

The 2005 Comprehensive Peace Agreement (CPA) was the conclusion of more than twenty years of civil war between the governments of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A). Disputes over borders, resources and unsettled territories, such as the resource-rich Abyei, continue to plague the relationship between South Sudan and the Republic of Sudan, South

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Sudan achieving its independence from the Republic of Sudan on 9 July 2011. Abyei is considered by the *Ngok Dinka* community their permanent territory. The *Ngok Dinka* community is a sub-sect of a predominantly agrarian Christian ethnic group ancestrally domiciled in South Sudan. Seasonally, the *Abyei* area is often used by the *Humr Misseriya* pastoralists, which belong to a large Arab Muslim population in the Sudan, named *Al Baggara*.[2] The *Humr Misseriya* and *Ngok Dinka* have lived together in the Abyei area for centuries, with the nomadic *Misseriya* spending part of the year in Abyei for grazing and access to water. However, after the Sudanese independence from colonialism, their relationship became tense and confrontational as many *Ngok Dinka* became part of the rebel movements in South Sudan and the *Humr Misseriya* were increasingly recruited into government militias.

Moreover, *Abyei* is one of the core issues in the CPA. Hence, the unresolved impasse between the two governments over a failure to execute the CPA's *Abyei* Protocol adversely affects the relative peace in both countries and threatens to possibly spark off renewed conflict between them, despite a fruitful referendum in January 2011 that endorsed the secession of South Sudan. Even after the removal of President Omar Al-Bashir from power in Sudan in 2019 and the new peace deal for a union government in South Sudan in 2020, the attention given for the *Abyei* issue is too obscure.

1. Conceptual issues

Several scholars and policy makers argue that natural resources can cause conflicts, or even escalate, but are not the only goal of the fighting.[3] For example, Porto argued that natural resources that include minerals, oil, timber, productive pastures and farming land can cause armed conflicts, or escalate existing tensions.[4] Le Billon also argued that 'resources have specific historic, geographic, and social qualities participating in shaping the patterns of conflict and violence. The discursive construction and materiality of oil and diamonds, for example, entail distinct social practices, stakes, and potential conflicts associated with their territorial control, exploitation, commercialization, and consumption'.[5] In this regard of strategic importance to foreign and domestic economic and political concerns, resource access and exploitation can become highly contested issues and their territorialisation can generate more territorial stakes than many other economic sectors. This situation

2 Zeru Getachew, 'Conflict Mapping and Conflict Resolution Strategy: The North and South Sudan Conflict on Abyei', *Journal of International Business and Leadership* 1, no 1 (2012), 24–47.

3 Jeffrey Herbst, 'Economic Incentives, Natural Resources and Conflict in Africa', *Journal of Africa Economics* 9, no 3 (2000), 270–294.

4 Joao Gomes Porto, 'Contempotary Conflict Analysis in Perspective', in *Scarsity and Surfeit. The Ecology of Africa's Conflicts*, ed. by Jeremy Lind and Kathryn Sturman (Pretoria: Institute for Security Studies, 2002), 1–50.

5 Le Billon, Philippe: 'The Geopolitical Economy of 'Resource Wars'', in *The Geopolitics of Resource Wars*, ed. by Philippe Le Billon (London: Routledge, 2007), 2.

has often appeared in excessive resource dependent and conflict-ridden developing countries. Moreover, history and political culture, institutions, the individual personality of leaders and the availability of weapons intervene in these conflicts at least as much as the role of political economy of natural resource and their violent escalation, but the security and exploitation of nature represents a source of power and conflicts that should not be overlooked.[6]

According to Morelli, the likelihood of violent conflict is strong when the presence of a local ethnic group coincides with natural resource abundance found in its region which is hardly available in the regions of other ethnic groups.[7] In contrast, if there are no natural resources in the region or if they are evenly distributed in neighbouring areas, there are no reasons for conflict. In other words, it is unlikely to maintain peace when the natural resources of a given area are more valuable (for example diamonds, oil and coca). This idea is supported by Le Billon who argued that 'contrary to the widely held belief that abundant resources aid economic growth and are thus positive for political stability, most empirical evidence suggests that countries economically dependent on the export of primary commodities are at a higher risk of political instability and armed conflict'.[8] However, 'the availability *in nature* of any resource is thus not in itself a predictive indicator of conflict. Rather, the desires sparked by this availability, as well as people's needs, and the practices shaping the political economy of any resource can prove conflictual'.[9]

From a political ecology perspective, there are two points that deal with causes of conflicts commonly known as resource scarcity (renewable resources) and resource abundance (non-renewable resources). Advocates of the scarce resource wars hypothesis argued that people or nations may fight each other to get access to the resources essential for their existence. This reflects the statement: the scarcer the resource, the bitterer the fight. On the other hand, advocates of the abundant resource wars emphasised that primary commodities are easily and heavily taxable, and are hence attractive to both conflicting parties. Thus, the availability of abundant resources would therefore increase the risk of armed conflicts as states struggle for territorial control. Yet, 'low levels of renewable resources endowment are not associated with the risk of armed conflict; while abundant renewable resource in otherwise poor countries and non-renewable resources in all countries increases the likelihood of armed conflict'.[10]

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6 Ibid.

7 Massimo Morelli and Dominic Rohner, 'Natural Resource Distribution and Multiple Forms of Civil War'. *Households in Conflict Network (HICN) Working Paper 80*. Falmer, Brighton: University of Sussex, the Institute of Development Studies, 2010.

8 Philippe Le Billon, 'The political ecology of war: Natural resources and armed conflicts', *Political Geography* 20, no 1 (2001), 562–563.

9 Ibid. 563.

10 Ibid. 565.

2. The dynamics of the Abyei conflict

The CPA was signed between the Government of Sudan (GoS) and SPLA/M in Nairobi on 9 January 2005. Among others, the CPA included the Protocol on the resolution of conflict in Abyei, which was signed in Naivasha, Kenya, on 26 May 2004.[11]

The Abyei Protocol defined the territory of Abyei as the area of the nine *Ngok Dinka* Chiefdoms transferred from Bahr el Ghazal to Kordofan by the Anglo–Egyptian Condominium rule in 1905 for administrative and security reasons.[12] The colonial administration transferred the area to treat victims and perpetrators under the same provincial administration and to address concerns of slave raiding.[13] However, the transfer took place without consulting the predominantly *Ngok Dinka* population of Abyei.[14]

The Abyei Protocol also confirms that the *Humr Misseriya* and other nomadic peoples should keep their traditional rights for grazing cattle.[15] Moreover, it specifies that during the interim period, Abyei should be administered by a local executive council elected by the residents of Abyei, which was a special administrative status. It was also stipulated that net oil revenues from Abyei should be divided among six parties during the interim period.[16]

As boldly written in the protocol, the residents of Abyei would cast a separate ballot, simultaneously with the referendum in South Sudan, to decide whether Abyei is to remain in the South Kordofan state of Sudan or join the Bahr el Ghazal state in South Sudan.[17] This type of decision is not new for the Abyei people. For example, in

11 The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Army. s. a.

12 Abyei Protocol, 9 January 2005. Resolution of the Abyei Conflict, Chapter IV of the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Nairobi, Kenya.

13 Some sections of Humr Misseriya continued raiding the *Ngok Dinka* as slaves; and this situation led the Anglo–Egyptian Condominium Government to transfer the territory of the *Ngok Dinka* from Bahr al Ghazal to Kordofan province in 1905. (Joshua Craze, *Creating Facts on the Ground: Conflict Dynamics in Abyei*. Geneva: Small Arms Survey, Graduate Institute of International and Development Studies, 2011) Similarly, the Humr Misseriya tribe was suffering from the *Ngok Dinka* cattle rustling. (Kwesi Sansculotte-Greenidge, 'Abyei: From a Shared Past to a Contested Future', *Accord* no 7 [2011], 1–8)

14 Sansculotte-Greenidge, 'Abyei'.

15 Abyei Protocol, 9 January 2005. Resolution of the Abyei Conflict: Chapter IV of the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Nairobi, Kenya.

16 The National Government: 50 per cent, the Government of South Sudan: 42 per cent, Bahr el Ghazal region: 2 per cent, Western Kordofan: 2 per cent), locally with the Ngok Dinka: 2 per cent and locally with the *Misseriya* people: 2 per cent. See Abyei Protocol, 9 January 2005. Resolution of the Abyei Conflict: Chapter IV of the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Nairobi, Kenya.

17 UN Mission in Sudan/UNMIS, *Principles of Agreement on Abyei in General: Abyei Protocal*, fact sheet, 2009.

1972, the Addis Ababa Agreement was signed, which ended the first North–South Sudan war. According to the agreement, the Abyei community, the *Ngok Dinka* were given the opportunity to vote in a referendum on whether to remain in the North or to be integrated into the newly formed Southern Sudan Region.[18] During this time, Abyei was given a special administrative status under the office of the President. Later, the GoS, however, unilaterally abrogated the Agreement, including the Abyei referendum clause because of resource and political motives, which set the scene for renewal of another war in the South.[19]

To define and demarcate the boundary of Abyei, the *Abyei* Boundaries Commission (ABC) was established, which has a reflection where to lay the resources of Abyei. In terms of Abyei's security structure, it was decided to be the inclusive security forces from the GoS, SPLA and the UNMIS.[20]

On 14 July 2005, the ABC report was presented to the presidency and set the boundary of the Abyei area 87 km north of Abyei town, which included the Heglig, Diffra and Bamboo oil fields. All villages recently settled by *Ngok Dinka*, as well as the areas from which the *Ngok Dinka* had been forcefully evacuated and occupied by the *Humr Misseriya* were placed in a zone of shared rights.[21] Both the GoS and the *Humr Misseriya* voted against the report but for different reasons.

The reason for the GoS's rejection was that the ABC had found that the Heglig, Diffra and Bamboo oil fields were located within the Abyei area. On the other hand, the *Humr Misseriya* declined to recognise the ABC, because of the resentment that they were not consulted and the concern that they would lose the renewable resource in Abyei forever.[22] On the contrary, the *Ngok Dinka* and the Government of South Sudan (GoSS) considered the ABC decision fair which should be recognised and implemented by all the signatories.[23]

18 The Addis Ababa Agreement on the Problem of South Sudan, 27 February 1972.

19 Apart from the pressure from the *Humr Misseriya*, the abrogation of the agreement was directly associated with the discovery of oil within and around the Abyei area in 1979. In this case, the *Humr Misseriya* militias were used by the government in the north of the Abyei territory to remove *Ngok Dinka* inhabitants and open up a path to the exploitation of oil reserves. Besides, apart from securing the oil fields from possible guerrilla attack, the GoS also used the Misseriya militias as part of its national policy of Arabisation in Sudan. (Craze, *Creating Facts on the Ground*) The failure to implement the referendum clause in the Addis Ababa Agreement and the GoS's strong support to the acts of the *Humr Misseriya* were determinant factors that led to some *Ngok Dinka* to form the 'Anyanya 2' guerrilla group and were instrumental in the formation of the SPLA in 1983. (Douglas H Johnson, 'Why Abyei Matters, the Breaking Point of Sudan's Comprehensive Peace Agreement?', *African Affairs* 107, no 426 [2008], 1–19)

20 Abyei Protocol, January 9, 2005. Resolution of the Abyei Conflict, Chapter IV of the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Nairobi, Kenya.

21 Sansculotte-Greenidge, 'Abyei'.

22 Craze, *Creating Facts on the Ground*.

23 Abdalla A Muna, *Situation Report: Abyei Natural Resources Conflict* (Pretoria: Institute for Security Studies, 2010).

The ABC report was rejected by the GoS and *Humr Misseriya*. Following this, Abyei was the cause of direct confrontations between the Sudanese Armed Forces (SAF) and the *Humr Misseriya* militia on the one side and the SPLA and *Ngok Dinka* on the other. The dispute exploded into violence in May 2008, which led to the razing of Abyei town and the displacement of over 60,000 people.[24] Moreover, in January 2020, the militia killed more than 30 civilians including children in the village of Kolom in the Abyei area.[25] Such type of violence was frequent, particularly following the Sudanese independence, where the first Sudanese civil war (1955–72) had created a deeper rift between the *Humr Misseriya* and the *Ngok Dinka*, as the *latter* were increasingly recruited into the *Anyanya* first rebel movement and the former joined the government militias. This rift aggravated in 1965, when 72 *Ngok Dinka* civilians were burned alive in Babanusa.[26] After a year of the Babanusa massacre, for the first time, the *Humr Misseriya* claimed parts of Abyei up to the river Ngol entirely for themselves[27] and some among them started permanently to settle in the area.[28]

To address the June 2008 deadly violence, the GoS and GoSS came up with the Abyei Roadmap document, which refers the case to the Permanent Court of Arbitration (PCA) in The Hague for a final and binding decision.[29] In the ruling of the PCA, the GoS and GoSS were the only two parties officially represented while *Humr Misseriya* were not adequately represented in the proceedings.[30]

In 2009, the PCA declared its final decision, which reduced the size of the Abyei area set forth by the ABC. The decision placed the Diffra oil field[31] in the Abyei area while the other two oil fields (Heglig and Bamboo) became parts of South Kordofan (that is, the Sudan).[32]

Similarly to the ABC report, the PCA decision accorded *Humr Misseriya* the right to use the Abyei area to graze cattle. However, *Humr Misseriya* and the GoS declined to accept the PCA ruling and declared to halt the physical demarcation of the boundary on the ground unless *Humr Misseriya* was permitted to vote in the referendum. Contrary to this, the *Ngok Dinka* and the GoSS declared their acceptance of the PCA ruling and opposed the idea of *Humr Misseriya* voting in the referendum.[33]

24 Sansculotte-Greenidge, 'Abyei'.
25 United Nations Security Council, Security Council Press Statement on Abyei, 29 January 2020.
26 Francis M Deng, *War of Visions: Conflict and Identities in the Sudan* (Washington, D.C.: Brookings Institution Press, 1995).
27 Craze, *Creating Facts on the Ground*.
28 Concordis International Sudan Report, *More than a line: Sudan's North–South Border* (United States Institute of Peace, 2010).
29 Craze, *Creating Facts on the Ground*.
30 Small Arms Survey, *The Crisis in Abyei* (Geneva: Human Security Baseline Assessment [HSBA], 1 March 2013).
31 Since the PCA decision in 2009, Diffra is the only oilfield in Abyei. See Angelina Sanders, 'Sudan and South Sudan's Oil Industries: Growing Political Tensions', 2012.
32 Roberto Belloni, 'The Birth of South Sudan and the Challenges of Statebuilding'. *Ethnopolitics* 10, no 3–4 (2011), 411–429.
33 Concordis International Sudan Report, *More than a line*.

Still, the GoS and Humr Misseriya have never given up that Abyei is an integral part of South Sudan.[34]

Contrary to the PCA decision, in May 2011, SAF and *Humr Misseriya* militia invaded Abyei and caused the displacement of more than 110,000 civilians into Warrap, Northern Bahr el Ghazal and Unity States.[35] They also killed more than 1,500 people.[36] Recently, the United Nations Security Council condemned the tribal attacks by *Humr Misseriya* militia on a *Ngok Dinka* village in Kolom in January 2020, which claimed the lives of 33 *Ngok Dinka*, 18 were wounded, including 15 children missing and 19 houses burned.[37]

There was no military response from the GoSS because of the fact that the party's focus was on South Sudan's formal declaration of independence on 9 July 2011. Later, on 20 June 2011, the GoS and GoSS signed an agreement in Addis Ababa, which committed both sides to the total withdrawal of their military forces from the area and the reestablishment of a local administration. In support to this agreement, the UN Security Council passed Resolution 1990 on 27 June 2011, which authorised the establishment of the United Nations Interim Security Force for Abyei (UNISFA).[38] The resolution authorised the deployment of 4,200 Ethiopian UN peacekeeping forces to the *Abyei* area after leaders from the two Sudans signed an agreement in Addis Ababa brokered by the African Union.[39] The UNISFA is the only UN force responsible for providing security in Abyei and authorised to precede a full military withdrawal by SAF and SPLA in order to enable the *Ngok Dinka* to return to their territory.[40] Since September 2019, the UNISFA military component stood at 4,150 personnel (3,871 troops, 140 military observers and 130 staff officers).[41]

The former South African President Thabo Mbeki was assigned by the African Union to chair the African Union High-level Implementation Panel (AUHIP) in mediating on Abyei and other post-referendum issues. In doing so, the AUHIP put forward a number of compromise proposals to end the crisis in Abyei.[42] For example, on 21 September 2012, it proposed that Abyei's referendum should be voted on by members of the *Ngok Dinka* community, and "other Sudanese residents" of the

34 United Nations Security Council, Adding Civilian Component to Abyei Interim Force Essential for Matching 'Reality on the Ground', Peacekeeping Chief Tells Security Council. 8519th meeting, SC/13796, 30 April 2019.

35 United Nations Office for the Coordination of Humanitarian Affairs, South Sudan Humanitarian Bulletin, 27 August – 2 September 2012. OCHA.

36 UNSC Report: Monthly Forecast, July 2011.

37 UN Office for the Coordination of Humanitarian Affairs, Sudan Situation Report 2020.

38 Small Arms Survey, *The Crisis in Abyei.*

39 Tesfa-Alem Tekle, 'Ethiopian Peace Force to Abyei Begins Operation Next Week'. *Sudan Tribune*, July 23, 2011.

40 United Nations Security Council, Report of the Secretary-General on the situation in Abyei. S/2018/293, 3 April 2018; Small Arms Survey, *The Crisis in Abyei.*

41 United Nations Security Council, Report of the Secretary-General on the situation in Abyei. S/2018/293, 3 April 2018.

42 Craze, *Creating Facts on the Ground.*

territory in Abyei in October 2013. But, unlike the CPA, it defines these residents as those "having a permanent abode within the Abyei Area". It also proposes that the referendum commission should include two representatives from the two countries, and a chairperson appointed by the AU. Besides, it proposed to set up the Abyei Referendum Facilitation Panel (ARFP), to be composed of three "individuals of international stature", to mediate any disagreement in the referendum commission, as well as to deliver advisory services.[43]

The proposal decided to create a Common Economic Development Zone (CEDZ) to transform the existing conflict between the adversaries of the two Sudans. Moreover, regardless of the outcome of the referendum, it guarantees *Humr Missiriya*'s migratory rights in the area.[44] Consequently, the AUHIP's proposal was endorsed by the African Union Peace and Security Council (PSC) in October 2012, and appreciated it as a fair and feasible one to the conflict. Then, the AU requested the two countries to further negotiate over a six-week period on the basis of the proposal.[45] But, the progress so far is not as remarkable as to say that the potential oil reserve of Abyei would go to South Sudan.

At its 750th meeting held on 6 February 2018, the African Union PSC stated the activities of the AUHIP for Sudan and South Sudan. The council disclosed that no progress had been made in resolving the final status of Abyei. As a result, the council requested the leaders of both Sudans to continue their discussion on the final status of Abyei. It further noted that the discussion should be based on the AUHIP's Proposal on the Final Status of Abyei Area adopted in 2012. However, the final status of the Abyei area is not yet determined as can be read from the Sudan situation report of February 2020.[46]

3. Observable challenges

Even though there have been multiple efforts by the conflicting parties and other regional and international stakeholders, multifaceted challenges in Abyei and its environment are making worst the works to improve the situation on the ground and ways to find sustainable solutions. In this part, some of the major challenges associated with the Abyei crisis are discussed.

3.1 State–society relations

The bondage between the *Humr Misseriya* and the GoS is not always consistent; rather it is one of the most dynamic political games in Sudan. To mention a few,

43 Small Arms Survey, *The Crisis in Abyei*, 7.
44 Ibid. 8. For more information see https://enoughproject.org (17. 01. 2013.)
45 Renata Rendón and Amanda Hsiao, *Resolving the Abyei Crisis* (Washington, D.C.: Enough Project, 2013).
46 UN Office for the Coordination of Humanitarian Affairs, Sudan Situation Report 2020.

the *Humr Misseriya* believed that they were betrayed by the NCP-led government they fought for during the second Sudanese civil war and felt that the end of the war did not result in any visible improvement in their life.[47] Rather, they felt that the CPA was negotiated against their interests and that they are politically and economically marginalised. As a result, some unhappy former fighters built alliances with the Justice and Equality Movement against the GoS.[48] To mitigate the observed resentment, the GoS developed a strategy to work with and use *Humr and other sections of the Misseriya* tribe to ensure control of South Kordofan and the Blue Nile states.

Moreover, retaining the loyalty of the Misseriya is beneficial to the GoS because of the importance of the Misseriya constituency to the ruling National Congress Party. For these reasons, any move by the GoS to execute the PCA borders would produce a hostile relationship with the *Humr Misseriya*. In other words, the GoS fears losing their support if it makes any concessions on the political future of *Abyei* that would make the *Humr Misseriya* feel their grazing resource was in danger. Between 1988 and 1989, President Al Bashir was assigned in Muglad as officer in charge with the rank of brigadier general, which enabled him to directly supervise the *Humr Misseriya* militias on how to offensively attack SPLA and its supporters. After Bashir seized power in a coup in 1989, he promulgated the Popular Defense Forces Act that includes *Humr Misseriya* militias.[49] Since this time, President Al Bashir and his party have been telling the *Humr Misseriya* that Abyei belongs to them.[50] In this respect, the GoS encouraged the *Humr Misseriya* to look to Abyei as "their" area, for grazing cattle and other development projects. Within this context, any move which would denounce the likelihood of Abyei becoming "their" area must have seemed like another infidelity.[51]

Similarly, because of strong historical connections between the SPLA and the *Ngok Dinka*, it is unlikely for the GoSS to be reluctant on the Abyei issue. This is one of the principal reasons why the South Sudan Government may not accept any proposal that makes Abyei and its resources remain in the Southern Kordofan of Sudan. Thus, the GoSS has often been very active in working both with internal and external stakeholders to make sure that Abyei would join South Sudan.

47 Tim Flatman, 'Abyei: Predicting the future', *Sudan Tribune*, May 9, 2011.

48 Since the launch of the CPA, JEM has been increasingly active in recruiting from among the *Humr Misseriya* tribe. Some from this tribe are serving in the leadership position of the movement such as a *Humr Misseriya* man who led JEM's delegation to the peace talks in Doha in February 2010. (Craze, *Creating Facts on the Ground*)

49 Under Sudan's current government, the *Humr Misseriya* militias and other similar groups were formally integrated into the Popular Defense Forces (PDF) in 1989, which had a legal entity to serve as a de facto reserve for the national army. This action further polarised the dispute between *Ngok Dinka* and *Humr Misseriya* as the government was redistributing the land of the *Ngok Dinka* to *Humr Misseriya* and other groups. (International Crisis Group, *Sudan's Comprehensive Peace Agreement: Beyond the Crisis.* Africa Briefing N°50. Nairobi–Brussels, 13 March 2008)

50 Craze, *Creating Facts on the Ground*.

51 Flatman, 'Abyei: Predicting the future'.

Recently, however, there are new relationship developments between the *Ngok Dinka* and *Humr Misseriya* communities. For example, Akonon Ajuanja, a *Ngok Dinka* chief in Abyei said "our communities have accepted to live together here". "We have no problem with the *Misseriya*. Our problem is with the Sudanese government." Doelbit Ali, a *Misseriya* nomad, on his part said: "Each person says this land is theirs, but we don't want to get involved with the politics." He further said they do not have a problem with *Ngok Dinka* and want the politicians to "stay away". In spite of this new development, the final status of the Abyei area is not yet determined as there is no concrete agreement on the ground between the two governments.[52]

3.2 Disagreement on issues of referendum and settlement

Both governments (the GoS and the GoSS) have disagreed on the demarcation of Abyei's territorial boundary and the criteria that determine voters' eligibility in the area. This ultimately derailed the referendum on the Abyei's future status.

As highlighted above, the residents of Abyei have the right to participate in the Abyei referendum. However, the problem is that there is no agreement on who should be considered a resident of Abyei. According to the Protocol, the Abyei Referendum Act, which passed into law in December 2009, has not been able to form the indisputable Abyei Referendum Commission (ARC) to be responsible in defining the criteria for residence because of the disagreement on the composition of the commission.

The GoS argued that there should not be a referendum in Abyei without the participation of *Humr Misseriya*.[53] *Humr Misseriya* also claim that they have the right to participate in the future referendum in order to enjoy not only an equitable share of the natural water and grazing pasture resources of the area, but also to gain the right to domicile, possess property, as well as invest in the Abyei area and its environment, in which they have inhabited with the *Ngok Dinka* for more than 30 decades.[54] Still, the GoS has the same stand that *Humr Misseriya* should be permitted to participate in the referendum.[55]

Despite the fact that an average of 25,000 *Humr Misseriya* nomads have often spent six to seven months in a year in the Abyei area for grazing, the GoS claims that an estimated maximum number of 400,000 *Misseriya* must be endorsed to vote if the referendum is to go ahead. The reasoning behind this is that if the 400,000 *Misseriya* as a tribe are allowed to vote in the Abyei referendum, then their numbers will swamp the estimated 70,000 *Ngok Dinka*, thereby securing the territory for the

52 Sam Mednick, 'Conflict in Abyei Could Reignite South Sudan's Civil War', *Foreign Policy*, June 6, 2018.

53 Douglas H Johnson, 'The Road Back from Abyei', January 14, 2011.

54 Abdalbasit Saeed, 'Peace in Sudan: so near … so far?', in *Proceedings of the National Civic Forum Dialogue Sessions 2007–2008*, ed. by H A Ati and G E Tayeb (Khartoum: National Civic Forum and EDGE for Consultancy and Research, 2009), 104.

55 Sudan Tribune, 'Ngok Dinka and Misseriya discuss peaceful coexistence in Abyei', March 29, 2019.

Sudan.[56] But, in 2019, the migration season began in October, with 37,000 seasonal *Misseriya* herdsmen having entered the Area.[57] In response to this, officials of the GoSS claim that the *Humr Misseriya* have historically held their permanent residents in South Kordofan of Sudan and could not be considered permanent residents in two areas simultaneously. From this discrepancy, it can be inferred that it was logically inconsistent for the CPA to guarantee the grazing rights of the *Humr Missiriya* in Abyei if they are not to be counted as permanent residents. The GoSS also argued that the claims by the GoS on the *Humr Misseriya* being given the right to vote is also inconsistent with the precedent of the South Sudan referendum in which seasonal migrants did not get the right to vote. Moreover, the GoSS and the *Ngok Dinka* have overruled this due to the fact that they have a well-grounded concern that if the *Humr Misseriya* pastoralists are allowed to vote in the referendum, the GoS will strongly continue flooding the north of the territory with pro-government *Humr Misseriya* in order to make the referendum in favour of *Humr Misseriya*.[58]

The *Humr Misseriya* leaders expressed that they would continue to prevent the demarcation of the Abyei area on the ground and precede their plan of settlements in the area. In this regard, the SPLM spokesman in Abyei reportedly alleged that 2,000 Popular Defense Forces (PDF) had been mobilised from outside Abyei to settle in the north of the area to facilitate the settlement in the northern part of the Abyei region.[59] Several reports also revealed that the GoS had been settling *Humr Misseriya* in the northern part of Abyei for permanent settlement beyond the seasonal migration period. For example, the UNSC reported that in October 2019, the number of *Misseriya* settlers had reached more than 35,000.[60] In fact the settlement in the north of Abyei started earlier in August 2010, which was approximately 25,000 *Misseriya* settlers.[61] This practice has continued to worsen the situation in the Abyei Area.

In October 2013, while the GoS and *Humr Misseriya* leaders have expressed their rejection of the AUHIP's proposal for a referendum, the GoSS and the *Ngok Dinka* accepted it without any question. Following this, several *Humr Misseriya* leaders have announced their intention to settle in Abyei, creating permanent abodes, so as to ensure full participation in the referendum.[62] The GoS argued that the AUHIP did not consider the lifestyle of the *Humr Misseriya*, which "is inimical to the concept of permanent abode".[63] Because of this stand, both countries were not able to conduct a referendum to decide the future of the Abyei region as they have to agree first on

56 Sansculotte-Greenidge, 'Abyei'.
57 United Nations Security Council, Report of the Secretary-General on the situation in Abyei. S/2018/293, 3 April 2018.
58 Craze, *Creating Facts on the Ground*.
59 Concordis International Sudan Report, *More than a line*.
60 United Nations Security Council, Report of the Secretary-General on the situation in Abyei. S/2018/293, 3 April 2018.
61 Craze, *Creating Facts on the Ground*.
62 Rendón and Hsiao, *Resolving the Abyei Crisis*.
63 Small Arms Survey, *The Crisis in Abyei*.

who can participate in the vote.[64] This is one of the major challenges that impede the progress in Abyei until this day.

3.3 Humr Misseriya's past experience-based fear

Despite assertions in the CPA, the Abyei Protocol and PCA Report, the *Humr Misseriya* continue to feel uncomfortable about the loss of their grazing and water access rights if the CPA is effectively applied.[65] Their fears are based on past experiences, more precisely, the fact that it is difficult to separate 'traditional rights' from national politics. For example, after the Addis Ababa Accord, clashes were frequent between the then southern police forces and the *Humr Misseriya* tribe. Similarly, following the CPA, the *Humr Misseriya* has been blaming SPLA/M activities such as grazing time restrictions, requirements to disarm and taxes, which have often led to confrontations with it at the Unity and Warrap State borders.[66]

In some border areas, *Humr* Misseriya pastoralists were asked to pay the SPLA SDG 15,000 (USD 6,300). Apart from money in 2007, they were also obliged to pay SPLA soldiers one to two calves per herd to access the Southern provinces for grazing cattle. Moreover, in 2008 the majority of the *Humr Missiriya*'s cattle stayed and suffered a shortage of both grazing and water.[67] In a meeting held on 14 December 2012, *Dinka* chiefs and other local authorities agreed to block *Humr Misseriya* entry to the Abyei region as there were insufficient water resources and security threats from the *Humr Misseriya* militias.[68]

3.4 The issue of oil

In spite of the fact that the PCA placed most of the contested oilfields (Heglig and Bamboo) outside of Abyei (that is, in the north of the Kiir North), the GoS still wants to get access to current and future oil revenues in the Abyei region.[69] Mirroring the same idea, Craze argues that apart from the stated political and economic factors, the GoS and GoSS have strong interest on the existing and potential lucrative oil resources in the Abyei area.[70] As a strategy, for example, the *Humr Misseriya* militias have been used by the GoS in the northern part of the territory to displace the *Ngok Dinka* inhabitants so as to exploit the oil reserves without any problem. Thus, regardless of any political or legal questions, and given the NCP's behaviour of using proxy militias

64 Sudan Tribune, 'Ngok Dinka and Misseriya discuss.'

65 Vanessa J Jiménez, *Seeking Solutions to the Crisis in Abyei, Sudan* (Washington, D.C.: Public International Law & Policy Group [PILPG], 2010).

66 Concordis International Sudan Report, *More than a line.*

67 Craze, *Creating Facts on the Ground.*

68 Small Arms Survey, *The Crisis in Abyei.*

69 Belloni, 'The Birth of South Sudan.'

70 Craze, *Creating Facts on the Ground.*

in the area, one can argue that the GoS may not tolerate any decision that endangers its future access to oil.[71]

3.5 Continuous recruitment of militias

From the *Ngok Dinka* vantage point, the primary threat to peace is providing arms to the Misseriya pastoralists by the GoS.[72] As a tactic to prevent the PCA's implementation program, the GoS officials have been actively recruiting militia among the *Humr Misseriya*, especially since mid-2010. In fact, since 2005, more than twelve militia training camps have been established along Abyei's northern border, with new recruits reportedly receiving around SDG 50 (USD 21) per month.[73] Apart from handing out some financial incentive, the GoS had been motivating the new recruits by indoctrinating them that Abyei is a territory that belongs to *Humr Misseriya*.[74] Moreover, the GoSS officials claimed that after the 2005 CPA, 'the PDF has been reorganised and equipped with trucks, motorcycles, 12.7 mm machine guns, 82 mm mortars, RPGs, anti-tank weapons and small arms. The *Humr Misseriya* militias are receiving such weapons from the SAF.' All this help from the GoS enabled them to destroy much of Abyei town and the surrounding villages mainly *Todac, Tajalei, Maker, Wungok and Dungop*.[75] This situation contributed to the January 2020 attacks by armed *Humr Misseriya* militias on a *Ngok Dinka* village in Kolom, which left 33 local civilians killed, 18 wounded, 15 children missing and 19 houses burned.[76]

3.6 The question of identity

The issues of identity, mainly in attachments to the land are essential in explaining the way the *Humr Misseriya* and *Ngok Dinka* have expressed their territorial identities and institutional allegiances. Both have lived and worked on this land for many years and both have a strong moral claim to it. Abyei also has a strong sentimental attachment due to religious and cultural significance that shaped and strengthened their ways of life for generations, as well as covers a significant part of their history, legends, values and traditions. However, because of multifaceted historical and contemporary factors, these identities and attachments have resulted in an adverse impact on the relationship between the two peoples, as each group claims Abyei as

71 Ibid.

72 Abdalbasit Saeed, *Challenges Facing Sudan after Referendum Day 2011: Persistent and Emerging Conflict in the North–South Borderline States* (Chr. Michelsen Institute [CMI]: Sudan Report SR 2010).

73 Small Arms Survey, *Armed Entities around Abyei* (Geneva: Human Security Baseline Assessment [HSBA], December 2010).

74 Ibid.

75 Craze, *Creating Facts on the Ground*, 48.

76 UN Office for the Coordination of Humanitarian Affairs: Sudan Situation Report 2020.

its exclusive territory.[77] This perception has contributed to the collapse of multiple proposals to deal with the Abyei issue. However, with the help of UNISFA, the two communities have made regular conferences to strengthen peaceful coexistence and peaceful resolution of conflicts at grass root level.[78]

3.7 Negligence of traditional conflict resolution mechanisms

The *Humr Misseriya* shared the land in Abyei and its environment with the *Ngok Dinka* for more than three centuries and settled most of the disputes on the basis of custom and tradition. Since the signing of the CPA, *Humr Misseriya* and *Ngok Dinka* traditional leaders have been attempting at the local level to find ways for peace and prevent a worse conflict. However, these efforts are not well recognised and supported by the international community, including by both governments.[79] For example, the GoS and the GoSS were the only two parties officially represented at the ABC, PCA, as well as AUHIP and this created a feeling of marginalisation, especially among the *Humr Misseriya*.[80] However, amid efforts by the *Ngok Dinka* and *Humr Misseriya* communities to make dialogue for peace, governments of Sudan and South Sudan have made no progress on the issue of Abyei.[81]

3.8 The state officials' political rhetoric

Political rhetoric on Abyei by officials on both sides has also created a tense relation between both governments. Sudan's former President Omar al-Bashir said that the problem of Abyei cannot be solved without the participation of Arab *Humr Misseriya* nomads in a referendum: 'We are saying, loud and clear, that there will be no referendum on Abyei without the *Misseriya*.'[82] President of South Sudan, Salva Kiir Mayardit, in turn said that the North-aligned *Humr Misseriya* do not have any territorial right in the area except access to water and pasture for their cattle; rather Abyei belongs to the nine *Ngok Dinka* chiefdoms. 'The truth is here with us, Abyei belongs to us. Whether Omar al-Bashir likes it or not, one day Abyei will rejoin the South.'[83] From this narrative, it is apparent that state officials' statements have been exacerbating the situation on the ground.

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77 Muna, *Situation Report*.
78 Sudan Tribune, 'Ngok Dinka and Misseriya discuss'.
79 International Crisis Group, *Sudan's Comprehensive Peace Agreement*.
80 Small Arms Survey, *The Crisis in Abyei*.
81 United Nations Security Council, Adding Civilian Component to Abyei Interim Force Essential for Matching 'Reality on the Ground', Peacekeeping Chief Tells Security Council. 8519th meeting, SC/13796, 30 April 2019.
82 News24, 'Bashir: No Abyei vote without Misseriya', March 31, 2011.
83 Sudan Tribune, 'South Sudan's Kiir talks tough on oil, Abyei', July 19, 2011.

4. The prospect for peace

Following the PCA decision, the GoS negotiating position looks likely to remain that the *Humr Misseriya* must play a full part in the Abyei referendum. This position is entirely contrary to the Abyei protocol ruling (that is, the nine *Ngok Dinka* chiefdoms and other permanent residents being eligible to participate in the Abyei referendum), the referendum experience by the GoSS, and the interest of the international community. Given these views, the prospect for the *Humr Misseriya* as a tribe to be part of the referendum will not be practically attainable. Therefore, there is a need for a serious negotiated agreement between the two governments regarding the question of referendum. There is no doubt that if an agreement is not supported by age-old customary norms and traditions of the *Humr Misseriya* and *Ngok Dinka* communities, the prospect for sustainable peace in and around the area will not be feasible. Indeed, the good efforts by the *Ngok Dinka* and *Humr Misseriya* communities to achieve peace through dialogue should be encouraged and supported by all the stakeholders. Moreover, building upon the recent positive developments of bilateral relations between the two governments need to resume direct talks to resolve provisions of their agreements in relation to the final status of Abyei.

Based on the CPA and the PCA rulings, the *Humr Misseriya* have unconditional land usage rights in the Abyei area before and after the referendum. However, if the *Humr Misseriya* continues to be prevented to access grazing land and water in South Sudan by the GoSS' military wing and some traditional leaders of the *Ngok Dinka*, this will put further strain on grazing resources in Abyei. Above all, given the practice on the ground, the *Humr Misseriya* may enter into a violent conflict with the *Ngok Dinka* and SPLA if Abyei goes to South Sudan. Conversely, if the GoS and the *Humr Misseriya* did not drop the intent of land ownership rather than land-use rights in Abyei, the prospect for sustainable peace in and around the area will be unattainable.

Unless the two Sudans sign up to a demilitarised zone or soft border that would allow trans-human groups to cross freely, which relies on the good faith of the two governments not to send proxy militias across the Abyei area, it will be hard to achieve sustainable peace between the conflicting parties. The GoSS should also prove its commitment to the *Humr Misseriya* right to access grazing lands and water in the border areas of South Sudan including the Abyei region through political decisions, such as promulgation of state legislation.[84]

Despite the fact that the AUHIP proposal attempted to give a workable solution for the referendum impasse, the two governments have not yet agreed on the Abyei referendum. In fact, this proposal seems in favour of the GoSS and the *Ngok Dinka* due to the fact that it indicates that the *Humr Misseriya* pastoralist are not full residents of Abyei, and thus not eligible to vote. If this persists, especially the failure to agree on the AUHIP's final proposal, the PSC announced it would endorse the Proposal as

84 Hsiao, Amanda: 'Sudan–South Sudan Negotiaitions: Can They Meet the Deadline?', September 6, 2012.

final and binding, and would request an endorsement by the UN Security Council.[85] If this happens, the AU and UN Security Council may take some actions against the GoS to force it to review its stand towards the proposal. From this scenario, it is easy to understand that the proposal reveals that Abyei has the prospect to go to South Sudan in a popular vote. Indisputably, this may satisfy the GoSS and *Ngok Dinka*; still, the implementation process can only be smoothly conducted when the other side will be convinced by and will accept the proposal.

As argued above, following the CPA, some pro-government *Humr Misseriya* groups have already permanently settled in the northern part of the Abyei area as a strategy to participate in the referendum, thereby altering the demographic make-up of the area. To prevent such manipulation, it is essential to check the registration of voters in those South Kordofan localities that were considered part of Abyei in the 2008 census. This may help to identify who should be included on the basis of their 2008 self-identification to move to the next step.[86]

In order to attain sustainable peace and security in the Abyei area, the two governments should permit and support the *Ngok Dinka* and *Humr Misseriya* communities and religious leaders as well as representatives of peace building civil society organisations to meet and discuss the security situation in the Abyei area and its environment. This can help communities to address problems that were a direct legacy of the conflict, between *Ngok Dinka* and *Humr Misseriya*. Moreover, it may add a value to the overall efforts done by the African Union and other stakeholders as they attempted to address a number of core issues in the conflict such as natural resource, migration and cross boundary security related concerns. In fact, there is a good deal of work going on recently by the two communities to prevent violent conflicts and insecurities in the area, which are not recognised by both governments.

Conclusion

Under the 2005 CPA, members of the nine *Ngok Dinka* chiefdoms and other residents of Abyei are entitled to a referendum in which they will vote on whether the territory should be part of Sudan or South Sudan. But, the referendum has not yet been held because of the disagreement between the Governments of Sudan and South Sudan. In breaking this impasse, despite the fact that there have been several efforts by the conflicting parties and other stakeholders, multifaceted challenges on the ground tend to complicate the prospect of finding a sustainable solution. Among others, strong reciprocal relationship between the GoS and *Humr Misseriya* on one side and the SPLM/A and *Ngok Dinka* on the other side; disagreement to define the criteria determining voters' eligibility; *Humr Misseriya's* Settlement controversy; crave for current and potential lucrative oil; negligence to Traditional Conflict Resolution

85 Small Arms Survey, *The Crisis in Abyei*.

86 Aly Verjee, 'Race against time: the countdown to the referenda in Southern Sudan and Abyei', November 1, 2010.

Mechanisms; and state officials' political rhetoric are some of the intricate challenges that make the peace process inexorably gloomy.

Moreover, because of the past experiences of intimidation by the SPLA of the South Sudan, the *Humr Misseriya* pastoralists are not yet sure to get guarantees for their grazing and water access rights if the CPA is fully implemented. Needless to say, the proposal presented by the AUHIP in September 2012 has put forward a compromising solution to end the overall crisis in Abyei, which required the two countries to make further negotiation. Recently, there are new changes in both countries and paid reciprocal head of government visit in Khartoum and Juba. Nonetheless, the Abyei progress so far has not been impressive.

References

Belloni, Roberto: 'The Birth of South Sudan and the Challenges of Statebuilding'. *Ethnopolitics* 10, no 3–4 (2011), 411–429. DOI: 10.1080/17449057.2011.593364

Craze, Joshua: *Creating Facts on the Ground: Conflict Dynamics in Abyei*. Geneva: Small Arms Survey, Graduate Institute of International and Development Studies, 2011.

Deng, Francis M: *War of Visions: Conflict and Identities in the Sudan*. Washington, D.C.: Brookings Institution Press, 1995.

Flatman, Tim: 'Abyei: Predicting the future'. *Sudan Tribune*, May 9, 2011. Available: www.sudantribune.com/Abyei-Predicting-the-future,38887 (23. 09. 2019.)

Getachew, Zeru: 'Conflict Mapping and Conflict Resolution Strategy: The North and South Sudan Conflict on Abyei'. *Journal of International Business and Leadership* 1, no 1 (2012), 24–47.

Herbst, Jeffrey: 'Economic Incentives, Natural Resources and Conflict in Africa'. *Journal of Africa Economics* 9, no 3 (2000), 270–294. DOI: 10.1093/jae/9.3.270

Hsiao, Amanda: 'Sudan–South Sudan Negotiaitions: Can They Meet the Deadline?', September 6, 2012. Available: https://enoughproject.org/reports/sudan-south-sudan-negotiations-can-they-meet-deadline (06. 02. 2021.)

Jiménez, Vanessa J: *Seeking Solutions to the Crisis in Abyei, Sudan*. Washington, D.C.: Public International Law & Policy Group (PILPG), 2010.

Johnson, Douglas H: 'Why Abyei Matters, the Breaking Point of Sudan's Comprehensive Peace Agreement?'. *African Affairs* 107, no 426 (2008), 1–19. DOI: 10.1093/afraf/adm070

Johnson, Douglas H: 'The Road Back from Abyei', January 14, 2011. Available: http://citizenshiprightsafrica.org/douglas-johnson-the-road-back-from-abyei/ (23. 09. 2020.)

Le Billon, Philippe: 'The political ecology of war: Natural resources and armed conflicts'. *Political Geography* 20, no 1 (2001), 561–584. DOI: 10.1016/S0962-6298(01)00015-4

Le Billon, Philippe: 'The Geopolitical Economy of 'Resource Wars', in *The Geopolitics of Resource Wars*, ed. by Philippe Le Billon. London: Routledge, 2007.

Mednick, Sam: 'Conflict in Abyei Could Reignite South Sudan's Civil War'. *Foreign Policy*, June 6, 2018. Available: https://foreignpolicy.com/2018/06/06/conflict-in-abyei-could-reignite-south-sudans-civil-war/ (18. 02. 2020.)

Morelli, Massimo and Dominic Rohner: 'Natural Resource Distribution and Multiple Forms of Civil War'. *Households in Conflict Network (HICN) Working Paper 80.* Falmer, Brighton: University of Sussex, the Institute of Development Studies, 2010. DOI: 10.2139/ssrn.1662434

Muna, Abdalla A: *Situation Report: Abyei Natural Resources Conflict*. Pretoria: Institute for Security Studies, 2010.

News24: 'Bashir: No Abyei vote without Misseriya', March 31, 2011. Available: www.news24.com/News24/Bashir-No-Abyei-vote-without-Misseriya-20110331 (06. 02. 2021.)

Porto, Joao Gomes: 'Contempotary Conflict Analysis in Perspective', in *Scarsity and Surfeit. The Ecology of Africa's Conflicts*, ed. by Jeremy Lind and Kathryn Sturman. Pretoria: Institute for Security Studies, 2002. 1–50.

Rendón, Renata and Amanda Hsiao: *Resolving the Abyei Crisis*. Washington, D.C.: Enough Project, 2013.

Saeed, Abdalbasit: 'Peace in Sudan: so near … so far?', in *Proceedings of the National Civic Forum Dialogue Sessions 2007–2008*, ed. by H A Ati and G E Tayeb. Khartoum: National Civic Forum and EDGE for Consultancy and Research, 2009.

Saeed, Abdalbasit: *Challenges Facing Sudan after Referendum Day 2011: Persistent and Emerging Conflict in the North–South Borderline States*. Chr. Michelsen Institute (CMI): Sudan Report SR 2010.

Sanders, Angelia: 'Sudan and South Sudan's Oil Industries: Growing Political Tensions'. 2012. Available: www.cmi.no/file/2154-r016-cfc-monthly (18. 02. 2020.)

Sansculotte-Greenidge, Kwesi: 'Abyei: From a Shared Past to a Contested Future'. *Accord* no 7 (2011), 1–8.

Tekle, Tesfa-Alem: 'Ethiopian Peace Force to Abyei Begins Operation Next Week'. *Sudan Tribune*, July 23, 2011. Available: https://sudantribune.com/Ethiopian-Peace-Force-to-Abyei,39610 (23. 09. 2019.)

Thomas-Jensen, Colin and Maggie Fick: 'Abyei: Sudan's Next Test', July 2009. Available: https://enoughproject.org/files/publications/Abyei_Paper.pdf (25. 09. 2019.)

Verjee, Aly: 'Race against time: the countdown to the referenda in Southern Sudan and Abyei', November 1, 2010. Available: www.cmi.no/news/746-race-against-time-the-countdown-to-the-referenda (06. 02. 2021.)

Legal and political documents and press sources

Abyei Protocol, 9 January 2005. Resolution of the Abyei Conflict: Chapter IV of the Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army. Nairobi, Kenya. Available: www.usip.org/files/file/resources/collections/peace_agreements/abyei_05262004.pdf (20. 10. 2019.)

The Addis Ababa Agreement on the Problem of South Sudan, 27 February 1972.

AFP: 'Sudan says no Abyei vote without Misseriya'. March 31, 2011. Available: www.google.com/hostednews/afp/article/ALeqM5iYwSDpIq (20. 10. 2019.)

Concordis International Sudan Report: *More than a line: Sudan's North–South Border*. United States Institute of Peace, 2010. Available: http://concordis.international/wp-content/uploads/2016/04/MoreThanALine2010Report.pdf (16. 02. 2020.)

The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Army. s. a. Available: www.refworld.org/pdfid/5b44ac2b4.pdf (15. 10. 2019.)

International Crisis Group: *Sudan's Comprehensive Peace Agreement: Beyond the Crisis*. Africa Briefing N°50. Nairobi–Brussels, 13 March 2008. Available: www.refworld.org/docid/47d923792.html (20. 03. 2019.)

Official website of the Enough Project. Available: https://enoughproject.org (17. 01. 2013.)

Small Arms Survey: *The Crisis in Abyei*. Geneva: Human Security Baseline Assessment (HSBA), 1 March 2013. Available: www.smallarmssurveysudan.org/facts-figures/borderdisputed-areas/abyei.html (16. 02. 2020.)

Small Arms Survey: *Armed Entities around Abyei*. Geneva: Human Security Baseline Assessment (HSBA), December 2010. Available: www.smallarmssurveysudan.org/fileadmin/docs/facts-figures/abyei/HSBA-Armed-Groups-Abyei.pdf (14. 01. 2020.)

Sudan Tribune: 'South Sudan's Kiir talks tough on oil, Abyei'. July 19, 2011. Available: https://sudantribune.com/South-Sudan-s-Kiir-talks-tough-on,39591 (23. 09. 2019.)

Sudan Tribune: 'Ngok Dinka and Misseriya discuss peaceful coexistence in Abyei'. March 29, 2019. Available: www.sudantribune.com/spip.php?article67286 (08. 03. 2020.)

The Comprehensive PeaceAgreement (n.d.) between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Army. Available: https://www.refworld.org/pdfid/5b44ac2b4.pdf (15. 10. 2019.)

United Nations Security Council: Security Council Press Statement on Abyei, 29 January 2020. Available: https://www.un.org/press/en/2020/sc14089.doc.htm (15. 02. 2020.)

United Nations Mission in Sudan/UNMIS: *Principles of Agreement on Abyei In General: Abyei Protocol*, fact sheet, 2009. Available: www.unmis.org (11. 09. 2019.)

United Nations Office for the Coordination of Humanitarian Affairs: South Sudan Humanitarian Bulletin, 27 August – 2 September 2012. OCHA. Available: https://reliefweb.int/report/sudan/sudan-weekly-humanitarian-bulletin-27-august-2-september-2012 (16. 02. 2020.)

United Nations Office for the Coordination of Humanitarian Affairs: Sudan Situation Report: IDPs arrive in Abyei town fleeing conflict in Kolom. 27 January 2020. Available: https://reliefweb.int/report/sudan/sudan-situation-report-27-jan-2020 (02. 02. 2020.)

United Nations Security Council: Adding Civilian Component to Abyei Interim Force Essential for Matching 'Reality on the Ground', Peacekeeping Chief Tells Security Council. 8519th meeting, SC/13796, 30 April 2019. Available: www.un.org/press/en/2020/sc14171.doc.htm (05. 04. 2019.)

United Nations Security Council Report: Monthly Forecast, July 2011. Available: www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2011_07_forecast.pdf (06. 02. 2021.)

United Nations Security Council: Report of the Secretary-General on the situation in Abyei. S/2018/293, 3 April 2018.

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ARTICLES

Examining Minority Rights Protection under the Ethiopian Federal System

MAREW ABEBE SALEMOT[1]

This research investigates minority rights protection under the Ethiopian federal state structure, its legal instruments and institutional setups. Ethiopia is a land of a diverse society having more than eighty distinct ethnic groups, but the federal system conferred only seven ethnic groups, their own regions subsuming the rest within them. The territorial autonomy of ethno-national groups in Ethiopian federal context – in which the constituent units themselves are diverse – imposes a rigid conception of territory. The constituent unit that empowers autonomy for a particular group – the titular ethno-national group – claims exclusive control over territory and dominance within the constituent unit. Thus, the interests of minorities who are lumped with relatively dominant ethnic groups are not addressed and these minorities have neither been given self-determination nor are recognised as distinct nationalities of the country.

Keywords: minority, rights, Ethiopia, federalism, Constitution

Introduction

The concept 'minority' is a very broad and complex term. It is complex in the sense that no consensus has been reached as to what it pertains to, and is broad for it incorporates diverse groups which have ethnic, religious or linguistic features.[2]

As far as the protection of minorities is concerned, apart from the various UN conventions in many countries including Ethiopia,[3] constitutional provisions

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2 W Kymlicka, 'Emerging Western Models of Multination Federalism: Are They Relevant for Africa?' in *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, ed. by D Turton (Oxford: James Currey, 2006), 54–55.

3 The following conventions are relevant legal frameworks for minorities in which Ethiopia is a state party: International Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, African Charter on Human and Peoples' Rights, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). More importantly, the Ethiopian Constitution under

have been laid which are directly or indirectly designed to protect and meet the needs of minorities.[4] These constitutions, in addition to ensuring the equal treatment of minorities with other nationalities, provide special guarantee to specified linguistic or other minority groups within the states regarding their right to existence, to education, language, self-determination and representation.[5]

Ethiopia being a home of various nations, nationalities and peoples, its federal constitution has laid important guarantees for the protection of a sort of minority called 'minority nationalities' together with other nationality groups.[6] It is, however, sad to say that the past ruling classes had considered this unique and diverse culture of the different nations and nationalities the source of all troubles.[7] Instead of making concerned efforts to develop their indigenous culture and preserve what was inherited from their ancestors, the past regimes did not give due attention to their very existence and protection.

Following many devastating civil wars to overthrow both the monarchical and dictatorship regimes, Ethiopia adopted a constitution at the end of the cold war in 1995. After the promulgation of the Federal Democratic Republic Ethiopian (FDRE hereafter) Constitution in 1995, Ethiopia has implemented a federal state structure with ethno-linguistic political-legal arrangements. Contradicting the multiculturalism nature of Ethiopia, the Constitution[8] under Art. 47 has unequivocally declared Ethiopia as the federation of ten ethno-linguistically demarcated regional states (including the recently added Sidama Regional State).[9] The demarcation of Ethiopia – which has more than eighty-five diversified ethnic groups in only ten territories based on linguistic criteria – created the subordination of national minorities of any kind to the will of the majorities.[10] In the Ethiopian federation, populations are in practice rarely distributed into neat watertight regions. The existences of intra-unit minorities

Art. 9 states that all international agreements ratified by Ethiopia are an integral part of the law of the land, and Art. 13 further elaborates that fundamental rights and freedoms specified in the constitution are to be interpreted in a manner conforming to the principles of the international instruments adopted by Ethiopia. See the link of the UN Treaty Body Database below for Ethiopian status. Available: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN (20. 06. 2020.)

4 RL Watts, *Comparing Federal Systems*, 3rd ed. (Montreal: McGill-Queens University Press, 2008), 44–46.

5 N Steytler, 'Enhancement of Democracy through Empowerment of Disadvantaged Groups', in *Unity in Diversity: Learning from Each Other. Vol. 4: Local Government in Federal Systems*, ed. by J Kincaid and R Chattopadhyay (New Delhi: Viva Books, 2008), 20–35.

6 F Assefa, 'Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet', *Regional & Federal Studies* 22, no 4 (2012), 435–473.

7 D Aberra, *The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia* (Addis Ababa: Addis Ababa University, 2008), 23–47.

8 Constitution of the Federal Democratic Republic of Ethiopia.

9 GS Alemante, 'Ethnic Federalism: Its Promise and Pitfalls for Africa', *The Yale Journal of International Law* 28, no 1 (2003), 51–107.

10 T Kjetil, *Ethiopia: A New Start?* Minority Rights Group International – Report (London: Martinus Nijhoff Publishers, 2000), 22.

within the regional units have been unavoidable. Territorial demarcation of ethnic groups in Ethiopia hardly applies to minority groups which had been amalgamated with relatively dominant groups. This perspective fails to address adequately the problem of minorities within the different regional administrations and cities that are often inhabited by ethnically intermixed individuals.[11]

The UN special Rapporteur's report[12] on minority mission to Ethiopia confirmed the plight of minorities when making an evaluation of the situation of minorities in the country based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other relevant international standards, and identified four broad areas of concern regarding minorities. These are: (a) protecting the existence of a minority, including through protection of the physical integrity of its people and the prevention of genocide; (b) protecting and promoting cultural and social identity, and the right of national, ethnic, religious or linguistic groups to affirm and protect their collective identity and to reject forced assimilation; (c) ensuring effective non-discrimination and equality, including ending structural or systemic discrimination; and (d) ensuring effective participation of members of minorities in public life, especially with regard to decisions that affect them.

As far as numerical dominance is concerned, no nation constitutes half of the total population of Ethiopia but the constitution creates majority–minority divides.[13] From the three decades of federal experience, one major challenge the Ethiopian federal system is facing relates to the issue of local tyranny at constituent unit level. This research investigates the legal norms and institutional setups of Ethiopian federation to address and safeguard minority rights protection in the country.

1. The scope of minority rights under the Ethiopian Constitution

1.1 The right to existence and recognition

Recognition of minorities facilitates the protection of other minority rights. It is the recognition of ethnic groups that gives rise to other rights. Recognition of minority groups by the state helps minority for claiming other rights. 'The existence of minorities is a matter of fact, rather than a matter of law. According to the UN Human Rights Committee, such existence 'does not depend upon a decision by that state party but [must] be established by objective criteria.''[14] Of course, 'the linchpin of minorities' protection is the right of minorities to be recognized as minorities.'[15]

11 Assefa, 'Ethiopia's Experiment'.

12 'Report of the Independent Expert on Minority Issues: Mission to Ethiopia (28 November – 12 December 2006)', UN.

13 Assefa, 'Ethiopia's Experiment'.

14 United Nations Development Programme, 'Marginalised Minorities in Development Programming. A UNDP Resource Guide and Toolkit', May 2010, 36.

15 JR Stephen, 'Toward a Minority Convention: Its Need and Content', in *Israel Yearbook on Human Rights* (Dordrecht–Boston–London: Martinus Nijhoff Publishers, 1990), 102.

'Even in the absence of legal recognition granted to minorities by the respective states, *de facto* recognition may assist States to acknowledge and respond to the problems faced by minorities. States will be able to better tackle inequality and reduce tensions within their societies if they acknowledge that ethnic, cultural, religious and linguistic diversity exist; and that groups may challenge discrimination and exclusion along these lines.'[16]

Ethiopia is home for over eighty-five distinct multi-ethnic groups since time immemorial.[17] The constitution under Art. 62 authorises the House of Federation (Ethiopian Upper House) to give *de jure* recognition to these groups. The recognition or rejection of their (minorities') existence depends on the subjective criteria set under Art. 39(5) of the constitution. In order to be recognised as one of the distinct ethnic groups of the country, any minority people should fulfil the criteria of having a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological make-up, inhabiting an identifiable and predominantly contiguous territory.[18] For example, in case of 'belief in common or related identities' and 'a common psychological make-up', which are subjective ones, their determination is difficult. Apart from the difficulty in determining them, the constitution does not specify as to who has such power. However, as such elements are something that the concerned ethnic group believes in, they are the fundament of their existence, such power should be given to the group itself. No other body should prove (but may confirm) the existence or non-existence of such feelings for them.[19]

Due to the difficulty and subjectivity of the criteria, coupled with the influence of political involvements concerning the decision on the quest for recognition, so far the House of Federation has recognised only 75 relatively dominant ethnic groups. But there are still more than ten indigenous minorities who have not been yet recognised as a distinct nationality of the country. As a result their language, religion and their sheer identity, are at the verge of extinction. Of course, these indigenous minorities have been settled in these areas for centuries. To mention a few of those minorities[20]

16 United Nations Development Programme, 'Marginalised Minorities in Development Programming', 16.

17 Z Bahiru, *A History of Modern Ethiopia (1855–1991)*. 2nd ed. (Oxford: James Currey – Athens: Ohio University Press – Addis Ababa: Addis Ababa University Press, 2002).

18 C Van der Beken, *Unity in Diversity – Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia* (Berlin: Lit Verlag, 2012), 289. See also Art. 39(5) of the Constitution.

19 A Addis, 'Individualism, Communitarianism and the Rights of Ethnic Minorities', *Notre Dame Law Review* 66, no 5 (1991), 615–676.

20 The House of Federation (HoF), the second House empowered to give identity recognition, has rejected claims for recognition of the Danta, Wolene, Bahirwork Mesemese, Zaye, Dube and Kontoma stating that these groups do not have a 'distinct language' of their own, although Art. 39 does not include such a requirement. What Art. 39(5) requires, among other things, is 'mutual intelligibility of language' and not a distinct language in the way interpreted by the HoF.

nationwide claiming such recognition includes the Danta, Wolene, Bahirwork Mesemese, Zaye and Dube.

1.2 The right to self-determination

Self-determination is one of the most important rights of oppressed population groups because of its multi-faces. At the same time, it can be seen from political, economic, social and cultural rights.[21] The Ethiopian Constitution (Arts. 39 and 52) conferring the right to self-determination to Nations, Nationalities and Peoples which can be understood as the right to autonomy (self-government), the right to speak one's own language, preserve culture, history, identity and to have separate institutions.

In reality, there are only ten regional states and two city states for nearly eighty-five Nations, Nationalities and Peoples in the county. Since the members of the federation are not homogeneous, there are a number of Nations, Nationalities and Peoples in each regional state who are either unrecognised or lumped with other dominant groups. In some others like the Southern Regional State, there exist more than fifty-six Nations, Nationalities and Peoples. As a result, in the states, there exist majorities and minorities. States adopt their own mechanism of accommodating the rights of national minorities living in their own jurisdiction. The Southern and the Amhara Regional States, in their respective constitution, provide for the right of minorities to establish their own nationality self-governments and equitable representation in the state councils. On the other hand, the Constitution of the Oromia National Regional State under Art. 8 provides:

> Sovereign power in the region resides in the people of the Oromo Nation and the sovereignty of the people is exercised through their elected representatives and direct democratic participation. It is worth noting that this provision has ignored the existence of non-Oromo ethnic groups, which constitute only 12.2% of the region's population.[22]

Moreover, Art. 5 of the Harari Regional State Constitution provides that the Harari people are the owner of sovereign power in the region. This stipulation of the constitution recognises only the Harari ethnic community, which represents a mere 8.65 per cent of the regional population, as the sole holder of sovereign power. Although Art. 6 of the regional constitution provides that Oromiffa shall serve as an official language of the region along with the Harari language, there is no other provision in the regional constitution which recognises the right of the Oromo

21 YT Fessha and C Van der Beken, 'Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia', *African Journal of International and Comparative Law* 21, no 1 (2013), 32–49.

22 Van der Beken, *Unity in Diversity*.

community, which constitutes 56.41 per cent of the region's population as a partaker of sovereign power in the region.

The above illustrations show that there is no uniform mode of accommodating the right to self-government of national minorities among the states. This fact opens the room for states to devise their own form of treating national minorities of their region which in some instances resulted in denial of the basic rights of Nations, Nationalities and Peoples of the right to self-government.

1.3 The right to develop and promote cultural and linguistic rights

The survival and flourishing of a minority's culture depends largely on the validity of its language.[23] A language policy is a high-level governmental document that sets decisions and guidelines for and determines what language and for which purposes shall be used in a given country.[24] Language and cultural policy are two of the most crucial affairs that need special care in a multi-ethnic state, since unity should be preserved without compromising diversity. For good language policy, policy makers should consider the following considerations while making the policy: human rights implications for minorities, economic utility of each language, national integration and government efficiency, group identity as a well as personal identity and aesthetic expression.[25]

In the Ethiopian federation, the Constitution, under Art. 5(1) only states that all Ethiopian languages enjoy equal state recognition and as per Art. 5(2) Amharic is the working language of the federal government. It looks like Art. 5(1) and (2) of the FDRE Constitution contradict each other because it is difficult to give equal state recognition to all languages in the existence of one federal working language in a country where more than eighty languages are spoken. Still, the constitution uses the official language neither for vertical communication between the Federal government and the states, nor for the horizontal communication between the regional governments although as a matter of practice Amharic is maintained.[26] The constitution is supposed to lay the ground for the promotion and protection of the minority languages, but the Ethiopian Constitution is silent on the use of languages in administration and the media. There is also no specific law that regulates the use of languages in education, let alone the minorities'.[27] Minority Nationalities can therefore exercise their right to promote and develop their culture using this constitutional provision guaranteed to minorities and majorities alike. Taking into account their numerical inferiority and political non-dominance, minority Nationalities need special measures to preserve and develop

23 Addis, 'Individualism, Communitarianism'.

24 A Getachew and A Derib, 'Language Policy in Ethiopia: History and Current Trends', *Ethiopian Journal of Education & Science* 2, no 1 (2006), 37–62.

25 L Calvet, *Language Wars and Linguistics Politics* (Oxford: Oxford University Press, 1998), 34–38.

26 Assefa, 'Ethiopia's Experiment'.

27 Fessha and Van der Beken, 'Ethnic federalism and internal minorities'.

their own culture.[28] However, the Federal Constitution did not provide special support to minority nationalities that would enable them to enjoy and develop their culture.

2. Institutional responses: The right to representation of minorities at the Federal Houses

Minority groups of peoples are always in need of special protection and consideration from survival to preservation of their identity, culture, tradition and ways of life. Institutional setups where minorities are represented and their will reflected are the basic necessary instruments for better protection of minorities.[29] In the subsequent subsections, the representation of minorities in the Lower House (House of Peoples' Representatives, hereinafter HPR) and the Upper House (House of Federation, hereinafter HoF) will be discussed.

2.1 Minority representation in the House of Peoples' Representatives (the Lower House)

The House of Peoples' Representatives, the Ethiopian federal law-making body, represents the peoples of the Ethiopian people as a whole. The FDRE Constitution (Arts. 50–51) empowered the HPR, to have a final say on political issues. It is the supreme political body that enacts laws in compliance with the constitution and plays a supervisory role over the executive. Representing the peoples of Ethiopia, members of the HPR are elected on the basis of the *first-past-the-post* electoral system from candidates in each electoral district. This means that each candidate who gets the larger votes in each electoral district will win the seat. In Ethiopia, where the federal system is structured on the basis of ethnic lines, the election of members of the HPR by such *first-past-the-post* electoral system runs the risk that the one seat in each electoral district will be won by the candidate who represents the interests of the largest ethnic group in the district. This discriminates against minorities from having a single representative at the House of Peoples' Representatives. From the 550 seats of the HPR, relatively populous nations (the Oromo and Amhara) occupy 304 seats of the very law-making body. Therefore, if the Oromos and Amharas form a quorum, their combined vote will suffice to pass legislations to the prejudice of other nations and nationalities.[30]

Thus, the way members of the House of Peoples' Representatives are elected deviates from the very notion of the Ethiopian federation that aspires to accommodate

28 G Merera, *Ethiopia: Competing Ethnic Nationalisms and the Quest for Democracy, 1960–2000* (Maastricht: Shaker Publishing, 2003), 82–83.
29 N Fasil, *Constitution for a Nation of Nations: The Ethiopian Prospect* (Lawrenceville, NJ: The Red Sea Press, 1997), 51.
30 Assefa, 'Ethiopia's Experiment'.

diversities. The larger ethnic groups are more strongly represented leaving minorities behind from the law-making body of the federation.

The fact that the constitution under Art. 54(3) stipulates – out of the maximum number of 550 seats in the House of Peoples' Representatives – to reserve a minimum of 20 seats for '*minority nationalities and peoples*', lacks clarity. Even though at the federal level all nations, nationalities and peoples of Ethiopia are considered minorities, the attempt of the constitution to assign 20 seats for the Minorities in the House of Peoples' Representatives is not unequivocally stated and raises questions, because, it is not a clear concept in the Ethiopian Constitution who are minorities and what are the possible (objective) criteria for identifying them. And who claims such reserved seats is also not explained.

2.2 Minority representation in the House of Federation (Upper House)

Partly, it is the fear of the majority tyranny in the first chamber that many federal constitutions avoided by setting a non-majoritarian second chamber where the rights of minorities will be exercised and counterbalance the majority rule.[31]

The Ethiopian second chamber, commonly dubbed as the House of Federation (HoF),[32] is composed of representatives of each Nation, Nationality and People of Ethiopia. According to the FDRE Constitution Art. 61(2), each ethnic group shall be represented by at least one member. Moreover, those ethnic groups whose population exceeds one million are entitled to have one additional representative for every increase by a million. However, as per the FDRE Constitution Art. 61(1–2), the second chamber in Ethiopia is unique for many reasons; it has neither law-making power nor state representing mission; it rather represents Nations, Nationalities and Peoples. In Ethiopia, each Nation, Nationality and People is guaranteed a minimum of one representative and shall be represented by one additional representative for each one million of its population. By this calculation, those two relatively larger ethnic groups (Oromo and Amhara) have dominated almost half of the seats of the second chamber and have repeated the majoritarian tyranny in the Lower House. This still raises questions: how could the minority groups in the HoF exercise their rights if they are overridden (outnumbered) by the more populated groups that form the ruling party, who have more seats in the house, since the simple majority is a requirement to pass all decisions in the house.

Despite the fact that Ethiopia is home for more than 85 Nations, Nationalities and Peoples, only 69 Nations, Nationalities and Peoples for the third term (2005–2010), and 75 for the fourth term (2011–2015) and 76 for fifth term (2016–2020) have seat(s)

31 A Lijphart, *Patterns of Democracy* (New Haven: Yale University Press, 1999), 3–4.

32 The HoF is composed of 'nations, nationalities and peoples'. Each nation or nationality has one seat and one additional seat is granted for every additional million. The HoF does not have law-making power. It is mandated to resolve disputes among regional states, allocate subsidies to regional states and interpret the Constitution. See Arts. 61 and 62 of the Constitution.

in the HoF. This means about 16 minority groups for the third term and 10 for the fourth and 9 for the fifth term were unrepresented. This is not in line with Art. 61(2) of the Federal Constitution which provides for representation of each nation, nationality and people of Ethiopia in the Upper House. As a result, there are still minorities (re) questing primarily their identity to be recognised, to have self-determination and to get representation in the appropriate level of governments including the HoF.

Conclusion

By taking the objective, subjective and the combination of both criteria of defining minorities, Ethiopia is a land of minorities. There is not any ethnic group that claims to be in a majority position at the federal level. However, the FDRE Constitution tries to create majority ethnic groups at regional levels by making ethnicity incongruent with the territorial demarcation of the constituent units of the federation. But the geographic boundaries of the Regional States are not inhabited by homogeneous ethnic groups. Consequently, every regional state has minorities, which have survived the influence of the majority for many years. Thus, minorities continue to suffer because they are under the mercy of local majorities with no legal framework to protect their very right to existence, self-determination, development and promotion of cultural and linguistic rights and political representation among others. The intermingling nature of the Ethiopian polity at the regional levels was not considered by the framers of the Federal constitutions and the constitution did not set any kind of mechanism for protection of minorities living in each local government. The adopted electoral system in the Ethiopian federation makes minorities to be the losers and to have unfair representation.

The possible solutions to the plight of minorities in Ethiopia can be achieved by designing broader political and policy considerations beyond the normative constitutional stipulations. Thus, the Federal Government should have responsibility as a guardian of intra-regional minorities against possible repression by a regional majority. The proportional representation system is relatively better than the first-past-the-post system that would accommodate and reflect the interests of minorities, as well.

References

Aberra, D: *The Scope of Rights of National Minorities under the Constitution of the Federal Democratic Republic of Ethiopia*. Addis Ababa: Addis Ababa University, 2008, 23–47.

Addis, A: 'Individualism, Communitarianism and the Rights of Ethnic Minorities'. *Notre Dame Law Review* 66, no 5 (1991), 615–676.

Alfredsson, G: 'Minority Rights and a New World Order', in *Broadening the Frontiers of Human Rights: Essays in Honour of Asbjørn Eide*, ed. by D Gomien. Oslo: Scandinavian University Press, 1993, 55–77.

Alemante, G: 'Ethnic Federalism: Its Promise and Pitfalls for Africa'. *The Yale Journal of International Law* 28, no 1 (2003), 51–107.

Assefa, F: 'Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet. *Regional & Federal Studies* 22, no 4 (2012), 435–473. DOI: 10.1080/13597566.2012.709502

Calvet, L: *Language Wars and Linguistics Politics*. Oxford: Oxford University Press, 1998.

Bahiru, Z: *A History of Modern Ethiopia (1855–1991)*. 2nd ed. Oxford: James Currey – Athens: Ohio University Press – Addis Ababa: Addis Ababa University Press, 2002.

Elazar, D: *Exploring Federalism*. Tuscaloosa: University of Alabama Press, 1987.

Fasil, N: *Constitution for a Nation of Nations: The Ethiopian Prospect*. Lawrenceville, NJ: The Red Sea Press, 1997.

Fessha, YT and C Van der Beken: 'Ethnic federalism and internal minorities: the legal protection of internal minorities in Ethiopia'. *African Journal of International and Comparative Law* 21, no 1 (2013), 32–49. DOI: 10.3366/ajicl.2013.0051

Getachew, A and A Derib: 'Language Policy in Ethiopia: History and Current Trends'. *Ethiopian Journal of Education & Science* 2, no 1 (2006), 37–62. DOI: 10.4314/ejesc.v2i1.41975

Kjetil, T: *Ethiopia: A New Start?* Minority Rights Group International – Report. London: Martinus Nijhoff Publishers, 2000.

Kymlicka, W: 'Emerging Western Models of Multination Federalism: Are They Relevant for Africa?' in *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, ed. by D Turton. Oxford: James Currey, 2006, 32–64.

Lijphart, A: *Patterns of Democracy*. New Haven: Yale University Press, 1999, 3–4.

United Nations Development Programme: 'Marginalised Minorities in Development Programming. A UNDP Resource Guide and Toolkit', May 2010. www.ohchr.org/Documents/Issues/Minorities/UNDPMarginalisedMinorities.pdf (17. 12. 2020.)

Merera, G: *Ethiopia: Competing Ethnic Nationalisms and the Quest for Democracy, 1960–2000*. Maastricht: Shaker Publishing, 2003.

'Report of the Independent Expert on Minority Issues: Mission to Ethiopia (28 November – 12 December 2006)', UN. Available: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/111/13/PDF/G0711113.pdf?OpenElement (17. 12. 2020.)

Thornberry, P: *International Law and the Rights of Minorities*. Oxford: Clarendon Press, 1991.

Stephen, JR: 'Toward a Minority Convention: Its Need and Content', in *Israel Yearbook on Human Rights*. Dordrecht–Boston–London: Martinus Nijhoff Publishers, 1990.

Steytler, N: 'Enhancement of Democracy through Empowerment of Disadvantaged Groups', in *Unity in Diversity: Learning from Each Other*, Vol. 4, ed. by J Kincaid and R Chattopadhyay. New Delhi: Viva Books, 2008, 20–35.

Van der Beken, C: *Unity in Diversity – Federalism as a Mechanism to Accommodate Ethnic Diversity: The Case of Ethiopia*. Berlin: Lit Verlag, 2012.

Watts, RL: *Comparing Federal Systems.* 3rd ed. Montreal: McGill-Queens University Press, 2008.

Legal sources

The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, *Federal Negarit Gazetta*, 1st year, No. 1, 21 August 1995, Addis Ababa. Available: www.wipo.int/edocs/lexdocs/laws/en/et/et007en.pdf (20. 03. 2020.)

ARTICLES

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Language Law and Policy of the Federal Government of Ethiopia: Implications for Fair Trial and the Rights of Non-Amharic Language Speakers Accused

YEMSERACH LEGESSE HAILU[1]

Ethiopia is a multilingual country with a federal form of state structure. The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) gave equal recognition for all Ethiopian languages, but has chosen Amharic to become the working language of the Federal Government. In order to accommodate the needs of non-Amharic speakers in the provision of public services, the Constitution and other laws such as the Criminal Procedure Code, require the use of interpreters. Particularly in criminal proceedings, non-Amharic speakers are entitled to be assisted with a 'qualified' interpreter to meaningfully participate in the cases. In practice, it is observed that accused people who do not speak the working language of the federal government are unable to effectively understand or get prompt and detailed information regarding the nature and effect of the case brought against them. Even if they know the case, they are not able to effectively explain their defences to the court or associated bodies, and thereby defend their rights. This study reveals that non-Amharic speakers are not effectively served according to the legal standards. This problem subsists mainly due to the absence or limited number of interpreters, as well as the use of untrained interpreters. Despite some efforts to address the problem, the federal government has not yet laid down any formal mechanism by which people with limited and/or no Amharic language proficiency are properly served in criminal proceedings both before and during trial. This study proposes the federal government to establish court interpreter training institutions and to standardise court interpretation by allocating the necessary budget; lay down a formal mechanism such as enacting detailed laws and working manuals for assigning interpreters; providing other local languages the status of working language; consulting interpretation technologies and working in collaboration with different stakeholders.

Keywords: non-Amharic speakers, language barrier, multilingual community, untrained interpreter

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Introduction

Ethiopia is home to diverse cultures, languages, ethnic groups, religions, customs and traditions. The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE), which provides the legal basis for Ethiopia's federal form of government, constituted the federation of nine ethno-linguistically composed regional states which are predominately delineated based on ethnic identity. These include Afar, Amhara, Benishangul-Gumaz, Gambela, Harar, Oromiya, Somali, Southern Nations Nationalities and People's (SNNP) Region and Tigray, and two charter cities, Addis Ababa and Dire Dawa.[2] Recently a tenth regional state, namely, Sidama, one of the Zones in SNNP, was established after a referendum was made on November 20, 2019.[3] In all these parts of the country, researchers estimate that more than 75 languages are spoken.[4] In this type of heterogeneous and multilingual community, it is difficult for government institutions to provide public services in all the languages of the society. Hence, the choice of one or more language as a working language through adopting a language policy becomes inevitable even if it may create problems.[5]

The current Constitution of the federal government of Ethiopia, under Article 5, states that all Ethiopian languages are equally recognised. The Constitution makes Amharic the working language of the Federal Government even though it recognises that regional states of the Federation may determine their own respective working languages. Regardless of the fact that both federally chartered cities Addis Ababa and Dire Dawa are home to different ethnic and linguistic groups, this provision implies that Amharic language is the only official language that the federal government uses in the public domain.

This study reviews the impact of the language policy of the federal government of Ethiopia on the rights and freedoms of non-Amharic speakers accused in Addis Ababa. It aims at identifying the major challenges non-Amharic speakers encounter in criminal proceeding and analyses its implications on their fundamental human rights. This work is an extension of the author's Master thesis done in 2016, which only assess the problem in Lideta Sub-City. But the current research is significantly different in terms of scope of the area, as it covers the practice of criminal justice institutions, that is, police, prosecution office as well the Federal First Instance, High and Supreme courts at five selected sub-cities (Kolfe, Nifas Silk Lafto, Yeka, Lideta and Bole) of Addis Ababa. The data of the current study was collected from October 2019 to January 2020. The two works are also different in terms of the change in the

2 Constitution of the Federal Democratic Republic of Ethiopia. Proclamation No 1/1995 (hereinafter referred to as 'FDRE Constitution'), Art. 47.

3 The country is also expecting additional regional states as there are different requests for regional statehood.

4 J Záhořik, 'Debating language policy in Ethiopia', *Journal of Asian and African Studies* 18, no 1 (2009), 86.

5 WF Mackey, 'Language policy and language planning', *Journal of Communication* 29, no 2 (1979), 48.

political and policy landscape that happened in the country. It has also substantially benefited from recent literature, published later than the Master thesis. Consequently, the findings and the conclusions of the research are also more developed.

Language policy: the need for careful consideration

Despite the attempt for defining the concept, there is no standard definition for language policy. For the purpose of this paper, language policy refers to implicit or explicit sets of principles or decisions of government authorities to choose one or more languages to administer provision of public services in a multilingual society.[6] It can be said that language policy is an intentional decision made to determine language use in the public domain.

The choice of one or more languages in the language policy or law of a country is a necessary evil which often comes with a challenge of devising a mechanism for accommodating other minority languages, and which is usually associated with the availability of financial resources and political will.[7] In a country like Ethiopia with limited resources, choosing a language spoken by a relatively large number of speakers may perhaps be viable. But it can also have the effect of limiting or violating the linguistic and other fundamental human rights of persons who speak a different language.

When a certain language is chosen as a working language, it basically means that the language will be used as a medium of communication, written or oral, in the provision of public services by different branches of the government and other sectors. Language policy determines the use of a language in legislature, judiciary proceedings, financial and bank system, media, healthcare services and so on. This includes, but not limited to, communication in public institutions such as courts, police offices, prosecution offices, health centres, public schools, transportation military, and media. Even though most researchers focus on the impact of language policy on education, language policy practically influences people's everyday lives, in schools, in the market, in health care centres, and generally in the public spheres.

Language choice poses all kinds of problems that need to be handled cautiously.[8] On one hand, the government should be careful about the impact of language policy on national unity and political stability. On the other hand, the issue of accommodating the rights and claims of different linguistic groups and the cost thereof is also another critical challenge that requires careful consideration. Practically, it has been observed that linguistic diversity has been a source of political conflicts across the world

6 RL Cooper, *Language Planning and Social Change* (Cambridge: Cambridge University Press, 1989).
7 L Brenda, 'The Problems with Language Policy and Planning', *Journal of Language, Identity & Education* 14, no 1 (2015), 36.
8 R Tsegaye, *Issues of federalism in Ethiopia: towards an inventory of legal issues* (Addis Ababa: Addis Ababa University, 2009).

affecting the stability and sustainability of a wide range of political communities.[9] The experience of many countries in Africa, America as well as Asia shows that it has been a challenge to create shared identity and common institutions.[10] Multilingual states shall ensure that the policy represent and reflect the interest of all its members, including members of the different linguistic communities who are legally entitled to demand public services in a language that they understand. Thus determining language policy requires a careful and deep analysis, weighing up the pros and cons of the proposed alternatives.

1. Ethiopian language policy

1.1 The legal basis for the language policy

Language policies may take different formats. It can generally be found as part of an explicit clause in a constitution and other written legal documents. It can also be developed in a separate policy document that provides the objective as well as detailed guidelines and specific procedures of language usage.[11] Ethiopia does not have a separate language policy which provides detailed guidelines about language policy of the government and how it deals about language problems in different layers of government.

Since its adoption in 1995, the Federal Constitution has been the authoritative legal document which is usually cited as a source of the language policy of the country. The Constitution also gives equal recognition to all languages in the country. Despite that, Article 5 Section (2) of the FDRE Constitution stipulates that Amharic is the working language of the federal government. Accordingly, this language has been in use as a working language for providing different public services within the Federal government structure. Compared to the past experience of the country, in which Amharic was predominantly the language of the state, the current constitution can be considered as a move forward, insomuch as it attempts to officially recognise linguistic diversity and the use of different local languages in different parts of the country.[12]

In spite of the progress that the Federal Constitution introduces with regard to language policy, it is criticised for overlooking equal rights of languages of nations, nationalities and peoples of Ethiopia other than Amharic. This is generally evident in the public administration, education and the judiciary in the Federal setting.[13] This paper takes a closer look at the justice sector, especially the criminal

9 W Kymlicka and A Patten, 'Language Rights and Political Theory', *Annual Review of Applied Linguistics* 23, no 1 (2003), 3–21.

10 B Weinstein (ed.), *Language Policy and Political Development*. Norwood, NJ: Praeger, 1990.

11 B Spolsky, *Language Policy (Key Topics in Sociolinguistics)* (Cambridge: Cambridge University Press, 2004).

12 Záhořik, 'Debating', 86.

13 F Haftetsion, *The State of Vertical Division of Political Power in the Ethiopian Federation*, PhD Dissertation (Addis Ababa: Addis Ababa University, 2017), 261–264.

proceeding process, and review the practical challenges of non-Amharic speakers at the federal level.

1.2 The right to interpretation in criminal proceedings

With regard to the right to interpretation in criminal proceedings, the current baseline instrument in Ethiopia is the 1995 Constitution. The reading of the constitutional provisions indicates that the state of Ethiopia has given special attention to the language problem in the justice system as it has dedicated two important articles to providing protection for accused and arrested persons with limited proficiency in the working language. The protection of the law for accused and arrested persons extends from the time of arrest to the time of prosecution in court of law.

The FDRE Constitution, after recognising Amharic as working language, did not provide detailed mechanisms how non-Amharic speakers are going to be served in the public domain. However, the Constitution specifically provides, under Article 19 and 20, the rights of accused and arrested persons in the criminal proceedings. Article 19 of the Constitution provides that persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest or if any charge is against them. It also adds that they shall be informed of their right to remain silent in a language they understand and/or that any statement they make may be used as evidence against them in court of law. In addition to this, Article 20 Section (7) of the Constitution provides that accused persons have the right to request the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand. The Constitution not only obliges responsible government bodies to assist people with limited working language proficiency, it also indicates that the cost of language accommodation shall be covered by the state.

In addition to the constitutional provisions, there are also specific laws that provide protection for people with limited working language proficiency. The federal system endeavors to accommodate the needs of the diverse peoples of Ethiopia from different regions. The Criminal Procedure Code of Ethiopia also provides under Article 27 Section (4) that arrested persons shall be supplied with a competent interpreter where he/she is unable to understand the language and his/her answer is to be recorded.[14] Moreover, Article 126 Section (2) of the same document also provides that the court shall select a qualified court interpreter where it is required for the purposes of any proceedings. This article also adds that a relative of the accused, prosecutor or witness shall not be selected as interpreter. From the reading of these provisions, the Criminal Procedure Code, in addition to the assistance of interpreter, even requires the court to choose 'qualified' or 'competent' interpreters to assist individuals with limited language proficiency in criminal proceedings. But there is no legal instrument or other official document that provides for what qualified or competent interpreter

14 The Criminal Procedure Code, Proclamation No. 185/1961. Available: https://chilot.blog/wp-content/uploads/2011/01/civil-procedure-code-english.pdf (05. 06. 2020.)

actually means. As a result, problems are observed in criminal proceedings across the country that impede citizens' right to access the justice system.

On the other hand, Article 25 Section (2) of the Federal Courts Proclamation and its amendments expressly state that the courts shall provide an interpreter to individuals that do not know the working language of the federal courts.[15]

In addition to the constitutional provisions and specific laws, there are numerous international and regional human rights instruments that Ethiopia has ratified on the right to free assistance of an interpreter in criminal proceeding.[16] With regard to this, Article 14 Section (3) (f) of ICCPR provides for minimum guarantees that everyone in criminal proceeding is entitled to. It specifically provides that everyone is entitled to have the free assistance of an interpreter if he cannot understand or speak the language used in court. This provision again held the government responsible for covering the cost of interpretation and leaves the accused or arrested persons free of cost. Similarly, the regional human rights law, the African Charter on Human and Peoples' Rights in this case, provides that the entitlement to the assistance of an interpreter is an essential element of fair trial when a person is unable to understand or speak the language used by the judicial body.[17] Moreover, some researchers also argue that the right to an interpreter is a right recognised and protected by customary international law.[18]

By being party to the international and regional human rights laws, Ethiopia is required by law to comply with the standards contained in the conventions. These legal frameworks generally provide that everyone charged with a criminal offence shall enjoy the minimum right to the free assistance of an interpreter if the accused cannot understand or speak the language used before and during trial.

1.3 Attempts to change the language policy at the federal level

The importance of the issue of language policy and its impact on non-Amharic speakers has been felt by the federal government. In fact, the issue of language recognition at the federal level has been one of the major reasons for political debate. In addition to organisational efforts to address the problem among the federal institutions, the federal government has shown its willingness to change the language policy. For instance, in July 2017, while discussing the special interest of Oromiya over the capital city Addis Ababa, the Ethiopian Council of Ministers approved a draft act which would make Afan Oromo a second working language of the federal government. This draft act was criticised by researchers for lacking the proper language policy and

15 Proclamation No. 25/1996.

16 Article 9 Section (4) of the FDRE Constitution actually states that all international agreements ratified by Ethiopia are an integral part of the law of the land.

17 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (November 1999), African Charter on Human and Peoples' Rights, African Union.

18 J Sherman, 'The Right to an Interpreter under Customary International Law', *Columbia Human Rights Law Review* 48, no 3 (2017), 257.

evaluation.[19] The Council of Ministers neither adopts an explicit model to recommend Afan Oromo as a working language nor does it explain why other local languages were not considered. Consequently, this decision was criticised because it lacked to foresee the consequent practical challenges. The draft act did not discuss as to how the language policy will be implemented. Issues such as constitutional amendment, resource allocation, institutional reforms and other subsequent measures were not properly discussed. Moreover, it overlooked the interest of residents of Addis Ababa, where more than 70 per cent of the population belongs to other linguistic groups. As a result, this act may lead to continuous political unrest in the country and may also put the national standing at stake.

The other recent attempt to change the policy was made by Abiy Ahmed, the current Prime Minister of Ethiopia, who has been trying to take numerous reform measures since he come to power in April 2018. In his public statement on November 2019, Abiy Ahmed stated that he and his party, that is, the Prosperity Party, which was formerly known as Ethiopian People's Revolutionary Democratic Front, was working to incorporate more languages and improve the language policy at the federal level in a reform measure. He said his party had decided to incorporate Affan Oromo, Tigrinya, Somali and Afar languages as working languages of the federal government in addition to Amharic.[20] He said: 'This is a significantly better approach than the previously ones which will enable Ethiopians learn from one another and strengthen their desire to build their country.'[21]

Similarly to the previous attempt, the Prime Minister's announcement was criticised for lacking a legal ground and a detailed justification for this decision. Perhaps, the decision to change the language policy is the result of political, economic and social conjunctions in the country.[22]

1.4 The practice in criminal proceedings

Language barrier can be a daunting experience for non-Amharic speakers going through the legal system, especially if they appear before the law as an accused. The accused person's ability to understand the proceeding and communicate with lawyer, judge or others has a direct impact on his right to access the justice system, fair trial and other fundamental rights. Usually, a person with no or limited language proficiency has 'difficulty speaking or comprehending working language in a pressured or highly charged situation or in a location that is not part of their common experience,

19 L Yemserach, 'Challenges and Prospects of Adding Working Language in Ethiopia', Conference Paper, presented on Legal and Human Rights Academy / Policy Forum on Sustaining Political Reforms, Democratization and Human Rights in Ethiopia: Informing the Next Steps, October 1, 2018, Adama, Ethiopia.

20 Abiy Ahmed's speech from FDRE Office of the Prime Minister is available at www.youtube.com/watch?v=0m5TRUFLQ3M (05. 05. 2020.)

21 Ibid.

22 A Minasyan, 'Language policy, national identity and politics', *European Scientific Journal* 2, (2014).

such as in a court room or at a police station.'[23] Moreover, words used in court of law comprise much legal jargon which is usually not easily understood by persons outside the legal professions. It is thus important to assist non-Amharic speakers with language and ensure their meaningful participation in criminal proceeding.

The current Ethiopian legal system uses interpreters as a means of breaking the language barrier in legal proceedings. Hence, government institutions such as the police station and courts are by law responsible to meet the need of people who do not know the working language of the federal government by providing interpreters.

In this study, non-Amharic speakers can refer to three groups; Ethiopians who speak local languages other than Amharic, people with hearing impairments who use sign language and non-nationals who speak different foreign languages. These groups of individuals encounter more or less similar problems when it comes to language barrier in a criminal proceeding, even if the magnitude of language barrier or the challenge thereof is different.

1.4.1 Language barrier before trial

A criminal proceeding usually starts with the police, and a person is entitled to certain fundamental human rights at the first contact with the police officer who arrests him/her. As per the FDRE Constitution as well as other specific legislations, an accused/arrested person has a right to be promptly informed of the nature and cause of charge against him in a language he understands.[24] Arrested persons who do not know the working language also have the right to be informed of his right to refrain from making a statement at the police station. And if he provides statement, he shall be informed, in a language he understands, that it will be used as evidence in court of law.[25]

Usually, in a country like Ethiopia, it is not unusual to observe that accused individuals do not know their rights in legal proceedings in general and police stations in particular. Hence, it is at this critical stage of criminal proceeding that an interpreter should be available to break the language barrier. At the police station, the investigating police officer needs to communicate with the accused in different phases such as during detention, recording statement, investigation and application of remand. In order to conduct these responsibilities effectively, the police shall be assisted with an interpreter if they do not speak the language of the accused.

The state is therefore responsible to allow arrested persons to make an informed decision about making statements to police. For non-Amharic speakers, the state is

23 RW Cole and L Maslow-Armand, 'The Role of Counsel and the Courts in Addressing Foreign Language and Cultural Barriers at Different Stages of Criminal Proceeding', *Western New England Law Review* 19, no 1 (1997), 193–228.

24 FDRE Constitution Art. 19 s. (1).

25 FDRE Constitution Art. 19 s. (2).

not only responsible for informing the accused/arrested of his/her rights before trial, it is also expected to do it in a language that he understands.

The results of the study show that in Addis Ababa there are numbers of cases involving both local and foreigner people who do not speak the working language of the police. Regardless of the number of cases that appear before the police, there are no formal institutional or legal mechanisms laid down to assist non-Amharic speakers either to inform the accused/arrested the nature of the crime or his/her right not to make statement. Unless the police officer knows the language of the accused, it is very difficult for the accused person to know the nature and cause of crime if he is detained outside the police station. Even after arriving at the police station, a non-Amharic speaker may not be promptly informed of the charge brought against him because there are no interpreters hired at the police station. It is only when the search for possible interpreter is successful that non-Amharic speakers can be provided with the necessary information that the law requires.

Non-Amharic speakers generally shall be well-informed of their right to choose whether to make a statement or not, which also requires communication and effective understanding between the police officer and the accused person. Especially, in Ethiopian legal system whereby the statement of the accused can be taken by the court as evidence, it is important that these groups of individuals get the necessary information that the law requires in a language that they understand.

According to Article 86 of the Criminal Procedure Code,[26] a statement shall be read out to the accused before he is asked to sign it. After taking down the statement of the accused in Amharic, the police officer is expected to use the same interpreter to read what has been written in the statement before letting the accused sign it. But the practice shows the contrary.

The majority of non-Amharic speaker participants in this study stated that their inability to read and speak the working language of the federal government significantly limited them from exercising their fundamental rights such as the right to express their ideas, the right to defend oneself and the right for fair trial.

The absence of interpreters at the police station has an impact not only on the accused's fundamental rights, but also on the police officers' day to day activity. The police officers stated that this has an impact on their daily work, as the search for an interpreter had been taking most of their time, which they could have used to do other important activities. The very fact that a non-Amharic speaker is involved in a criminal case always implies that the proceeding will be prolonged. Perhaps this is partly because interpretation by its nature requires extra time, patience and effort, especially from the police.

In police stations, it is either the police officers or other individuals such as friends, families of the accused, or anyone who claims to be a bilingual, who acts as an interpreter to assist with the language barrier. All individuals who provide

26 The Criminal Procedure Code, Proclamation No. 185/1961.

the interpretation service are expected to provide the service on a voluntary basis and no payment is made for them. This definitely compromises the quality of the interpretation service, which may negatively affect the accused person's fundamental right. According to some accused respondents, the fact that the police officers are the ones who act as interpreters in criminal cases of non-Amharic speakers poses the question of neutrality, which is a very essential aspect.

The issue of language barrier also raises a similar challenge for the public prosecutors assigned in that specific police station. Usually, prosecutors are assigned in police stations to work in collaboration with the police officers during criminal investigation. Hence, they will be expected to talk to non-Amharic speakers while framing and preparing their charges. Usually, an investigating police officer and public prosecutor share the same office so as to work together on criminal cases. Hence, the public prosecutors can observe and assist police officers in numerous instances starting from recording statement to visiting prisoners in the respective temporary detention centres. Similarly to police officers, public prosecutors are also involved in the search for a person who could assist them in interpreting the language of their clients. Public prosecutors involved in this research stated that even if there are no formal guidelines or procedures for assigning an interpreter, they usually give priority for bilingual police officers at that station to help them with the communication barrier. It is after checking that there are no bilingual police officers that the prosecutors tell the accused person to bring their own interpreter or start to search for any interpreter around.

The current practice of the criminal proceeding before trial shows that there are no interpreters hired at the police station to break the language barrier in cases involving non-Amharic speakers. Moreover, there are no guidelines or formal procedure laid down to indicate how communication with accused people who do not know the working language should be provided. This can imply that the issue of non-Amharic speakers or the challenges they are encountering at police stations has not been felt by concerned bodies.

1.4.2 Language barrier during trial

The current criminal benches, the Federal First Instance Court (FFIC), Federal High Court (FHC) and Supreme Court (SC), are divided into different special courts that entertain specific cases on specific areas. These special benches include those that only see flagrant offences, remand applications from police, tax and customs, children and young offenders and women and children bench. And hence, the occurrence of cases involving non-Amharic speakers before one court depends on numerous factors such as the nature of cases, the area where the crime is committed, and the types of institutions in a certain sub-city.[27]

27 The situation with language interpreters is relatively better at the Federal Supreme Court, as most cases involve the exchange of written pleadings and not the physical appearance of the plaintiff and

The problem that language barrier may cause to the rights of citizens seems to be felt better in the judiciary than the executive. In all three levels of court structure, the job post for language interpreter, for both local and foreign languages, exists even though most of the job posts are vacant. The reason for this will be discussed in the following section.

In spite of the government's commitment to respond to lingual diversity and implement the legal requirements, the result of this study shows that multiple challenges, especially logistical limitations, hinder the justice system to achieve its objective at the level possible.

1.4.2.1 Major challenges in interpretation in court

A. Lack of qualified court interpreters

In a criminal legal system, the role of interpreters is indispensable as life, liberty, and other rights of the accused depend on the quality of service of the interpreter. Currently, when cases of non-Amharic speakers are presented before federal courts, the judge may take formal measures where he/she issues a written order to the main registrar office and/or other governmental and non-governmental institutions. When formal options are unfruitful, the judge asks anyone in and around the courtroom who speaks the language of the accused without any written or recorded communication. This includes employees such as assistant judges and secretaries as well as non-employees of the court such as police officers, relatives of the accused,[28] interpreters that the accused bring and court attendants.

The job qualification required for local language court interpreters was completion of the 12th grade with four or more years of experience in any sector. Recently, due to the request of the court, the qualification was changed. Nonetheless, almost none of the interpreters in the study had experience in interpretation service. Hence, most interpreters provide a summarised interpretation, which is not advised in court of law, especially in criminal proceeding.[29]

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the defendant in court. When interpreter is required, there are permanently hired interpreters that currently work in the court for English and Affan Oromo languages. For other languages, a similar challenge is encountered at the Federal Supreme Court level.

28 This in fact is against Article 126 Section (2) of the Criminal Procedure Code (Proclamation No. 185/1961) that clearly states that no person shall be selected who is a relative to the accused or the prosecutor, or himself/herself a witness.

29 According to William E. Hewitt there are different types of court interpretation. But only two models, namely, simultaneous and consecutive interpretations should be used in court of law. Simultaneous interpreting is rendering an interpretation continuously at the same time someone is speaking. On the other hand, 'consecutive interpreting is rendering statements made in a source language into statements in the target language intermittently after a pause between each completed statement in the source language'. According to this author, there is also a third common mode of interpretation called 'summary' interpreting. This mode of interpreting refers to paraphrasing and condensing the speaker's statement. Unlike the two previous models, the latter

Moreover, court interpreters do not have prior short or long term legal training, which makes the interpretation service more difficult. In many cases, people who had little or no familiarity with the court setting or legal jargons served as interpreters.

All participant judges commonly confirmed that it is not unusual to observe incompetent interpreters committing mistakes during trial. When competent interpreters are lacking, the individual's legal rights in the judicial system and their rights and freedoms within the system will be jeopardised. These inevitably result in commission of errors and misunderstanding.

In order to improve the service of court interpreters, different measures are taken by the government. One of the measures includes the job grading reform taken by the Federal Civil Service Commission. As interpreters are employees of the government, the job post requirement as well as benefits are usually revised by the Commission. As part of its usual activity, the Federal Civil Service Commission of Ethiopia was conducting a research to review all of the job posts in governmental institution from the year 2008 to 2013. With regard to the job post for court interpreters, taking into account the comments forwarded from the judiciary administration offices, the Commission has made improvements to the qualification thereof. Accordingly, local language interpreters are required to have qualification of a degree in any field of study and two years of experience. Although this may be praised as an effort to increase the quality of service, this has resulted in another problem. According to human resource management of the courts, these job posts have stayed vacant since the implementation of the newly revised job grading reform because they could not find anyone who is interested and fulfils the qualifications. According to the Human Resource Management of the First Instance Court, the reform has actually worsened the situation in courts, leaving them with no applicants that qualifies the requirement for local language interpreter job post.

Overall, interpreters play an important role in court of law, especially in criminal proceeding. They are the voice and ears of judges, public prosecutors and other parties on one hand, and those of non-Amharic speakers on the other. They contribute their share for the overall efforts of protecting the rights of the accused in criminal justice system. Nevertheless, the current strategies employed at the federal level to respond to the need of non-Amharic speakers in criminal proceeding are still inadequate.

B. Lack of incentive mechanisms for interpreters

According to the records of the human resources of the courts, there are only few permanent interpreters at the federal level who are hired for limited languages. This shows that the number of interpreters are insignificant compared to the diverse languages spoken in the country and the need in courts. Most interpreters in the

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does not provide a precise rendering of everything that is being said in to the target language. See William E Hewitt, *Court Interpretation: Model Guides for Policy and Practice in State Courts* (Williamsburg: National Centre for State Courts, 1995), 31.

study indicated that this is due to the unattractive salary or *per diem* payment, the absence of incentive mechanisms for court interpreters.

Most interviewees indicated that the challenges in strategies to overcome language barrier in court of law has been mainly related with budget. Even though the issue of budget is essential, it cannot be a justification to deny rights of citizens, because this is the issue of access to justice and equality. It is also the duty of the government to provide public services fairly if not equally for any tax paying citizen in the country.

C. Different payment for foreign languages and local languages interpreters

Despite the fact that the government is expected to give more attention to accommodate local languages, the practice until 2017 shows that the number of foreign language interpreters, English in this case, as well as the salary was greater than those of local language interpreters. The starting salary for a local language interpreter was 1305.00 birr (one thousand three hundred and five birr) while it is 3425.00 birr (three thousand four hundred and twenty five birr) for a foreign language interpreter. The qualification as well as the payment for a foreign language interpreter is higher than those of local language interpreters. And this has been indicated as a problem discouraging local language interpreters. But since 2017, the qualification required for local and foreign language as well as the payment has been the same, still, there have been no interpreters hired for local language interpreters since then.[30]

D. Absence of job post for sign language interpreter

The absence of job post for sign language interpreter may imply that sign language has not been recognised as a language by itself, or other verbal languages overshadow it. It may also imply that the concern of persons with hearing impairment has not been given due attention in court proceedings.

Despite the current language policy that Ethiopia follows, it can be seen from the above discussion that only little has been done in terms of accommodating the diverse needs of non-Amharic speakers in criminal proceedings. The practice of using random individuals in court interpretation will definitely increase the chance of error and misinterpretation. In addition to that, the absence of means of ensuring quality of service and accountability is also very problematic. The fact that most interpreters who are formally or informally assigned do not have experience of interpretation also has an impact on the justice process.

30 The fact that the qualification requirement for local language interpreters increased even pushes away those applicants for the post. It led to an absence of permanently hired interpreters in courts, except some few in the Supreme Court. According to the Human Resource Management in Federal First Instance Court, they are now planning to request the Federal Civil Service Commission to lower the qualification requirement again as they could not find anyone that with a degree and two years' work experience.

In many countries, such as the USA and Canada, courtroom interpretation has been professionalised as there are different legal frameworks and guidelines that require interpreters to pass through regular 'training programs, certification standards and codes of ethics'.[31] But in Ethiopia, where there are no standard requirements for court interpretation, it is not unusual to observe unprofessional interpreters providing service in courtroom. And this creates a significant variation in the quality of courtroom interpretation, leaving the risk of errors on the shoulder of the accused, who is vulnerable in criminal proceedings.

1.4.2.2 Language barrier in criminal proceedings and its human rights implications

The absence of interpreters in criminal proceedings before trial not only affects the accused person's right to interpreters, but also his/her right to fair and speedy trial and fair procedures. It will also affect his constitutional right to be brought before court of law within a reasonable time after having been charged. Similarly, the accused person's right to be informed about the charge brought against them, to be informed of his/her right not to answer questions during investigation, the right to bail, and the right to liberty will likely be confined.

Correspondingly, in court of law, the number of interpreters to assist the language barrier during trial has a similar impact on the accused person's human rights. The continuous adjournment of cases will eventually lead to delayed justice. And as often said, 'justice delayed is justice denied'. The right to justice, the right to defend oneself, the right to speedy trial and other rights of the accused will be limited and/or violated.

The language barrier also affects non-Amharic speakers' emotional wellbeing, as they can easily feel frustration when they are unable to express themselves effectively. Most of the research participants stated that the language barrier put great limitation on their capacity to express their ideas, feeling or even to ask questions to the responsible person before, during or after trial.

In addition to this, most non-Amharic speakers also indicated that language barrier in the criminal proceeding also affected them economically. They stated that they usually incur costs of travel and accommodation for themselves as well as witnesses for court appearance when in fact their cases may not be seen the first day because the judge will adjourn the case if there is no interpreter available at that time. The inadequate service of interpreters and continuous adjournments of cases will also indirectly affect individuals who are socially and economically dependent on the accused, such as children, family members and relatives.

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31 MI Ahmad, 'Interpreting Communities: Lawyering Across Language Difference', *UCLA Law Review* 54, no 5 (2007), 999–1086.

The study also observed that there are no interpreters in prison, which again affect the accused person's right to appeal. Given the limited period for appeal, it is very difficult for the accused to effectively communicate with prison administrators and express the intention for appeal.

The prolonged proceeding in criminal cases will also have impact on evidences that need to be timely presented before court of law and assist the judge to provide fair judgment.

Conclusion and recommendations

Ethiopia has adopted an accommodationist language policy to linguistic diversity, taking into account the multilingual nature of nation, nationalities and peoples that comprise the nation. Hence the federal government is expected to lay down the necessary legal and institutional mechanisms by which people that do not speak the working language of the constituent members of the federation are assisted in their attempt to access the justice system.

Despite the promise in the Constitution and other legal documents, non-Amharic speakers are encountering different challenges at the different stages of criminal proceeding. The current practice shows that the federal government has not laid down any formal mechanism by which people with limited and/or no Amharic language proficiency are properly served in criminal proceedings before trial. Even though the situation looks better in courts as there are permanently hired interpreters, most of the job posts are vacant as the salary and incentive mechanisms for interpreters are very low.

The absence of adequate and professional interpretation service affects the day to day activities of justice institutions such as the police, public prosecutors and courts. It also affects the quality of interpretation services, which directly or indirectly affect the accused's fundamental human rights in criminal proceeding. It also affects the economy as well as the trust of the accused towards the justice system in general. Overall, the issue of persons with limited or no Amharic language proficiency is acute and should be given the attention it deserves.

In order to improve the challenges of non-Amharic speakers at the federal level, it is recommended that the current language policy be revised in a way that provides opportunity for local languages as well as international languages such as English to be recognised as working language of the federal government, based on a scientific research. The language policy should come up with defined criteria such as number of people speaking that language in the federal city, population size, contribution to GDP that will provide each local language an equal opportunity to be considered for federal working language.

It is important for the government to adopt a new language policy in a separate document that explicitly provides the rationale of the policy. In addition to this, detailed laws and working manuals should be prepared to lay down clear procedures

that need to be followed while handling the language barrier in public sectors including justice sector.

Besides, it is important for the government to consider establishing federal courts in different regions of the country, especially Federal Supreme Courts. That would enable non-Amharic speakers to access the justice system in their own language and also avert costs related to interpretation services. If such is also the case at regional level, similar measures should be taken.

The role of interpreters is undeniable in bridging the communication barrier. In order to ensure that there are adequate and qualified interpreters, the job grading, salary and incentive mechanisms should be improved. As the major factor impeding this is related to resource, it is recommended that the government work in collaboration with concerned stakeholders such as civil society organisations and embassies to solicit sustainable funding for interpretation service in the justice sector. Besides, in order to provide competent and qualified interpreters, the government should facilitate the opening of professional interpreters training centres in the private and public higher educational institutions. The institutions will be helpful in providing standardised interpreter training for legal, medical, conference and other interpretation services. Moreover, higher educational institutions could also conduct scientific research on the issue across the country, provide reliable data and updated recommendation to address the problem.

It is also important for Ethiopia to draw a lesson from others such as California that considers the use of technology to respond to language barrier in public services. It is thus advisable to invest in the development of advanced software and other innovative technologies that could assist language barrier in criminal proceedings and other public services.

References

Ahmad, MI: 'Interpreting Communities: Lawyering Across Language Difference'. *UCLA Law Review* 54, no 5 (2007), 999–1086.

Brenda, L: 'The Problems with Language Policy and Planning'. *Journal of Language, Identity & Education* 14, no 1 (2015), 36–49. DOI: 10.1080/15348458.2015.988571

Cole, RW and L Maslow-Armand: 'The Role of Counsel and the Courts in Addressing Foreign Language and Cultural Barriers at Different Stages of Criminal Proceeding'. *Western New England Law Review* 19, no 1 (1997), 193–228. Available: https://digitalcommons.law.wne.edu/lawreview/vol19/iss1/11/ (20. 05. 2020.)

Cooper, RL: *Language Planning and Social Change.* Cambridge: Cambridge University Press, 1989.

Haftetsion, F: *The State of Vertical Division of Political Power in the Ethiopian Federation*. PhD Dissertation, Addis Ababa: Addis Ababa University, 2017.

Hewitt, William E: *Court Interpretation: Model Guides for Policy and Practice in State Courts*. Williamsburg, National Centre for State Courts, 1995. Available: www.txcourts.gov/media/907023/Court_Interpretation_Model_Guides_for_Policy_and_Practice_in_the_State_Courts.pdf (05. 07. 2020.)

Kymlicka, W and A Patten: 'Language Rights and Political Theory'. *Annual Review of Applied Linguistics* 23, no 1 (2003), 3–21. DOI: 10.1017/s0267190503000163
Mackey, WF: 'Language policy and language planning'. *Journal of Communication* 29, no 2 (1979), 48–53. DOI: 10.1111/j.1460-2466.1979.tb02946.x
Minasyan, A: 'Language policy, national identity and politics', *European Scientific Journal* 2, (2014).
Sherman, J: 'The Right to an Interpreter under Customary International Law'. *Columbia Human Rights Law Review* 48, no 3 (2017), 257–302.
Spolsky, B: *Language Policy (Key Topics in Sociolinguistics)*. Cambridge: Cambridge University Press, 2004. DOI: 10.1017/cbo9780511615245
Tsegaye, R: *Issues of federalism in Ethiopia: towards an inventory of legal issues*. Addis Ababa: Addis Ababa University, 2009. Available: www.researchgate.net/publication/265014490_ISSUES_OF_FEDERALISM_IN_ETHIOPIA_TOWARDS_AN_INVENTORY_OF_LEGAL_ISSUES?channel=doi&linkId=53fbee800cf2dca8fffee545&showFulltext=true (19. 06. 2020.)
Weinstein, B (ed.): *Language Policy and Political Development*. Norwood, NJ: Praeger, 1990.
Yemserach, L: 'Challenges and Prospects of Adding Working Language in Ethiopia'. Conference Paper, presented on Legal and Human Rights Academy / Policy Forum on Sustaining Political Reforms, Democratization and Human Rights in Ethiopia: Informing the Next Steps, October 1, 2018, Adama, Ethiopia.
Záhořik, J: 'Debating language policy in Ethiopia'. *Journal of Asian and African Studies* 18, no 1 (2009), 80–102.

Legal and political documents and sources

Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. Available: www.abyssinialaw.com/general/item/1783-proclamation-no-1-1995-proclamation-of-the-constitution-of-the-fdre (12. 07. 2020.)
Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (November 1999). African Charter on Human and Peoples' Rights, African Union.
The Criminal Procedure Code, Proclamation No. 185/1961. Available: https://chilot.blog/wp-content/uploads/2011/01/civil-procedure-code-english.pdf (05. 06. 2020.)
Proclamation No. 25/1996. Available: https://chilot.blog/wp-content/uploads/2011/01/proc-no-25-1996-federal-courts.pdf (05. 06. 2020.)
International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966.
African Charter on Human and Peoples' Rights. Adopted by the African Union on June 27, 1981.

Interviews made by the author

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Indigenous Tribes in Brazil and the Increasing Attack from Business Interests

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The article offers an overview of the evolution of Brazilian law in relation to the living descendants of indigenous people who lived on the territory of Brazil before Portuguese colonisation. The legal developments reflect the evolution of the relation between the Brazilian state and the indigenous peoples since Brazil gained independence. This short article also offers a look at the implementation of relevant international norms on the rights of indigenous peoples in the Brazilian context.

Keywords: indigenous people's rights, Brazil, constitutional law, international law

Introduction

The focus of our analysis is on the living descendants of indigenous Brazilians, referred to as 'Indians' in Brazilian law, from tribes that existed prior to Portuguese colonisation in 1500. In 1500, a broad estimate of the number of indigenous Brazilians would be in the order of millions, spread across thousands of tribes.[4] Of course, it is impossible to give any kind of exact figure, as this significantly pre-dates any kind of census information. In contrast, the 900,000 or so indigenous Brazilians recorded in the 2010 census offers some insight into the demographic trends.[5] Whilst this figure is significantly more exact, it is worth noting that numbers will vary somewhat according to the group gathering the data. This article will discuss the relationship of the Brazilian state with indigenous groups since independence. It will analyse the role of

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4 RV Santos et al., 'The identification of the Indigenous population in Brazil's official statistics, with an emphasis on demographic censuses', *Statistical Journal of the IAOS* 35, no 1 (2019), 29–46.
5 Ibid.

soft law instruments, ILO Convention No. 169[6] and also the UN Declaration on the Rights of Indigenous Peoples (henceforth: the Declaration).[7] It will also discuss the role of customary international law, by analysing the role of the Inter-American Court of Human Rights (henceforth: IACtHR), and argue whether the current provisions in place are sufficient enough to protect indigenous tribes in Brazil from the increasing attack from business interests.

1. The relationship of the Brazilian state with indigenous tribes since independence

Indigenous tribes occupy a number of demarcated territories, amounting to 115 million hectares across Brazil.[8] Around half of the indigenous population live within legal Amazonia, though this represents 98.5 per cent of the land by area.[9] The Amazon is well-known as the site of abundant natural resources, including lumber and mineral resources. Meanwhile, Brazil's large and influential beef industry has been growing for decades into what is now the single largest global producer, driving demand for land.[10] These economic interests appear to have converged on the Amazon and indigenous lands, leading to anxiety and public campaigns to uphold the existing legal protections.[11]

Taking a wider view for the time being, it is possible to identify three general periods in the government's approach to tribal issues in Brazil. These could have been divided in a number of ways, but here the aim is to give insight into broad trends, rather than a comprehensive breakdown of historic government policies. The periods identified here are:

- Independence – 1988 Constitution;
- 1988 Constitution – the collapse of Dilma Rousseff's Government;
- Collapse of Dilma Rousseff's Government – Present.

Each period has a respective theme. First, the gradual and hard-won battle for legal protections for indigenous peoples and associated territories. This was followed by a period of rapid development to a minority rights regime that has been widely praised as world leading. Finally, the wholesale change in political environment that has led to constitutional realignment and pledges to dismantle protections.

6 International Labour Organization (ILO), *Indigenous People and Tribal Peoples Convention* (adopted June 27, 1989, entered into force September 5, 1991). C169.
7 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples,* (adopted October 2, 2007). A/RES/61/295.
8 Santos et al., 'The identification', 31.
9 Ibid.
10 GB Martha Jr, E Alves and E Contini, 'Land-saving approaches and beef production growth in Brazil', *Agricultural Systems* 110 (2012), 173.
11 D Phillips, 'Brazil: Indigenous people rally in capital to protest against Bolsonaro onslaught', *The Guardian*, April 24, 2019.

1.1 From independence to the 1988 Constitution

Brazil gained its independence from Portugal in 1822. Since the arrival of the colonists, the indigenous population had significantly reduced and relocated, with surviving tribes forced away from coastal mining areas and seeking refuge from violence deeper in the Amazon.[12] Independence resulted in little immediate change for these peoples. Pedro I stayed on as Emperor of the former colony, whilst most of the other royals returned to Portugal.[13] Exploitation of the large and mixed population remained the bedrock of the Brazilian economy, becoming the last nation in the Americas to abolish slavery, almost four centuries after the trans-Atlantic slave trade.[14]

Even after these changes did take place, violence towards tribes continued well into the 20th century. If they lived on a territory that were deemed economically exploitable, as the Guarani did in the 1940s, they were dislodged and forced into smaller settlements.[15] Crimes against others were more egregious still, as 87 tribes were entirely lost between 1900 and 1957 due to a combination of violence and the introduction of unfamiliar diseases.[16] In terms of lived experience, the creation of the Brazilian state plainly reflected Portuguese colonisation. Indigenous peoples were at best considered a nuisance and impediment to economic development, and at worst savages that were deemed inferior and worthy of extinction.

However, in response to the violence both perpetrated and effectively sanctioned by the state, indigenous rights groups emerged to offer support and lobby for protections. Many of these groups were Christian missionaries, aiming to spread religious messages amongst Amazonian peoples whilst offering assistance.[17] Assimilationist policy was also the approach taken by governments when measures were taken to protect tribes in the 20th century. It was hoped that more developed Brazilians would be able to supervise the intellectual and cultural maturation of the 'childhood of humanity'.[18] For the majority of this initial period, the few efforts made to help indigenous peoples were motivated by the desire to bring an end to their way of life and unilaterally integrate them into majority Brazilian society. It was only by the 1970s that a wave of activist-scholars set the groundwork for what is now recognised as a modern, multiculturalist approach. Efforts to politically organise tribes around the premise that theirs was a distinct culture deserving of protection and rights set the stage for the next period in Brazil's relationship with its native peoples.

12 Y Miki, *Frontiers of Citizenship: A Black and Indigenous History of Postcolonial Brazil* (Cambridge: Cambridge University Press, 2018), 2.

13 Ibid. 4.

14 Ibid.

15 MC Cunha et al., 'Indigenous Peoples boxed in by Brazil's political crisis', *HAU Journal of Ethnographic Theory* 7, no 2 (2017), 404.

16 P Calafate, 'The Rights of the Indigenous Peoples of Brazil: Historical Development and Constitutional Acknowledgment', *International Journal on Minority and Group Rights* 25, no 2 (2018), 207.

17 Santos et al., 'The identification', 34.

18 Ibid. 30.

1.2 From the 1988 Constitution to the collapse of Dilma Rousseff's government

The latter half of the 1980s marked a radical change for Brazilian politics and society. 1985 saw the fall of the military dictatorship that had led the country for the last 20 years, ultimately resulting in the 1988 Constitution.[19] Along with the strengthening of democratic institutions, it also codified the abandonment of state guardianship and assimilationist policies for indigenous tribes, adopting many of the policy recommendations of multiculturalist scholars that had come to prominence in the previous decade.[20] Autonomy was increased, giving tribes far more input on the decisions made over their lands – although the ultimate sovereignty still lies with the Brazilian state.[21] A specific agency, The National Indian Foundation (FUNAI), was created in order to oversee, centralise and formalise the assistance provided to indigenous groups. However, it is notable that much of the practical work continued to be conducted by evangelist groups.[22] These efforts for indigenous Brazilians and a broader focus on individual rights led to the popular nickname 'Citizen Constitution', receiving praise as the foundations for a future multiculturalist society that would integrate all peoples with respect for the individual cultural differences.[23]

1.3 From the collapse of Dilma Youseff's government to the present

The ensuing two decades saw indigenous rights stronger than they had ever been in Brazil, albeit still with significant flaws. Through the 1990s it was observed that autonomy of political leadership was not a viable option, so tribes had to rely on white NGOs to gain access to political and economic channels.[24] Effective requirement of 'private wardship' did undermine the strength of the process, despite practical gains.[25] It is fair to describe this period as one of 'imperfect yet significant' progress in the codification of indigenous rights, as the majority of territories were demarcated and consecutive governments would continue this course of policy.[26] This period came to an end in 2016. President Dilma Rousseff was impeached by the Senate on August 31, coming on the back of a corruption scandal that had implicated much of the political class, in the context of Brazil's greatest economic slump in decades.[27] Brazil's

19 JRS Pinto, 'The legislative and public policies in Brazil: before and after the 1988 Constitution', *Journal of Legislative Studies* 22, no 4 (2016), 484.
20 Santos et al., 'The identification', 31.
21 Ibid. 32.
22 Ibid. 34.
23 Cunha et al., 'Indigenous Peoples', 404.
24 AR Ramos, 'The Indigenous Movement in Brazil: A Quarter Century of Ups and Downs', *Cultural Survival Quarterly* 21, no 2 (1997), 50.
25 Ibid. 53.
26 L Valenta, 'Disconnect: The 1988 Brazilian Constitution, Customary International Law, and Indigenous Land Rights in Northern Brazil', *Texas International Law Journal* 38, no 3 (2003), 643.
27 J Watts, 'Dilma Rousseff impeachment: what you need to know – the Guardian briefing', *The Guardian*, August 31, 2016.

Senate voting for impeachment brought an end to 13 years of Workers' Party rule and was a major victory for the agribusiness lobby, having previously struggled in a system in which the balance of power still significantly favoured the executive over the legislature.[28] Rousseff was succeeded by her Vice President, Michel Temer, of the Brazilian Democratic Movement Party.

Moving into the final period, the political crisis created the circumstances for the attempted dismantlement of the indigenous rights regime. President Temer was also implicated in the corruption scandal, meaning that his ability to govern depended on the Senate keeping him in place.[29] The agribusiness lobby, which had been long-time opponents of the strong land rights that inhibited the economic development of tribal land and those that upheld the system, backed Temer through threats of impeachment in return for 'tougher abortion restrictions and looser gun control.'[30] With the government now effectively in the hands of this lobby, farmers' interests were advanced at the expense of indigenous groups and a leading member went on to state that they would support Temer's economic plan on the basis that the president was a Christian who believes in marriage between a man and a woman.[31] Such leverage over a president was unprecedented, and it started the erosion of human rights and conservation laws in the 28 months he was in power.[32]

2018 ended with the election of Jair Bolsonaro, a long-time Congressman with strong ties to the agribusiness lobby. His first measure on January 1, 2019 was to begin dismantling FUNAI, aiming to take it out of a human rights ministry and place it in the Agriculture Ministry that was controlled by farming interests.[33] Headed by an evangelical pastor whose group has worked in indigenous communities, the decision was met with consternation by staff of the agency and has been perceived as a sign of the move away from a multiculturalist approach.[34] Fears were only compounded by Bolsonaro's previous statements as a senator, when he was quoted as regretting 'that the Brazilian cavalry wasn't as efficient as the Americans, who exterminated the Indians.'[35] Rhetoric and policy have aligned against indigenous peoples under the Bolsonaro government, and it is in this context that violence against these groups has increased from loggers, miners and ranchers wishing to exploit demarcated land.[36]

28 Ibid.

29 A Boadle, 'Brazil's Bible, beef and bullets lobby backs Temer, unfazed by scandal', *Reuters*, June 24, 2016.

30 Ibid.

31 Ibid.

32 Cunha et al., 'Indigenous Peoples'.

33 D Phillips, '»We are fighting«: Brazil's indigenous groups unite to protect their land', *The Guardian,* March 4, 2019.

34 D Phillips, 'Bolsonaro to abolish human rights ministry in favour of family values', *The Guardian,* December 10, 2018.

35 F Watson, 'The uncontacted tribes of Brazil face genocide under Jair Bolsonaro', *The Guardian,* December 31, 2018.

36 S Guajajara, 'The fight to save the Amazon is urgent as there is no Plan B'. *Down to Earth*, August 28, 2019.

As fires continue to burn across the Amazon, it appears that the domestic means of conservation that are attached to tribal land are no longer effective and being actively undermined by the state.

2. The role of the ILO Convention No. 169

In pursuit of universal social justice, the ILO Convention No.169 has been concerned with the situation of indigenous and tribal peoples virtually since its interception.[37] Convention No. 169 is based on the obligation to identify and demarcate indigenous and tribal peoples' territories.[38] Article 14.2 of this Convention states: 'Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy and to guarantee effective protection of their rights of ownership and possession.'[39] The government has the obligation under Article 6 Sections (1) (a) and (2) of the Convention, to consult the peoples covered by the Convention through their representative institutions.[40] Furthermore, according to Article 7 Section (3) of the Convention, 'governments shall ensure that studies are carried out in cooperation with the peoples concerned to assess the social, spiritual, cultural and environmental impact on them of planned development activities.'[41] It is important to note that Convention No.169 is the only international instrument which specifically provides protection for indigenous and tribal peoples.[42]

Convention No. 169 has been taken into account in the interpretation of constitutional norms concerning indigenous tribes in Brazil.[43] For instance, the Supreme Federal Tribunal explicitly invoked ILO Convention No. 169 when deciding cases relating to property rights of the *quilombola* communities.[44] In these cases, 8,713 hectares was cleared for the spaceport in the early 1980s, displacing over 1,500 *quilombolas* without sufficient land to maintain their livelihood. Sliberling notes that to date, over 160,000 hectares have now been cleared.[45] Similarly, in the *Belo Monte Dam*[46] case, a report released by the Committee of Experts on the Application of Conventions and Recommendations for the ILO found that the Brazilian government

37 *Monitoring Indigenous and Tribal Peoples' Rights through ILO Conventions: A compilation of ILO supervisory bodies' comments 2009–2010*, International Labour Organization. 4.
38 Ibid.
39 ILO Convention No. 169 (n 3), Art. 14.2.
40 Ibid.
41 Ibid.
42 C Phuong, *The International Protection of Internally Displaced Persons* (Cambridge: Cambridge University Press, 2005), 49.
43 MVC Ormaza, *The Requirement of Consultation with Indigenous Peoples in the ILO: Between Normative Flexibility and Institutional Rigidity* (The Hague: Brill, 2017), 90.
44 Supreme Federal Tribunal of Brazil, Judgement No. 027/2007/JCM/JF/MA (Jurisdicia Federal de 1a Instancia).
45 SL Silberling, 'Displacement and *quilombos* in Alcantara, Brazil: modernity, identity, and place', *International Social Science Journal* 55, no 175 (2004), 145–156.
46 *Communicades Indigenos da Bacia do Rio Xingu v Brasil* (Belo Monte Dam Case). Inter-American Commission on Human Rights Report No 381/10 (I-ACHR, April 1, 2011).

directly violated the rights of indigenous communities in the Xingu region of the Amazon while moving forward with the controversial Belo Monte Dam project.[47] The report shows that by failing to conduct indigenous hearings in villages impacted by the Belo Monte Dam prior to approving the project's construction, Brazil violated Convention No. 169 which guarantees indigenous peoples the right to free, prior and informed consultation over projects that affect their lands and rights.[48] According to the ILO document, 'the Commission notes that, under Article 15 of the Convention, the government is obliged to consult indigenous peoples before undertaking or permitting any programs for the exploitation of existing resources on their lands,' going on to state that Belo Monte would change the navigability of the Xingu, while irrevocably impacting the fauna, flora and climate of the region. These impacts, the ILO said, 'go beyond the flooding of land or displacement of these people.'[49]

However, there has been little progress in the development of national regulation regarding indigenous tribes in Brazil, despite the fact that the Brazilian Congress ratified the ILO Convention in 2002.[50] In fact, Tauli-Corpuz observed that until 2016, there was no established mechanism for consultation of indigenous tribes in relation to legislative measures.[51] For instance, although the official recognition of a *quilombo* does not usually lead to effective land legalisation, there is no legislation to regularise the rights and territorial space of the *quilombolas*.[52] In 2003, CONAQ, in partnership with ACONERUQ and COHRE, established the National Campaign for Land Regularisation of Quilombo Territories and almost five years later, the Campaign ended without achieving its primary objective.[53]

We agree with Demissie who argues that one of the reasons as to why Convention No. 169 is not fully effective is because countries can sign and ratify international conventions but are not obliged to implement or enforce them.[54]

In conclusion, in regard to what steps the ILO Convention No. 169 can take to prevent the threats made by the Bolsonaro government, at the moment nothing can be done, since states have the right to sign and ratify international conventions but are not obliged to implement or enforce them, unless that is enforced by the treaty itself (which does not seem to be the case here). If that does happen, then an alternative legal argument is that the state is still bound by international customary law in certain areas and that, from a human rights law perspective, the existence of

47 *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 98th Session, 2009. 674.

48 'ILO Says Brazil Violated Convention 169 in Belo Monte Case. International Labor Organization Confirms Government Violated Indigenous Rights.' State News Service, March 7, 2012.

49 Ibid.

50 Ormaza, *The Requirement*, 91.

51 United Nations General Assembly, Report of the Special Rapporteur on the Rights of Indigenous Peoples in her Mission to Brazil, para. 63.

52 F Demissie, *African Diaspora in Brazil: History, Culture and Politics* (New York: Routledge, 2016), 138.

53 Ibid.

54 Ibid.

indigenous peoples does not depend on state recognition. This will be discussed in the next chapter.

3. The role of the UN Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples and Convention No.169 are mutually reinforcing instruments providing the framework for the universal protection of indigenous and tribal people's rights. This Declaration came into force on December 13, 2007 and 143 countries voted in favour of this, including Brazil. In comparison to the Convention No. 169, the UN Declaration demands free prior and informed consent and not just consultation.[55] It is therefore arguable that since Brazil voted in favour, then it is bound under customary law due to its practice in favour of, or at least not against the extent of indigenous rights.

4. Inter-American Court of Human Rights

The Inter-American Court of Human Rights (IACtHR) is an autonomous judicial institution based in the city of San José, Costa Rica. Together with the Inter-American Commission on Human Rights (IACHR), it makes up the human rights protection system of the Organization of American States (OAS), which serves to uphold and promote basic rights and freedoms in the Americas. It is important to note that this Court rules on whether a State has violated an individual's human rights, rather than if individuals are guilty of human rights violations.

The *'Mayagna (Sumo) Awas Tingni Commmunity v Nicaragua'*[56] was a case ruled by the Court and similar to the situation in Brazil, in terms of indigenous peoples' rights and increasing attacks from business interests. This case involved the petition before the IACHR denouncing 'the State of Nicaragua for failing to demarcate the *Awas Tingni* Community's communal land and to take the necessary measures to protect the community's property rights over its ancestral lands and natural resources.... The IACHR submitted the case to the IACtHR, who concluded that Nicaragua had violated the right to judicial protection and to property',[57] as a result of the state's failure to 'delimit and demarcate' the lands of the *Mayagna* (Sumo) *Awas Tigni* people.[58] In addition, the IACtHR 'decided that the State had to adopt the necessary measures to create an effective mechanism for demarcation and titling of the indigenous communities' territory, in accordance with their customary law, values' and customs.[59] The Court also ordered the Nicaraguan government 'to refrain

55 J Hohmann and M Weller (eds.), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (Oxford: Oxford University Press, 2018), 262.

56 Inter-American Court of Human Rights – The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua – Judgment of August 31, 2001.

57 Caselaw database, ESCR-Net.

58 Hohmann and Weller, *The UN Declaration,* 191.

59 Caselaw database.

from any acts that might affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the *Awas Tingni* community live and carry out their activities,'[60] until their lands were demarcated and titled.

This case is of major significance, because it is a leading case in the jurisprudence of the Court on the rights of indigenous peoples to their ancestral land[61] and is a major step in the fight against the historical and ongoing subjugation of indigenous peoples in the region.

Conclusion

In conclusion, we have discussed how conflict of interests between the Brazilian government and indigenous peoples has been ongoing before the state of Brazil was formed in 1822. Despite the fact that indigenous peoples were driven into the Amazon as a place for refuge, they have been offered little respite as the 'resource rich' rainforest has now become the next subject for increasing business interests and economic development. The ensuing 150 years have seen regular and massive atrocities committed, either by the state or with its complicit disinterest, as indigenous Brazilians faced displacement or slaughter when their land became sought after for economic exploitation.

A series of hard-fought and gradual victories through the 20th century, emphasising the right of all peoples to live with security for their culture and lifestyle, culminated in the 1988 Constitution, which included a range of provisions to codify these protections. Ensuing decades have seen the adoption of a multiculturalist approach by the state, with strong rights over land and a dedicated ministry to act in the interests of indigenous groups. However, with the collapse of Dilma Rousseff's government, 2016 saw a reversal in this momentum. As the agribusiness lobby became the most powerful group in Brazilian politics, protected lands once again became the focus for companies' seeking to utilise the resources. This lobby consolidated its interests with the 2018 election of Jair Bolsonaro, who immediately set about dismantling and weakening many of the legal measures designed to protect indigenous peoples. At present, the position of indigenous peoples in domestic law and politics appears to be at its weakest since the 1988 Constitution, leading some to turn to international law for help.

Although the ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples are mutually reinforcing instruments providing the framework for the universal protection of indigenous peoples and tribal people's rights, they are not legally binding in nature. We have also argued that land and natural resources

60 Ibid.

61 Hohmann and Weller, *The UN Declaration,* 192.

are crucial for the survival and cultural heritage of indigenous peoples.[62] Therefore if development projects from business interests emphasised the full, well-informed involvement of indigenous peoples, governments would no longer be able to treat them or their cultural lands as expendable.[63]

References

Amiott, AJ: 'Environment, Equality, and Indigenous Peoples' Land Rights in the Inter-American Human Rights System: Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua'. *Environmental Law* 32 (2002), 873–904.

Boadle, A: 'Brazil's Bible, beef and bullets lobby backs Temer, unfazed by scandal'. *Reuters*, June 24, 2016. Available: www.reuters.com/article/us-brazil-politics-conservatives/brazils-bible-beef-and-bullets-lobby-backs-temer-unfazed-by-scandal-idUSKCN0ZA2RT (12. 11. 2019.)

Calafate, P: 'The Rights of the Indigenous Peoples of Brazil: Historical Development and Constitutional Acknowledgment'. *International Journal on Minority and Group Rights* 25, no 2 (2018), 183–209. DOI: 10.1163/15718115-02502004

Caselaw database. ESCR-Net. Available: www.escr-net.org/caselaw/2006/case-mayagna-sumo-awas-tingni-community-v-nicaragua-eng (21. 12. 2020.)

Communicades Indigenos da Bacia do Rio Xingu v Brasil (Belo Monte Dam Case). Inter-American Commission on Human Rights Report No 381/10 (I-ACHR, April 1, 2011).

Cunha, MC et al.: 'Indigenous Peoples boxed in by Brazil's political crisis'. *HAU Journal of Ethnographic Theory* 7, no 2 (2017), 403–426. DOI: 10.14318/hau7.2.033

Demissie, F: *African Diaspora in Brazil: History, Culture and Politics.* New York, Routledge, 2016. DOI: 10.4324/9781315540528

Guajajara, S: 'The fight to save the Amazon is urgent as there is no Plan B'. *Down to Earth*, August 28, 2019. Available: www.downtoearth.org.in/blog/forests/-the-fight-to-save-the-amazon-is-urgent-as-there-is-no-plan-b–66391 (21. 12. 2020.)

Hohmann, J and M Weller (eds.): *The UN Declaration on the Rights of Indigenous Peoples: A Commentary.* Oxford, Oxford University Press, 2018.

'ILO Says Brazil Violated Convention 169 in Belo Monte Case. International Labor Organization Confirms Government Violated Indigenous Rights.' State News Service, March 7, 2012. Available: https://link.gale.com/apps/doc/A282433083/ITOF (14. 11. 2019.)

Martha, GB Jr., E Alves, and E Contini: 'Land-saving approaches and beef production growth in Brazil'. *Agricultural Systems* 110 (2012), 173–177. DOI: 10.1016/j.agsy.2012.03.001

Miki, Y: *Frontiers of Citizenship: A Black and Indigenous History of Postcolonial Brazil.* Cambridge, Cambridge University Press, 2018. DOI: 10.1017/9781108277778

Monitoring Indigenous and Tribal Peoples' Rights through ILO Conventions: A compilation of ILO supervisory bodies' comments 2009–2010. International Labour Organization. Available: http://hrbaportal.org/wp-content/files/wcms_126028.pdf (14. 11. 2019.)

62 AJ Amiott, 'Environment, Equality, and Indigenous Peoples' Land Rights in the Inter-American Human Rights System: Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua', *Environmental Law* 32 (2002), 903.

63 Ibid.

Ormaza, MVC: *The Requirement of Consultation with Indigenous Peoples in the ILO: Between Normative Flexibility and Institutional Rigidity*. The Hague: Brill, 2017.

Phillips, D: 'Bolsonaro to abolish human rights ministry in favour of family values'. *The Guardian,* December 10, 2018. Available: www.theguardian.com/world/2018/dec/06/outcry-over-bolsonaros-plan-to-put-conservative-in-charge-of-new-family-and-women-ministry (12. 11. 2019.)

Phillips, D: '»We are fighting«: Brazil's indigenous groups unite to protect their land'. *The Guardian,* March 4, 2019. Available: www.theguardian.com/world/2019/mar/04/we-are-fighting-brazils-indigenous-groups-unite-to-protect-their-land (02. 12. 2019.)

Phillips, D: 'Brazil: Indigenous people rally in capital to protest against Bolsonaro onslaught'. *The Guardian,* April 24, 2019. Available: www.theguardian.com/world/2019/apr/24/brazil-indigenous-people-bolsonaro-protest (12. 11. 2019.)

Phuong, C: *The International Protection of Internally Displaced Persons.* Cambridge: Cambridge University Press, 2005. DOI: 10.1017/CBO9780511494062

Pinto, JRS: 'The legislative and public policies in Brazil: before and after the 1988 Constitution'. *Journal of Legislative Studies* 22, no 4 (2016), 484–505. DOI: 10.1080/13572334.2016.1235335

Ramos, AR: 'The Indigenous Movement in Brazil: A Quarter Century of Ups and Downs'. *Cultural Survival Quarterly* 21, no 2 (1997), 50–53.

Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, 98th Session, 2009. Available: www.ilo.org/public/libdoc/ilo/P/09661/09661(2009-98-1A).pdf (21.12. 2020.)

Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Mission to Brazil. United Nations General Assembly, Available: http://unsr.vtaulicorpuz.org/site/index.php/en/documents/country-reports/154-report-brazil-2016) (17. 11. 2019.)

Santos, RV et al.: 'The identification of the Indigenous population in Brazil's official statistics, with an emphasis on demographic censuses'. *Statistical Journal of the IAOS* 35, no 1 (2019), 29–46. DOI: 10.3233/sji-180471

Silberling, SL: 'Displacement and *quilombos* in Alcantara, Brazil: modernity, identity, and place'. *International Social Science Journal* 55, no 175 (2004), 145–156. DOI: 10.1111/1468-2451.5501019_13

Valenta, L: 'Disconnect: The 1988 Brazilian Constitution, Customary International Law, and Indigenous Land Rights in Northern Brazil'. *Texas International Law Journal* 38, no 3 (2003), 643–662.

Watson, F: 'The uncontacted tribes of Brazil face genocide under Jair Bolsonaro'. *The Guardian,* December 31, 2018. Available: www.theguardian.com/commentisfree/2018/dec/31/tribes-brazil-genocide-jair-bolsonaro (12. 11. 2019.)

Watts, J: 'Dilma Rousseff impeachment: what you need to know – the Guardian briefing'. *The Guardian,* August 31, 2016. Available: www.theguardian.com/news/2016/aug/31/dilma-rousseff-impeachment-brazil-what-you-need-to-know (12. 11. 2019.)

Legal sources

Inter-American Court of Human Rights – The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua – Judgment of August 31, 2001. Available: www.informea.org/sites/default/files/court-decisions/Mayagna_%28Sumo%29_Awas_Tingni_Community_%20v_Nicaragua.pdf (21. 12. 2020.)

International Labour Organization (ILO), *Indigenous People and Tribal Peoples Convention* (adopted June 27, 1989, entered into force September 5, 1991). C169.

Supreme Federal Tribunal of Brazil, Judgement No. 027/2007/JCM/JF/MA (Jurisdicia Federal de 1a Instancia). Available www.ilo.org/wcmsp5/groups/public/—-ed_norm/—-normes/documents/publication/wcms_123946.pdf (14. 11. 2019.)

UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples,* (adopted October 2, 2007). A/RES/61/295.

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Debating (Post-)Coloniality in Southeast Europe: A Minority Oriented Perspective in Bulgaria

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Despite the fact that its scholarly application has been considered highly problematic in the former Eastern Bloc and barely employed due to the Marxist background, post-colonialism has been recently introduced by a large number of scholars and academics. Yet, theoretical experiments, research, and projection of post-colonialism in Central and Eastern Europe have come to compose an abundant field of reference. Drawing on this theoretical approach, this paper aims to debate the category of post-coloniality in post-communist Bulgaria in order to better venture the parapet of the post-1989 transition. Employing a 'minority perspective,' which will reveal minority positionality in the contemporary Bulgarian cultural and political ground, this paper traces potential power actions of (dis)possession of knowledge among subaltern groups, which actions continue to negate, disavow, distort, and deny access to different forms of minority cultures and life visions represented by non-majoritarian segments of the Bulgarian society. In general, this paper digs into the historical experience of the ethnic Turks and Muslim minority groups in Bulgaria prior to (1) the communist experience, (2) throughout and after the collapse of communism, and (3) in the contemporary Republic of Bulgaria. In particular, post-coloniality – understood in terms of 'coloniality of being' – shall offer a better and critical angle of investigation over the issues of human marginalisation, cultural subordination, and knowledge exploitation in Bulgaria and Southeast Europe.

Keywords: post-coloniality, Bulgaria, post-1989, ethnic Turks, Muslim minority

Introduction

In the constant attempt to investigate new intersectional aspects of post-communist Central and Eastern Europe, the post-colonial transfer[2] gained

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2 Dorota Kołodziejczyk, 'Post-Colonial Transfer to Central-and-Eastern Europe,' *Teksty Drugie* no 1 (2014) (Special Issue), 124–142.

popularity among scholars. Whether or not a post-colonial CEE[3] has arguably existed, or continues perhaps to exist, has become a fascinating interdisciplinary inquiry long before 1989.

However, thirty years after the demise of the formerly so-called Eastern Bloc, the post-colonial paradigm remains largely controversial and contested across the region. Since the paradigm is deeply rooted in historical experiences of nations of the Global South and scholarly dependent largely on Marxist literature,[4] the notion 'post-colonial' has been rejected or barely used in the post-communist academia. Nonetheless, experiments, research and projection of the post-colonial paradigm compose an abundant field of reference despite resonating negatively with the past of the region. Recent revival of ethno-national discourse and sense of collective anxiety towards the ethnic Other, the field of post-colonial studies and post-structuralism have not managed to cohabit with the anti-communist environment, while, conversely, civil society actors and resistant movements born before and throughout the post-communist transition have largely employed it.

From a minority perspective, the post-colonial paradigm seems useful to venture the parapet of externally imposed discourse, which continues to dispossess, discard and set aside "Other's knowledge" through a power-organised, albeit subtle and lasting operation of cultural patronisation. In this, the post-communist and the post-colonial trajectories share vacuumed political programmes of inclusion that contrive intervals between which divisions and separations remain at the disposal of political entrepreneurs and their interests-oriented commitments. Arguably, it would seem that post-colonialism and its scholars, such as Gayatri Chakravorty Spivak, Edward Said, and Homi K. Bhabha, among others, have little to offer across the post-Communist space. Application of the post-colonial paradigm over the successor republics of the Soviet Union and formerly satellite region cannot reveal a 'Soviet colonialisation', but only a 'second class empire' that differs from those resulting from Western experiences.[5] By the same token, a post-colonial paradigm seems to bring in the post-communist CEE more problems than benefits.[6] On the contrary, one might argue that a post-colonial analysis in CEE missed the chance to include those minority resistances that between the '70s and the '90s began to mobilise themselves through an anti-imperialist discourse.[7] Despite the fact that the 'Soviets' are not understood as 'colonisers' *in toto*, the lingering problems of racism and ideological prison-style Nation's 'Proletarian superiority' over all other classes and segments of societies were blatantly colonial in its hierarchic methods of doing politics. The Party-state

3 From now on, CEE is used to abbreviate 'Central and Eastern Europe'.

4 J Peter Braueunlein, 'Postcolonial Theory', in *Religion and Southeast Asia: An Encyclopaedia of Faiths and Cultures*, ed. by Jesudas Athyal (Santa Barbara: ABC-CLIO, 2014), 1–8.

5 Madina Tlostanova, 'Towards a Decolonization of Thinking and Knowledge: a Few Reflections from the World of Imperial Difference', *Decolonial Theory and Practice in Southeast Europe* no 3 (2019) (Special Issue), 1–15.

6 Kołodziejczyk, 'Post-Colonial Transfer', 125–140.

7 Ibid. 133–134.

rhetoric and its overwhelming propaganda machine, which trumpeted the virtues of egalitarianism and internationalism, was only later unveiled due to the demise of the former Eastern bloc. The latter meant nothing more than the failure of the Russian messianism, whose expansionism embodied for decades an imperial fatigue nurtured by orthodox outlook of religion, constructed around the dictatorship of the 'Great Proletariat' and developed by the Russians as the only constitutive ruling ethnos.[8]

Perhaps not entirely colonised, yet CEE could be understood as a historically semi-colonial region,[9] where the relation to power was as ambiguous as the relation with the subaltern Other, the foreigner, the alien.[10] Granted, both Russian and Western cultures were a discursively hegemonic reflection throughout diverse societies, upon which stereotypes of inferiority as well as otherness and subalternity were ascribed. Beyond a doubt, the aftermath of the communist demise was a clear manifestation of a wide range of one's own subjectivity (that is, collective, national, political) previously negated by an imperial discourse. Similarly to post-colonial states in the Global South,[11] while post-communist successor states emerged with a mass of communities historically antagonistic and confrontational toward each other, others were found nurturing their new forms of antagonism to construe, or to construct, and nourish by a long-term period of *colonially* 'divide and imperial' policies.

The post-1989 transition toward full-fledged democracy opened anew the historical experience of cultural patronisation and power-centred oppression of non-aligned segments of society against those who had suffered the same period of oppression. Through externally imposed ascriptions of exotic downgrading and assertion of forms of cultural backwardness, a sharper correlation between the 'post-communist' and 'post-colonial' can be conceptualised regarding minority identities (that is, hybridity, in-between-ness, and liminality). If the typically identifiable (post-) colonial states across the globe adopted majoritarian identities as national identities, dismissing Other's into another (subaltern) position to be accommodated, moderated, challenged, or even eliminated because seen and understood as a potential threat,[12] the same phenomenon happened to the post-Communist states in CEE. In this regard, the post-colonial paradigm is neither an identity manifesto, nor a theoretically redefined identity policy program, nor the end of the colonial but its troubling continuity[13] that shed new light on imposed discursive hegemonic ascriptions upon those who have been deprived to speak as independently, fully recognised subjects. Although

8 Ostap Kushnir, *Ukraine and Russian Neo-Imperialism. The Divergent Break* (Lanham: Lexington Books, 2018), 25–65.
9 Braueunlein, 'Postcolonial Theory'.
10 Ibid.
11 Joshua Castellino, 'Identity and Human Rights in a "Populist" Era: Urging Caution and Pragmatism in Minority Rights Protection', in *Populism, Memory, and Minority Rights. Central and Eastern European Issues in Global Perspective*, ed. by Anna-Mária Bíró (Leiden: Brill, 2018), 342–356.
12 Ibid. 345–346.
13 Marianne Hirsch, *The Postmemory Generation. Writing and Visual Culture After the Holocaust* (New York: Columbia University Press, 2012), 5.

navigating within post-communist societies through the prism of post-colonialism may be debatable, the latter may nevertheless lead towards a critical, analytical instrument to unravel identity issues digging up mechanisms of subordination that certain groups are subject to, navigating, thus revealing, nodal points and structures *around* and *in-between* which cultural backwardness and political subalternity have been imposed on.

Given this token, in this paper I argue that a form of factual colonisation could be conceptualised in CEE and, in its turn, in Bulgaria, with reference to post-1989 majority–minority relations. From a historical viewpoint, a factual (post-) colonial phenomenon[14] is nothing but a socio-cultural Bulgarian attitude of cultural patronisation which was simply reversed against those who once used it against them.[15] The paradigm of post-coloniality might raise criticism for not being properly employed and examined in a particular field or in those disciplines that secure its frontiers and contents. However, as a scholarly paradigm of discontinuity, post-colonialism is here used to put into question not only the procedure of its use, but also theoretical problems of historical analysis.[16] Therefore, this paper aims to shed light on Bulgaria's factual colonialising attitude toward non-Bulgarian segments of society, which has been constantly power-organised through mechanisms of cultural patronisation against Other's being. This does not only reveal post-1989 trajectory of power where minority groups have fallen from a voiceless position to being considered claimers of frivolous and superfluous demands, but it is traced back to the first experiences of liberated Bulgaria from the 'Turkish yoke' in 1878. In few words, the paradigmatic vector brings light to the modalities of hegemonic appropriation and externally imposed ascription of cultural features that in Bulgaria have been kept at work in order to cement power position in certain segments of society rather than initiating a mutual process of empowerment upon 'other' cultures and groups. What is here considered as a much subtler category of thinking, which has been left working in the region and shaped a form of (post-)*colonialising attitude*, came in support of ethno-national majoritarian cultural models and subjugated minority cultural claims accordingly.

1. A factual colonialisation? A minority perspective in Bulgaria

Unlike other Balkan countries, Bulgaria did not apparently suffer from minority issues in the aftermath of communism. Paradoxically, albeit unsurprisingly during the communist period, Bulgaria declared to have no minorities in the country.[17] Only during the period throughout the accession process to the European Union minority

14 Andrei Terian, 'Is there an East-Central European Post-Colonialism? Towards a Unified Theory of (Inter)Literacy Dependency', *World Literature Studies* 3, no 4 (2012), 21–36.
15 Michel Foucault, *Nietzsche, Genealogy and History* (Oxford: Blackwell, 1971), 157.
16 Michel Foucault, *The Archaeology of Knowledge* (New York: Routledge Classics, 2002), 23.
17 JF Brown, *Bulgaria under Communist Rule* (London: Pall Mall Press, 1970).

issues appeared in the political discourse and the wider public. While attempting to guarantee internal stability to democratic institutions along with respect of the rule of law, human rights and minority rights,[18] Bulgaria had to fully assert the presence of non-Bulgarian citizens in its society. This presupposed a quite delicate manoeuvre that could not have taken the risk to impinge on post-communist Bulgaria's historical attempts to assert a 'Europeanised identity' which was historically denied to the country by the Ottoman Empire and the communist takeover. This newly proposed Bulgarian European identity went rapidly under research about political changes and relatedly different locations of space rather than consequences of power. From a geopolitical viewpoint, the post-1989 period brought Bulgarians to definitely refuse a certain Oriental legacy that had prevented Bulgaria to return to Europe much earlier. Henceforth, socio-cultural and political microhistories of ethnic minority groups become centrally paramount for shedding light on how Bulgarian policies have kept ethno-nationalist signs of pathological revenge at work against non-Bulgarians. Along the Ottoman/post-Ottoman and communist/post-communist thresholds, it would be unwise to understand a power-centred Bulgarian cultural attitude and political approach toward minority groups in terms of factual colonialisation.

Some might here argue that the Bulgarian scenario with regard to the Muslim minority – the majority of whom are of Turkish and Roma origin – opens the view to a bigger picture regarding the cultural challenge to include European Muslims into a contemporary vision of Europe.[19] Nevertheless, in Bulgaria and other Balkan countries likewise, the 'Europeanising project' has constantly separated the Balkan Muslims from the rest of the ethnic majoritarian cultural systems and, at the same time, from the rest of the Muslim world.[20] On a cultural level, a full recognition of European Muslims as autochthonous peoples of Europe evokes in Southeast Europe the image of periphery. Particularly in Bulgaria, the political debate simply overlooks the presence, or discards the existence, of non-Bulgarian communities living in their national territory, namely in their historical land of origin.

Therefore, the proposed post-colonial paradigm might not only be a vector to scholarly investigate Southeast Europe since the victory of the First World War by the great powers of the twentieth century exposed and broke down the same region along the axially artificial barrier of South–North and West–East Europe.[21] It might also delineate a colonisation-like political attitude toward Muslims in Bulgaria as

18 Spasimir Domaradzki, 'Opportunistic Legitimisation and de-Europeanisation as a Reverse Effect of Europeanisation', *Global Discourse. An Interdisciplinary Journal of Current Affairs* 9, no 1 (2019), 223.

19 Gerald Shenk, 'What Went Right: Two Best Cases of Islam in Europe – Cordoba, Spain and Sarajevo, Bosnia', *Occasional Papers on Religion in Eastern Europe* 26, no 4 (2006), 7–20.

20 Piro Rexhepi, 'Unmapping Islam in Eastern Europe: Periodization and Muslim Subjectivities in the Balkans', in *Eastern Europe Unmapped: Beyond Borders and Peripheries*, ed. by I Kacandes and Y Komska (New York: Berghahn, 2018), 53–78.

21 Timothy Snyder and Katherine Younger (eds.), *The Balkans as Europe, 1821–1914* (Rochester: University of Rochester Press, 2018), 2.

a consequence of the Soviet new-style colonies across the Eastern Bloc that suppressed national inspirations,[22] and the more locally-nuanced factual colonisation of central power toward ethnic minorities within each People's Republic. Not surprisingly, during the event held in Sofia in 1966, the communist Romania's leader Ceaușescu addressed his Bulgarian alter ego Todor Zhivkov by remarking how Balkan people, who had historically been quite often the pawns of the imperialist powers in their policy of domination and conquest, had a mutual interest in cooperation. If the politics-oriented interests by which that speech was delivered are clear, addressing directly Zhivkov and his position on Bulgaria's favourable relations with USSR, it seemed that the idea of Soviet imperialism was haunting across Southeast Europe, notably in Yugoslavia with the Non Alignment Movement (NAM). Both post-communist Romania and Bulgaria's transitions toward fully-fledged democracy occurred with an overwhelming ethno-nationalist sentiment and anti-communist rhetoric which reinforced a centralist character of the national state. As a matter of fact, societal position of national minorities rapidly deteriorated.[23]

However, Bulgaria's factual colonisation toward non-Bulgarian people began much earlier than the communist takeover. In fact, the simply reversed historical process of cultural colonisation against those who once used the same method against Bulgarians, namely the Ottoman Turks, began to take place against the non-anymore hegemonic Turkish minority even before the liberation of the country in 1878. For instance, in contemporary Southern Bulgaria, formerly Eastern Rumelia, ethnic Turks – almost all of whom were Muslims – began to experience the attacks of Christian Bulgarians since 1876. Similarly, in the Northern region, Muslim centres and buildings such as the large library of old Turkish books and the mosque in Tûrnovo were destroyed in 1877. In Sofia, the 'forest of minarets' was definitely cut down in December 1878. The liberation from the Ottoman rule put some pressure on Muslims, who forcedly remained marginalised in rural areas they had historically inhabited. Although the Treaty of Berlin (1878) emphasised the rights of property to Muslims in Eastern Rumelia, insisting upon freedom of worship for all faiths and outlawed discrimination on the basis of religion, Bulgaria respected only on paper such indications.[24] In fact, a period of disorientation and psychological demoralisation among the Turkish population followed several forms of oppression: villages were burned and locals driven from their lands. Turks and Pomaks who decided to remain in Bulgaria rather than emigrating toward Turkey, kept a traditional lifestyle without changing social habits and separating themselves from ethnic Bulgarians who began to consider 'old-fashioned' their lifestyle. In addition, subtler forms of oppression

22 James Mark et al., *1989. A Global History of Eastern Europe* (Cambridge: Cambridge University Press, 2019), 177.

23 François Fejtő, *A History of the People's Democracies. Eastern Europe Since Stalin* (Middlesex: Penguin Books, 1974), 247–414.

24 R Julian Crampton, *A Concise History of Bulgaria* (Cambridge: Cambridge University Press, 2005), 112–113.

were carried out. For instance, since Turks were accustomed to leave part of their land fallow, Bulgarian authorities interpreted such agricultural practice as a 'Turkish forfeit' of properties, thereby considering their lands *terrae nullius* to own. Moreover, taxes on land hit Muslim landowners[25] who were not excluded to serve the Bulgarian Army. Although they were not obliged to wear Christian symbols on their uniforms, yet they were forced to obey Christian officers, observe Christian festivals and eat Christian food. Measured by mother-tongue, the number of ethnic Turks declined rapidly,[26] and in September 1940 in Southern Dobruja many 'Ottoman name places' were changed.[27]

Once the Communist ruling elites cemented their power position, attempts to awake a 'socialist consciousness' among the Turkish and Muslim minority[28] were carried out accordingly. A kind of Bulgarian psychological revenge against the 'Ottoman Turks' was kept at work, politically veiled by the fact that Islam would have played a dangerous role in a communist society due to its cultural and religious distinctiveness. Islam was indeed perceived as an obstacle for the progress of the communist society despite the fact it was barely performed.[29]

Throughout the communist experience, Bulgaria continued to face some troubles with the same Turkish minority members (750,000, or 10 per cent of the population) due to their refusal to be ideologically assimilated. The majority of ethnic Turks were not essentially disturbed by the anti-Turkic campaign, such as the one conducted by *Rabotnichesko Delo*, the official voice of the Bulgarian communist regime, which constantly targeted Islam and Turkey as perilous entities for the country. However, rather than a religious concern, Islam was externally presented in Bulgaria as a leading-threat instrument against the communist state in order to hide the real political purposes and real power concerns.[30] The homogenously and geographically compact mass-disagreement of the Turkish peasantry against communist institutions began to be expressed in forms of resistance against land collectivisation.

Interestingly enough, it must be pointed out that such 'Turkish peasantry resistance' was kept voiceless and depoliticised by communist Bulgaria's machinery of propaganda as well as by the minority's attitude to remain immune from it while renouncing to understand Turkey as their country of origin. Because of this, ethnic Turks and Muslims could not catch the momentum when many oppositionists in the 1970s were discovering the importance of political and civic freedoms, beginning to constitute the liberal consensus for the post-1989 transition to democracy. In fact, while across the Eastern Bloc anti-party mobilisation was inspired by anti-imperialist

25 Ibid. 112.
26 Ibid. 113.
27 Ibid. 204.
28 Ina Merdjanova, 'Uneasy Tolerance: Interreligious Relations in Bulgaria after the Fall of Communism', *Occasional Papers on Religion in Eastern Europe* 26, no 1 (2006), 1–11.
29 Crampton, *A Concise History*, 58.
30 Fejtő, *A History*, 295.

solidarities and anti-colonial movements,[31] Bulgaria's Turkish peasantry did not manage to defend their socio-economic rights as well as basic civic-political rights. Moreover, they missed the chance to employ a vocabulary of anti-imperialist self-determination that was commonly used by minorities in multi-ethnic States[32] and by trade unions' independent resistances such as *Solidarność* in Poland.

Particularly in socialist countries with substantial Muslim minorities, such as in Yugoslavia and the Soviet Caucasus, Muslims experienced intermittent persecution since 1956. In Bulgaria, campaigns of oppression and cultural patronisation were carried out without interruptions instead. In 1951, 154,000 ethnic Turks from Southern Dobroudja were 'repatriated' in Turkey, even though Ankara expressed its unwillingness to absorb them by shutting its gates along one of the most debated borders of the Eastern Bloc. During communism, fewer than 1 per cent of Muslims attended and graduated from Bulgarian universities due to a large exclusion from higher education and lack of promotion of education among them. Although Islam was always barely perceptible in the wider public, Muslims were liable to lose their jobs.[33] The long-term period of intimidation began to target Pomak communities since the 1970s, the majority of whom was subjected to physical and psychological terror tactics aimed at forcing them to 'adopt back' Bulgarian identity.[34] Many refused and were therefore imprisoned. The de-Stalinisation of Eastern Europe and the rehabilitation of Stalin's victims did not have much importance in Bulgaria,[35] where 1300 citizens, 500 of whom were Pomaks, were tortured and sent to prison on Belene Island.[36]

As the time passed by, at the moment of the upcoming advent of Gorbachev, in the highest echelons of the Communist Party, ethnic Turks and other Bulgarian Muslims were forced to choose from a list of Christian names[37] or Slavic ones that 'they wished to adopt'. Between 1984 and 1989, the communist regime carried out the largest military operation undertaken by the Bulgarian army since the end of the Second World War[38] and one of the cruellest policies of 'identity transformation' of Turks in general and Muslims in particular. Under the name of 'Great Revival', Bulgarian Turks and Muslims were given by force Bulgarian names in order to align them with a Slavonic 'ethnic code'. Unveiling a never-ended anti-Turkish mentality in Bulgaria, those ethnic Turks who postponed changing their names, or openly refused to do so, were forced to adopt anyway a different name decided by Bulgarian authorities,

31 Mark et al., *1989*, 83–84.
32 Ibid. 174–178.
33 Crampton, *A Concise History*, 58.
34 Ibid.
35 Ibid.
36 Ibid. 59.
37 Jordan Baev, 'De-Stalinisation and Political Rehabilitations in Bulgaria', in *De-Stalinising Eastern Europe. The Rehabilitation of Stalin's Victims after 1953*, ed. by Kevin McDermott and Matthew Stibbe (London: Palgrave Macmillan, 2015), 164.
38 Crampton, *A Concise History*, 205.

which had the last word on which name was 'proper' per each person. Especially in 1985, the 'Great Revival' provoked yet another mass-scale migration of 350,000 Bulgarian-Turks (of whom about 100,000 later returned to Bulgaria) in the direction of Turkey. Once again, state confiscations of Muslim properties and charitable foundations reduced the number of functioning mosques and persecution of Muslim leaders.[39] Halil Ahmedov Ibishev, a Turkish figure who left Bulgaria during the campaign with Naim Süleymanov, was told to explain to his community that anyone who resisted would be 'killed like a dog'.[40] Although Muslims did not have permission to carry weapons in the army,[41] thus less likely to be inconspicuously in possess of weapons, the communist regime discovered documents about a Cyprus-like Turkish action in Southern Bulgaria which was (arguably) about to break up and supported by pan-Turkic and pro-Turkey nationalism. To a certain extent, this potential threat justified the 'regenerative process' that Muslim Turks had gone through, to whom it was allowed to return to the bosom of their mother nation.[42] In convincing them to have had once 'Bulgarian roots', thus Bulgarian descendants and family connections with Bulgarian ancestors lost in time due to the mass-scale conversation to Islam that the Ottoman domination imposed,[43] communist Bulgarian authorities managed to damage their reputation in the wider Muslim world. What had become a de facto dogmatic position for *all* Bulgarian academia, was the ideological cornerstone of the 'Revival Process', whose implementation and consequences failed to register in scholarship of European public memory after 1989.[44]

In the course of the fall of the Communism and the arrival of democracy, common hostility and mistrust toward ethno-minority groups did not disappear in Bulgaria. While on a political level the newly established Bulgarian Union of Democratic Forces (UDF), the main platform of anti-communist organisations and voices, did not show much willingness to break convincingly with the nationalist legacy of the communist past,[45] on a cultural level Bulgaria had to seriously restore its national identity. Throughout, ethnic Turks and Muslims embraced a certain kind of oriental legacy[46] that in the eyes of Bulgarians meant 'backwardness'. In support of a European identity, the whole Bulgarian political spectrum was founded on an explicit rejection of the country's errant oriental qualities. The Bulgarian Socialist Party (BSP), the main heir of the political culture of the previous Communist regime, came to

39 Merdjanova, 'Uneasy Tolerance'.
40 Crampton, *A Concise History*, 60.
41 Ibid. 58.
42 Baev, 'De-Stalinisation'.
43 Mario Marinov, *Religious Communities in Bulgaria* (Blagoevgrad: South-West University Publishing House, 2017), 74.
44 Tomasz Kamusella, *Ethnic Cleansing During the Cold War. The Forgotten 1989 Expulsion of Turks from Communist Bulgaria* (New York: Routledge, 2019) 24-25, 67.
45 James Dawson, *Cultures of Democracy in Serbia and Bulgaria. How ideas Shape Publics* (London: Routledge, 2016).
46 BE De Dominicis, 'The Bulgarian Ethnic Model: Post-1989 Bulgarian Ethnic Conflict Resolution', *Nationalities Papers* 39, no 3 (2011), 450.

mobilise Bulgarians against the restoration of cultural rights to the Turkish minority. Ivan Kostov, economic expert for the Union of Democratic Forces (UDF), similarly remarked that '[Bulgarians] have to say what we do not want to be, what [they] want to leave out of Europe... stressing the need »to leave a part of our morality, a part of our oriental nature«.'[47]

Despite this, ethnic minority groups managed to seek out recognition in 1991 and secured their political representation by establishing the Turkish-nominated Movement for Rights and Freedoms (MRF), which succeeded to uphold basic cultural rights for Bulgaria's ethnic Turks. However, such recognition did not occur through a full recognition of 'ethnic basis' since the legal statement was adopted in accordance with the court decision that denied the MRF to choose its first name, namely 'Movement for Rights and Freedoms of the Turks and Muslims in Bulgaria'. The immediate pressure from the Council of Europe on the Bulgarian Constitutional Court allowed MRF to participate in elections to the Constitutional Assembly of June 10, 1990, despite the fact that the original name was changed and a historical trajectory of suspicion and hostility continued to deter political expression of minority groups in Bulgaria. The MFR has never been recognised on ethnic or religious affiliations forbidden constitutionally by Article 11 (Paragraph 4) which, along with Article 34, obliges all Bulgarian citizens regardless of their ethnicity and religion to learn the official language. In other words, the constitutional clause necessitates the MFR to refuse any position of an ethnic organisation, and, more broadly, dictates the party to accept Bulgaria's majority rights[48] on a cultural and political level.

Immediately after the communist dissolution, newly established Bulgarian institutions began to deal with the accession process to the European Union. In the eyes of Bulgarians, the opportunity to become an EU member state meant nothing but keeping the 'right track' against the one that had mistakenly led astray Bulgaria under the so-called Turkish yoke[49] firstly, and the Moscow-centred communist power secondly. Against the pitfall to be associated with backwardness as happens for the Balkans,[50] in the attempt to secure its accession to EU, Bulgaria ratified the Framework for the Protection of National Minorities in 1999 and reintegrated a minor component of Turkish-language provision in some of the country's schools[51] after having been suspended in 1975. On the other hand, however, the constant and never-ending hostility toward Islam in general and Muslims in particular conformed beyond any doubt the psychological revenge of the Bulgarian ethnos against historical pages of domination and suffering in the 'Ottoman waiting room'. Among others, this may explain why the post-accession period did not mean only stagnation for Bulgaria

47 Dawson, *Cultures of Democracy*, 88.
48 De Dominicis, 'The Bulgarian Ethnic Model', 84.
49 Crampton, *A Concise History*, 160.
50 Snyder and Younger, *The Balkans*, 1.
51 De Dominicis, 'The Bulgarian Ethnic Model', 88.

as EU Member State, but also a noticeable backsliding[52] with regard the respect of minority rights in the country.

Three decades since the dissolution of the Eastern Bloc, Bulgaria's de facto minority party, namely the MRF, represents an 'enigma-within-an-enigma'.[53] While it seems to be culturally paramount for Bulgarian elites to offer an anti-Turkish rhetoric in order not to be seen in political cohabitation with the MRF, the latter has taken part in majority coalition in the Parliament in the last years, and, together with BSP and GERB respectively, it has kept close and unhealthy relations with economic elites.[54] Often, however, the majority of political parties accuse the MRF to stock ethnic tensions,[55] and the latest decision of the Local Council of Stara Zagora to 'Bulgarise' place-names with a clearly Turkish or Arabic origin, confirmed that behind the ratification of international conventions, the mentality of most Bulgarians has not changed much. There is little doubt, however, that post-Communist Bulgaria's national identity lies in a sort of ideological continuum that the Bulgarian authorities and their master narrative have historically held and performed against the heirs of Ottoman representatives after 1878. Since the liberation of Bulgarian from the so-called "Turkish yoke", a widespread anti-Turkish sentiment largely marked ideologically the country power institutions and Bulgarians. At present, common knowledge and values of national identity reflect a constant image of ethnolinguistic-ethnoreligious nationalism steeping in the Bulgarian language and Orthodox Christianity. The latter is, in the very end, the troubling continuity of a de-facto colonialization that has never stopped to function from Communism to the first demonstration for democracy in Bulgaria, where those who called for the return of the names of Turks and Muslims, were accused of being "traitors" and "enemies of the Bulgarian nation".[56]

Conclusion

In the contemporary history of Bulgaria, the study-case of minority groups reveals how power-organised methods of factual colonialisation in public policies were simply implemented on the ground by looting natural resources and (dis-)possessing cultural legacies of certain segments of society. In other words, hierarchic relationships between Ottoman Turks and subaltern Bulgarians were reorganised after the 1878 Bulgarian liberation movement against the subaltern Turks. The latter can be usually reserved for discussions in a global history context – namely, colonialism and anti-

52 Domaradzki, 'Opportunistic Legitimisation', 230.

53 Clive Leviev-Sawyer, *Bulgaria: Politics and Protests in the 21st Century* (Sofia: Riva, 2015).

54 KH Pedersen and L Johannsen, 'Democratic Consolidation: A Matter of Shared Values. The Case of Bulgaria', in *Twenty Years Since the Fall of the Berlin Wall: Transitions, State Break-Up and Democratic Politics in Central Europe and Germany*, ed. by E Bakke and I Peters (Berlin: DWB, 2011), 89.

55 Dawson, *Cultures of Democracy*, 163.

56 Kamusella, *Ethnic Cleansing During the Cold War,* 73.

colonialism.[57] Relatedly, hierarchic relationships in the liberated Bulgaria and Turkish/ Muslim communities have to be systematically understood through the role of ethno-nationalist parties[58] since minority communities themselves began to be culturally targeted and politically discarded in their daring attempts to raise their heads against brutal exploitation and enormous poverty.[59] In fact, the 'Great Revival' was only the darkest chapter of a cultural patronisation that Turkish minority members began to be affected by much earlier. Either imprisoned or forced to migrate[60] or accused of stoking enmity toward Bulgarians and Bulgaria's statehood, all of these have historically been nothing else than a veiled machinery of colonising Other's being, which is nowadays salient in the hostile sentiment against Muslims, Roma and Turks,[61] upon whom an anti-Islam discourse is continuing to be discursively ascribed in order to fuel the wider public and point out the 'demonic' essence of such religious belief system and peoplehood. In this regard, despite the fact that Bulgaria's Muslim or Turkish communities have never played a critical role throughout the Bulgarian society, it seems obvious that the transnational essence of Islam emphasises how the issue of Bulgarian Muslims is no longer different from those present in Western Europe, which, for a matter of fact, are post-colonial nations. Epistemologically, there is no much distinction between how the communist regime presented the Great Revival, namely as 'a completely safe process' that occurred 'speedily, spontaneously, and calmly' as result of 'a historical maturity',[62] and how Boyko Borrisov openly declared in 2008 that the same Great Revival 'had the right aims, but was implemented badly'.[63] To a certain extent, today's political rhetoric in Bulgaria wins the ground under slogans of 'Roma Crime' as well as 'No More Gypsyness', looking upon the Turkish-dominated MFR party as the main agent malignantly devoted to increase disloyal attitudes toward Bulgaria.

In Bulgaria, however, a 'minority perspective' sheds light on how violence and power-oriented mechanism of cultural patronisation across different locally-nuanced areas have been carried out similarly to other (semi-)colonial countries. The latter took place through (a) *dispossession of land*, which brings, above all, dignity,[64] (b) the instrumentally created *dependence* on ethnicist institutions that impose a socio-cultural direction in social life, and a type of (c) *oppression* that does not clearly

57 Snyder and Younger, *The Balkans*, 2.

58 Frantz Fanon, *The Wretched of the Earth*, trans. by Constance Farrington (London: Penguin Books, 2011), 37–47.

59 Noam Chomsky, *The New Military Humanism. Lessons from Kosovo* (London: Pluto Press, 1999), 50.

60 Baev, 'De-Stalinisation', 164.

61 Sonya Emilova, 'Bulgaria', in *European Islamophobia Report 2017*, ed. by Enes Bayrakly and Farid Hafez (Istanbul: SETA, 2018), 127.

62 Janice Broun, *Conscience and Captivity. Religion in Eastern Europe* (Washington, D.C.: Ethics and Public Policy Centre, 1988), 60.

63 Dawson, *Cultures of Democracy*, 88.

64 Fanon, *The Wretched,* 34.

go along ethnic lines but functions through a subtler process of control firstly, and human marginalisation secondly.

Granted so, the post-colonial paradigm is simply a scholarly attempt to disentangle post-socialist trajectory of power that CEE nations are still experiencing while barely masking strife for shaping a realm of coexistence. Underneath, the colonially imposing identity-manoeuvring and behaviour-forming process upon certain segments of peoples[65] veil a much subtler category of thinking (people's mentality) that has been left at work in the region. Although 'communist colonialism' formally ceased to exist in CEE since 1989, hierarchic methods of doing politics have been embedded into a certain political thinking and cultural knowing that have historically emerged within already-made externally constructed boundaries based on interests of hegemons.[66] To put it simply, the post-colonial paradigm in CEE in general, and Bulgaria in particular, discovers how certain minority groups have gone through a process of 'colonialisation of being', of their collective identities, on a cultural level. It is not a manifesto-like 'liberation struggle' that on a political level was visible in Global South. It is, once again, a power-organised machinery of cultural patronisation that has come throughout changes of power structures to be simply reversed against those who had used it before against the ones who now possess it. Therefore, if applied over minority groups, post-colonial paradigm is nothing but a vector to discover a way of thinking shaping a sense of 'inferiority' upon a certain segment of the society, where, paradoxically, those who are affected by, tend to interiorise such an externally imposed mechanism of othering.

To conclude, while a 'communist Bulgarian colonialism' has never existed, the post-colonial paradigm shows how certain forms of living and knowing in relation to 'ethnic', 'gender', 'radical', and, to a certain extent, 'political' features of minority groups have been colonised. What the 'former' Bulgarians as minority suffered from Ottoman and Communist rules – namely, being colonised by an overwhelming ideology of kumshu firstly and socialism secondly, began to be suffered by those minorities in the post-Ottoman and post-Communist period. This form of colonisation may be understood as a mechanism of politics to discard human conditions of certain non-aligned groups in society, whose marginalisation and exclusion cannot exclusively represent political issues, but, above all, systematical policies that set apart and suppress different lifestyles, religious systems, process of knowing and so forth.

65 Ágnes Daróczi, 'Shouldn't We Have a History?' in *Populism, Memory, and Minority Rights. Central and Eastern European Issues in Global Perspective*, ed. by Anna-Mária Bíró (Leiden: Brill, 2018), 20–35.

66 Castellino, 'Identity and Human Rights', 344.

References

Baev, Jordan: 'De-Stalinisation and Political Rehabilitations in Bulgaria', in *De-Stalinising Eastern Europe. The Rehabilitation of Stalin's Victims after 1953*, ed. by Kevin McDermott – Matthew Stibbe. London: Palgrave Macmillan, 2015. 150–169. DOI: 10.1057/9781137368928_8

Braueunlein, Peter J: 'Postcolonial Theory', in *Religion and Southeast Asia: An Encyclopaedia of Faiths and Cultures*, ed. by Jesudas Athyal. Santa Barbara: ABC-CLIO, 2014. 1–8.

Broun, Janice: *Conscience and Captivity. Religion in Eastern Europe*. Washington, D.C.: Ethics and Public Policy Centre, 1988.

Brown, JF: *Bulgaria under Communist Rule*. London: Pall Mall Press, 1970.

Castellino, Joshua: 'Identity and Human Rights in a "Populist" Era: Urging Caution and Pragmatism in Minority Rights Protection', in *Populism, Memory, and Minority Rights. Central and Eastern European Issues in Global Perspective*, ed. by Anna-Mária Bíró. Leiden: Brill, 2018. 342–356. DOI: 10.1163/9789004386426_015

Chomsky, Noam: *The New Military Humanism. Lessons from Kosovo*. London: Pluto Press, 1999.

Crampton, Julian R: *A Concise History of Bulgaria*. Cambridge: Cambridge University Press, 2005. DOI: 10.1017/cbo9780511996870

Daróczi, Ágnes: 'Shouldn't We Have a History?' in *Populism, Memory, and Minority Rights. Central and Eastern European Issues in Global Perspective*, ed. by Anna-Mária Bíró. Leiden: Brill, 2018. 20–35. DOI: 10.1163/9789004386426_003

Dawson, James: *Cultures of Democracy in Serbia and Bulgaria. How ideas Shape Publics*. London: Routledge, 2016. DOI: 10.4324/9781315575544

De Dominicis, BE: 'The Bulgarian Ethnic Model: Post-1989 Bulgarian Ethnic Conflict Resolution'. *Nationalities Papers* 39, no 3 (2011), 441–460. DOI: 10.1080/00905992.2011.565317

Domaradzki, Spasimir: 'Opportunistic Legitimisation and de-Europeanisation as a Reverse Effect of Europeanisation'. *Global Discourse. An Interdisciplinary Journal of Current Affairs* 9, no 1 (2019), 221–244. DOI: 10.1332/204378919x15470487645475

Emilova, Sonya: 'Bulgaria', in *European Islamophobia Report 2017*, ed. by Enes Bayrakly and Farid Hafez. Istanbul: SETA, 2018. 127–142.

Fanon, Frantz: *The Wretched of the Earth*, trans. by Constance Farrington. London: Penguin Books, 2011.

Fejtő, François: *A History of the People's Democracies. Eastern Europe Since Stalin*. Middlesex: Penguin Books, 1974.

Foucault, Michel: *Nietzsche, Genealogy and History*. Oxford: Blackwell, 1971.

Foucault, Michel: *The Archaeology of Knowledge*. New York: Routledge Classics, 2002.

Hirsh, Marianne: *The Generation of Postmemory. Writing and Visual Culture After the Holocaust*. New York: Columbia University Press, 2012.

Kamussela, Tomasz: *Ethnic Cleansing during the Cold War. The Forgotten 1989 Expulsion of Turks from Communist Bulgaria*. New York: Routledge, 2019. DOI: 10.4324/9781351062701

Kołodziejczyk, Dorota: 'Post-Colonial Transfer to Central-and-Eastern Europe'. *Teksty Drugie* no 1 (2014) (Special Issue), 124–142.

Kushnir, Ostap: *Ukraine and Russian Neo-Imperialism. The Divergent Break*. Lanham: Lexington Books, 2018, 25–65.

Leviev-Sawyer, Clive: *Bulgaria: Politics and Protests in the 21st Century*. Sofia: Riva, 2015.

Marinov, Mario: *Religious Communities in Bulgaria*. Blagoevgrad: South-West University Publishing House, 2017.

Mark, James et al.: *1989. A Global History of Eastern Europe*. Cambridge: Cambridge University Press, 2019.

Merdjanova, Ina: 'Uneasy Tolerance: Interreligious Relations in Bulgaria after the Fall of Communism'. *Occasional Papers on Religion in Eastern Europe* 26, no 1 (2006), 1–11.

Pedersen, KH and L Johannsen: 'Democratic Consolidation: A Matter of Shared Values. The Case of Bulgaria', in *Twenty Years Since the Fall of the Berlin Wall: Transitions, State Break-Up and Democratic Politics in Central Europe and Germany*, ed. by E Bakke and I Peters. Berlin: DWB, 2011, 77–96.

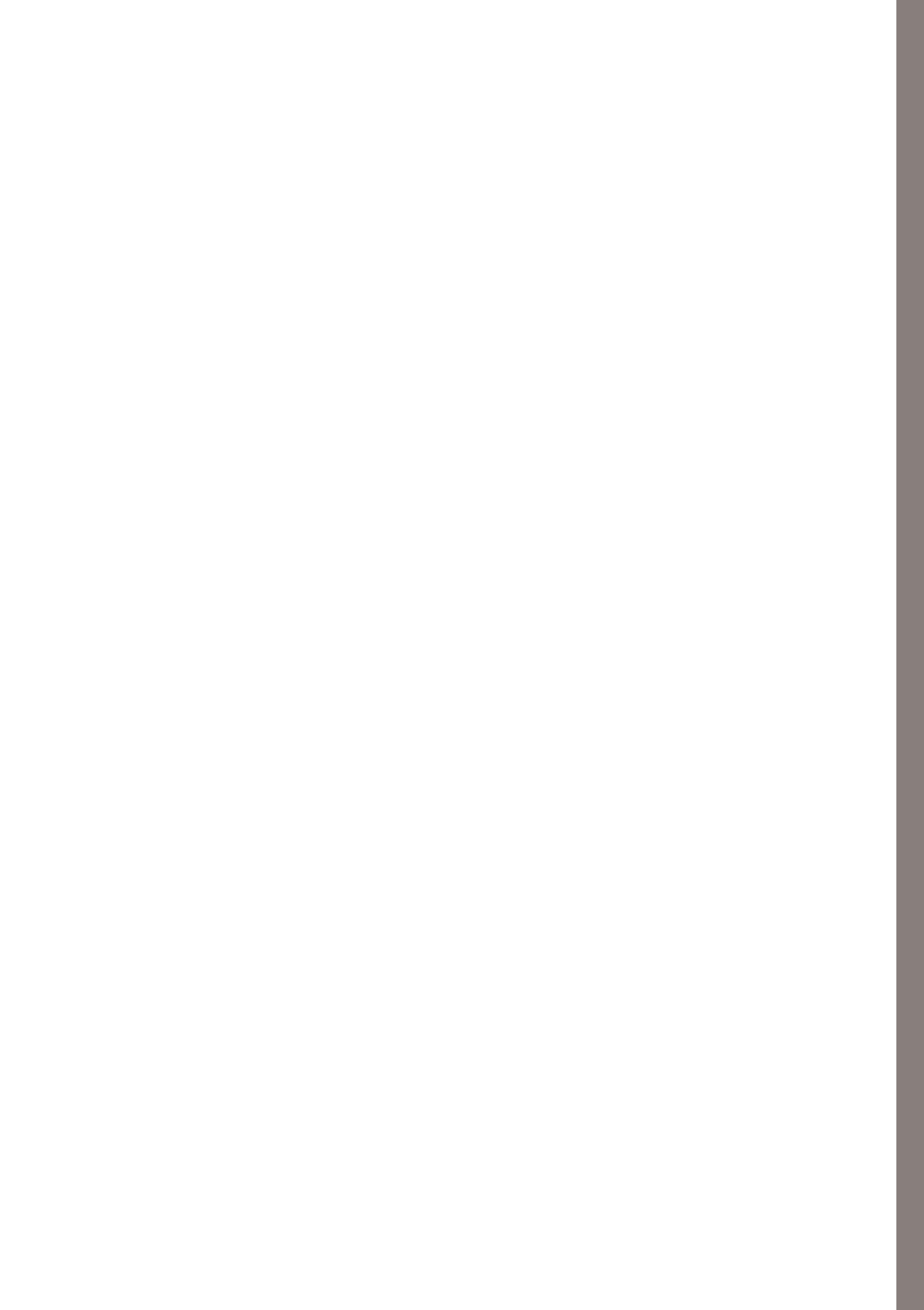
Rexhepi, Piro: 'Unmapping Islam in Eastern Europe: Periodization and Muslim Subjectivities in the Balkans', in *Eastern Europe Unmapped: Beyond Borders and Peripheries*, ed. by I Kacandes and Y Komska. New York: Berghahn, 2018, 53–78. DOI: 10.2307/j.ctvw049zd.7

Shenk, Gerald: 'What Went Right: Two Best Cases of Islam in Europe – Cordoba, Spain and Sarajevo, Bosnia'. *Occasional Papers on Religion in Eastern Europe* 26, no 4 (2006), 7–20.

Snyder, Timothy and Katherine Younger (eds.): *The Balkans as Europe, 1821–1914*. Rochester: University of Rochester Press, 2018. DOI: 10.1017/9781787442290

Terian, Andrei: 'Is there an East-Central European Post-Colonialism? Towards a Unified Theory of (Inter)Literacy Dependency'. *World Literature Studies* 3, no 4 (2012), 21–36.

Tlostanova, Madina: 'Towards a Decolonization of Thinking and Knowledge: a Few Reflections from the World of Imperial Difference'. *Decolonial Theory and Practice in Southeast Europe* no 3 (2019) (Special Issue), 1–15.



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ARTICLES

Unending Wars: Is Nationalism the Snag?

COLLINS NKAPNWO FORMELLA[1]

Nationalism has been the major cause of wars since time immemorial and the most pronounced of it was World War I. Although the rhetoric of nationalism is seemingly less used after the major wars, because it adopted a new name, 'self-determination' – as enshrined in the UN Charter, Chapter I article 1 –, it remains in the background of many political discussions today and we continually see a global rise in collectivism, marked by religious fundamentalists of ethnic nationalist ideologies, which have resulted in nothing but fierce conflicts in almost every part of the world. Having noticed this increasing phenomenon, this paper tries to establish the relationship that exists between the world's agenda to globalise and national interests, which have left the world in a rather saddened situation of protracted wars between and within states, and its main thesis is that nationalism has played and continues to play a major role in the violent conflicts that sparkle around the world today, in the guise of ethno-religious conflicts.

Keywords: nationalism, globalisation, ethnicity, war, political instability, religion

Introduction

Mankind has behaved more barbaric than any other living thing on earth and one would wonder why we just cannot stop fighting each other. Our human self has been betrayed on several occasions and the fraternity that binds us together as human beings holds no meaning again. This political upheaval marks the growing divisiveness in a world where no one is listening to the other. Globalists would rather say the world is becoming more than ever united, especially with growing technology. The two great wars and recent ones have presented us with a rather different view of nationalism, which no longer points to the identification of people with a common destiny and history, nor the desire for nation states to be independent from others and to be driven towards a common end. The First World War would be remembered to have erupted due to the desire of Slavic people to establish a unified Greater Serbia. This Pan-Slavic nationalism led to the assassination of Archduke Franz

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Ferdinand in Sarajevo in June 1914, thus WWI broke out, leaving behind the events that happened in former Yugoslavia. Nationalism today presents a great challenge to the global agenda that the world has set out to achieve, depressing all hopes that Fukuyama had envisaged in his 1992 book,[2] in which he hoped the world after the end of the Cold War would spiral into peace as liberal democratic ideals continue to spread, marking an end to violent conflicts that characterised the century.

This paper tries to establish the relationship that exists between the world's agenda to globalise and growing scenes of self-determination, which have left the world in rather a saddened situation of protracted wars between and within states, The aim of this paper is to investigate the connection amid the globalisation scheme and increasing instances of self-determination in the world, which on the other hand is the sparkle behind the so many protracted conflicts in all corners of the globe, a situation described by Mary Kaldor[3] as 'new wars', wars of identity politics based on ethnic, religious or tribal affiliations, with the primary aim to gain control of the state by a particular group over the other either locally or internationally. The main thesis suggests that nationalism has played and continues to play a major role the violent conflicts that characterize our today's world. The focal point of this paper is to highlight the fact that nationalism as in the past, still contributes greatly to the violent conflicts we face today. We face so many challenges in these present times and these challenges show no trace of lessening its grip on us, yet nationalism has stood as a major drawback to mankind's unified action to such challenges. Recent debates on technological disruptions and climate change have proven this thesis even more fruitful. Growth in nationalistic feelings in a globalising world has seen common problems even more complicated to be solved in unity and nationalistic winged parties around the world have proven to be even more violently opposed to common and unified solutions to challenges such as artificial intelligence, bio-engineering and climate change.

1. Nationalism and the nation-state

National interests have always been behind every country's agenda despite involvements in international affairs, and even globally, nation-states often do disagree to which approaches are the best to respond to major issues such as climate change and terrorism. Virtues of egalitarianism, which are resourceful in the resolution of common problems that more often than not transcend borders and that necessitate common and united solutions, have been largely impeded, because nations of the

2 See F Fukuyama, *The End of History and the Last Man* (New York: Perennial, 1992). Responding to the collapse of the Berlin Wall and the subsequent breakdown of the Soviet Union, the book is still highly recognised for its efforts, but recent years have seen the erection of more walls and greater restrictions around the walls, moving away from the ideology wars of the past to more ancestral delineations.

3 M Kaldor, 'In Defence of New Wars', *Stability: International Journal of Security and Development* 2, no 1 (2013), 2.

world remain divided along nationalistic lines, which have become more and more pronounced these days. Refugee crisis, climate change, and even disease pandemics which increasingly require a concerted effort of all nations of the world, have persisted because nations continue to pursue their narrow interest at the expense of collective efforts, which always yield better results for all. President Trump's policy of 'America First' has been the center of several disputes when settling issues that concern the globe. All this is rooted in the belief that what is in the best interest of my country should not necessarily be that which is best for yours, so national interests come first. This drive for nationalism has propelled every country's agenda on top of every other's, thus creating situations of conflict that have put globalisation on a sinking hole. Joseph E. Stiglitz in his writings talks of the 'debates on how to restructure the institutions running the world… thus globalisation a major concern being' which must be vigilantly controlled.[4] To better understand nationalism, it will be wise to know what this rather controversial term means.

First, it is the immediate derivative of the term nation, which stands for the sentiments of attachment to each other shared by members of a nation possessing a feeling of pride belonging to that. Many reasons contribute to this feeling of nationalism, and throughout the eighteenth, the twentieth and the twenty-first centuries, this desire of members of a community to govern themselves as a state within the boundaries of a particular territorial jurisdiction have driven all humankind's activities. This fusion gives birth to the 'nation state' and nationalism has been the driving force behind nation-states agendas. Care however must be given while trying to define nationalism especially when linking it to faithfulness to the state and not the nation, because a nation could be a tribal grouping, or other subnational groupings clinging on their identity. This is because nationalism may adopt several guises out of the original idea of the state itself. This point is important because there exist some groups of nations who are propagating their nationalism in the hopes of creating a homeland state or, on the other hand, pursuing to fashion a nation for a state that is not existing yet, for example, the 'Biafrans' in Nigeria, or the Palestinians, who have, however, been recognised by a few established nation-states, and also the 'Ambazonians' in Cameroon. Nationalism may not be a major variable in the realist paradigm, but it remains a powerful weapon in global power politics. Not focusing very much on the differences between these two theories, converging, however, the attributes of these two isms permits me to discuss these two concepts as if they were a single theory, though they are not. Nationalism has been known to be the everyday life tool and real-world phenomenon shaping global politics between nation-states, but the fact that calculated actions of states end up securing their national interests has plagued the world which, though seemingly globalising in respect to technology and other aspects, remains highly divided and in a state of chaos. García-García investigates the relationship between nationalism and

4 JE Stiglitz, *Making Globalisation Work* (New York – London: W.W. Norton & Company, 2006), 3–4.

mass psychological degradation and recounts that earlier studies and researchers had linked nationalism to 'the harmful effects of prejudice, mental narrowness, ignorance, the painful and deplorable effects of fanaticism, intolerance and a strong drive to war'.[5] Looking at nationalism from another perspective than the conventional political science explanations, García-García brings in the voices of researchers in medicine and psychology to expose the ills of nationalism in the post war era.

Nationalists have in recent years been gaining popularity around the world and it is no coincidence that it is happening at the same time when natural disasters ranging from wild fires and droughts, to flooding and wars have become so unprecedented. Responses to these phenomena have yielded rather unspeculated results, making nationalists leaders who are 'us' focused, while many wish to see leaders with the larger thought of the betterment of the globe; their actions have been rather conservative and protective, especially when they are members of the safer zones and very hostile towards the external world. These nationalistic tendencies have stood as a very strong blockade to the realisation of unified global actions towards the resolution of global problems, and at worst it is even giving rise to class-based societies.

2. Globalisation, yet a dream

The rhetoric of the 'new world order' that marked the end of the Cold War and opened the way to globalisation has come with a lot of confusion, raising several questions as to the true meaning of globalisation. One would even think it to be a myth at some time in life, based on the way the human race behaves, in this age of ever increasing interconnectedness, as clearly visible in the cluster of activities in economics, with the production chain internationalising, technology going across national boundaries, and a large inter-change of ideologies and cultures.

Emphasising the growing geographical extensions between activities people carry out between national boundaries, Holm delineates globalisation to be 'the strengthening of political, social, cultural and economic relations across national boundaries',[6] stressing the importance of conscious and increasing global connectedness. This view, on the other hand, can be examined in terms of self-interested goals of states, which have seen a less cooperative, less productive society, defined more in terms of self-survival, leading to uneven growth and globalisation in a world where a common law is drafted in the form of the universal declaration of human rights.

The benefits of globalisation in the world can never be undermined. It has come through with many consequences both positive and negative, yet it is still believed to be more needed by the world than isolation. Looking at the world today, one would say globalisation may have failed to achieve its desired goals, that is, free world, a 'global

5 J García-García, 'After the Great War: Nationalism, Degenerationism and Mass Psychology', *Journal of Social and Political Psychology* 3, no 1 (2015), 103.

6 HH Holm, 'Introduction: What has Changed?' in *Whose World Order? Uneven Globalization and the End of the Cold War*, ed. by HH Holm and G Sørensen (London: Routledge, 1995), 1–7.

village'. Stiglitz[7] blames it for poor management. As earlier advanced, power politics has been put in front of its goals, and Stiglitz further describes the situation that 'the rules of the governing has been largely altered by powerful and technologically advanced countries... driven by their national interests... and they denied creating faire rules, even just a set of rules that would promulgate well-being of those in the less developed world'.[8] National interests have, however, diverted the true intentions of globalisation, which in essence entails the creation and consolidation of a global market-place instead of autonomous national economies.

3. The Snag!

With improvements in technology and communication, people have over the years migrated and settled in different parts of the world and formed families, thus creating a mixture of races, cultures, religions and ethnicities. The need for coexistence had brought people of varied origins to live together in various parts of the globe for centuries and even millennia through the establishment of a social contract, as Hobbes writes.[9] He further adds in his understanding of human nature that the human race is at some point unavoidably, utterly narcissistic and often derails from the general good to pursue only that which they identify to be individually beneficial to them; so has been the nature of global politics, as leaders react perfunctorily, being drawn to that which they see their immediate interests and behave repugnant to all which is of no benefit to their desires, but which could be for others; this leads to the break-down of the social contract, according to which man in his rational being had chosen to submit to the authority of a sovereign so as to be able to live in a harmonious society. The increase in globalisation has led to a recent resurge of nationalistic feelings across the globe that has driven nationalism again as the major agenda for statesmen. Expectations have failed, promises broken, cooperation and the human ability to work with one another – though seemingly increasing – remain pulled-back by nationalistic desires and pride of men. Nationalistic feelings have led to the rise of left-wing and far-right political parties, increase in secessionist movements, and even led to increase in terrorist activities since the September 2011 attacks. One would ponder why all this is happening now! Donald Trump, while accepting his nomination as the Republican candidate, in his statement stressed his plan to 'put America First', not the world, proclaiming 'Americanism, not globalism as their credo'.[10] Since his nomination and eventual election as president of the United States, Trump's policy of 'America First' has created mixed feelings and reactions in the world. Protectionism

7 Stiglitz, *Making Globalisation,* 4.
8 Ibid.
9 See T Hobbes, *Leviathan.* Longman Library of Primary Sources in Philosophy (New York: Routledge, 2016).
10 Donald Trump's nomination speech in Cleveland, Ohio, 21 July 2016.

in pursuing American agenda has distorted and created several conflicts within and without America and the world at large and nationalism has seemingly become one of the main snags of our era, from Trump's pronouncement to uprisings in Catalan, Ireland and even leading to Britain voting to leave the European Union, and many others.

Very much akin to the nationalism constants are the myths of capitalism, which all base their foundations on stories; they have greatly influenced the way the human being behaves. Yuval Noah Harari in his 2014 book elaborates greatly on these myths surrounding the human reasoning: what nationalism is currently doing is just like what religion before the age of enlightenment and during the jihadist periods did to humankind, no good but the unnecessary waste of human lives, for a course of which no one has actually proven to have seen the end. Flag bearers of nationalism today are bent ready to edify anyone who appears promising enough to bring to light their beliefs and the supposed destinies which they hold, while scapegoating[11] anyone who tries to defy their sense of superiority. According to Van Evera, the genesis of many civil wars, have been the result of 'impartial treatment especially of a minority, ethnic or tribal group by the central government, who after years of disgruntledness gradually nurture their nationalistic feelings and resolve to violence as the sole means of liberating themselves to accomplish their political ambitions.'[12] In the same vein, the desire of a particular group of people with nationalistic feelings for what they distinguish to be their ancestral base may tilt such a group towards adopting force as the sole means towards attaining their objectives, especially when they have judged that they are liable to enough backing from an exterior elite that is ready to sponsor their activities. These have been the case with so many post-war conflicts, especially in the developing nations of the world. A most recent example has been the conflict that broke out in the two Anglophone regions of Cameroon in 2016,[13] which busted out after years of unanswered questions as to the true position of the Anglophone identity; it has been on a table of cards between the dominant Francophone government and the international community, notably the United Nations, which has ignored addressing the status of the two regions since the plebiscite that ceded the two regions as part of a federal Cameroon, and that was later manipulated to form a unitary state.

Nationalism is the direct offshoot of the concept of nation, which encompasses people with feelings of attachment to each other, with a common sense of pride, belief in a common destiny and desire to stand tall above all others. Since the Peace of Westphalia, nationalism took a different form, often manifesting itself as the urge of these peoples with a common identity as a nation to rule over and control a particular territory which they believe is theirs, and even to a certain extent to occupy more through expansion and conquest. The claim and conquest of the Israelites over

11 YN Harari, *Sapiens: A Brief History of Humankind* (Random House India, 2014).
12 S Van Evera, 'Hypotheses on nationalism and war', *International Security* 18, no 4 (1994), 8.
13 *Cameroon's Anglophone Crisis at the Crossroads*, International Crisis Group Report No. 250, 2017.

the territory which they presently occupy just further emphasises the strength of nationalism and to which extent it may go to form a state of their own; this culminates in the formation of the concept of a 'nation-state' due to their believe in a common destiny within a particular geographic demarcation. This view of nationalism based on nation-states has been the source of several conflicts the world witnesses today, because today's states, being legally geographically bounded, have within themselves several groupings of people, who, though bounded under the same legal boundaries, are of different origins and as such see themselves as different nations, with different historical beliefs. Calling today's countries nation-states will thus be very much misleading, especially if well investigated. A good example to mention will be the Turkish minority in Western Thrace, Greece – as Evelin Verhás noted –, who are of Turkish origin and have constantly struggled for rights and recognition in Greece.[14] The formation of some of today's nation-states especially African states, were the result of the decisions of their former colonial masters, who carved out their territories according to their desires; these have remained the boundaries of these states, which in themselves are made up of people from several nations. These countries have in most cases been at the mercy of civil wars due to political differences between the various nations. Nations, as is commonly known, are in the third world known as tribes, and tribalism and nepotism has thriven and gained grounds especially in the poor state from which they were granted independence. The situation in post-colonial sub-Saharan Africa, as remarked Franck, shows a trend where people with different histories, culture and language desire – for the sake of moving forward to nationalism – to create a nation within the territorial boundaries that define them as a state, where originally there is no nation-state.[15]

Looking at Nationalism from this standpoint will present a rather passionate investment in binding together human beings with a common sense of purpose, contained by given territorial boundaries eparating them from others. The fact that nationalism is used in a globalising world to achieve some purposes which on the other hand hampers the interests of other peoples makes it dangerous, and this is a possible cause of some wars we have today. So it may turn to be a curse, especially when the end results are cross country wars due to propaganda of the superiority of some nations over others instead of viewing nationality as a shared identity within the same territory. Nationalism turned out to have rather confusing political consequences, because the more we turn our reflections towards one country, the more we ignore issues concerning the planet, as leaders of super powers have denied to become denizens of our planet to whom we all belong, but have pushed forward their respective country agendas ahead in all international organisations, choosing to walk out of anything that does not favour them. Trump's announcement to walk

14 E Verhás, 'The Turkish Minority in Western Thrace: The Long Struggle for Rights and Recognition', Report, Minority Rights Group Europe, 2019. 3–11.

15 TM Franck, 'Tribe, Nation, World: Self-Identification in the Evolving International System', *Ethics & International Affairs* 11 (1997), 164.

America out of the Paris Peace Accord came as a result of his desires to maintain the American economy on top.[16] This nationalistic pronouncement has spurred a lot of debates around the globe. The truth remains that nationalism is a fiction, because no country or people can prove that they all come from the same bloodline, instead, they are just an assembly of people from different parts of the world who come together and settle for their mutual benefits is some territorial delimitation.

Scholarly views on nationalism as a major trigger for global conflicts have not been unnoticeable. Political advances such as the American invasion of Iraq as a means of fostering US national interests subsequent to September 11, 2001 have been exemplified by many researchers such as McCartney[17] or Warren, Cederman and Sornette;[18] also, Walt[19] proposed that 'nationalism weakens global cooperation', and according to Schrock-Jacobson, it 'escalates hostility between nation-states'.[20] Wars of interest incited and sponsored by great powers due to their nationalistic interests have plagued the Middle East and other parts of the world into conflict and this have had severe consequences that stand as a backdrop to globalisation and its quest to unite the world. The last two decades have seen the movement of no less than 272 million[21] people, with an increase of 14 million people since 2017. At least 64 per cent of these international migrants tend to move to the most industrialised nations of the world, and these increases in migration have led to upsurges of right-wing movements in these countries due to the rise of nationalistic feelings there. These have not been well received by many groups, and this has brought severe consequences for many of these nations such as the increase in terrorist activities. The Charlie Hebdo attacks, the bombings in London and many others have all been linked to Islamic uprisings and the rapid encroachment of Islam into the European culture. The 'Islamification' of Europe has created a chain of conflicts and internally broken many countries by sparking off new nationalistic sentiments against all followers of Islam in Europe, who are usually commonly referred to as 'uncivilised' and an ideological enemy, as described by Marine Le Pen representing France's far right political wing, who even goes as far as comparing Islamic migrants moving to France to 'wolves in a henhouse'.[22] Islamic nations have viewed such allegations not just as mere campaign speeches, but as a direct attack of their values; these have led to tensions between these nations and extremist Muslims continue to use these exclusions as a basis to launch attacks on

16 See 'Our Disgraceful Exit From the Paris Accord', Opinion by the Editorial Board, *The New York Times*, June 1, 2017.

17 P McCartney, 'American Nationalism and U.S. Foreign Policy from September 11 to the Iraq War', *Political Science Quarterly* 119, no 3 (2004), 400.

18 LE Cederman, TC Warren and D Sornette, 'Testing Clausewitz: Nationalism, Mass Mobilization, and the Severity of War', *International Organization* 65, no 4 (2011), 606.

19 SM Walt, 'Nationalism rules', *Foreign Policy*, July 15, 2011.

20 GU Schrock-Jacobson, *Fighting and Dying for One's Country: Nationalism, International Conflict, and Globalization*, PhD Dissertation (State College: Pennsylvania, 2010), 25–28.

21 *World Migration Report 2020*, IOM. 2.

22 C Farand, 'Marine Le Pen Launches Presidential Campaign hardline speech', *The Independent*, February 5, 2017.

these nations. Today's wars have been known to spin mostly around communities and how they relate to each other, as explained by Lake and Rothschild; the emergence of a power vacuum can quickly start up a violent conflict among communities, due to 'fears of what the future may bring as a result of issues of credibility and security dilemma.'[23] Mansfield and Snyder, in theorising nationalism and war, advanced that nationalistic revolutions are likely to result in war.[24] The more the number of individuals holding nationalistic affiliations in a country, having lost the feeling of belonging and seeking to be part of their own state, the more is the likelihood of war erupting in such countries, as they would always transmit these feelings down to their generations, and these people will build up a violent confrontation whenever they feel ready to challenge their oppressors. Africa's youngest country, South Sudan, gained its independence from the Republic of Sudan on July 9, 2011, as a result of such pattern of nationalism, which eventually led to violent confrontation, despite the independence from the Republic of Sudan; the country has barely known peace as it plunged into another civil war just two years after jubilating independence as a nation. This broke out as a result of the disgruntledness of Riek Machar (Vice President), his Nuer tribesmen and other ethnic groups over their allegedly marginalised position by Salva Kiir and his Dinka tribesmen. The Darfur region in Sudan since the mid-2000s has not known peace either, due to ethno-religious conflicts, which, like the others mentioned in this study, was the first genocide of the 21st century. The Rohingya's in Myanmar saw the dark moon since 2015, and the Central African Republic since 2017 had its own turn on the blood bath list, with rising tensions between the Christians and the Muslims. Similar was the earlier case during the Croatian war of independence, which saw the independence of Croatia from the Socialist Republic of Yugoslavia on June 25, 1991, after years of violent confrontations.

In January 2015, a *Washington Post* article by Brian Catlos brought to light a different line of thinking regarding the often religiously inclined sectarian conflict in the Middle East. It takes a rather different line of reasoning in which nationalism predates even the coming of Christianity and Islam and modern Judaism in the region to expose the common cultures and practices amongst the people. He links this to the European idea of nationalism, which traces nations as with 'one language, one people, and one religion.'[25] This ties the explanations of the wars in this region to the same pattern that happened in Europe, where peoples with different ethnicity and religion were being targeted and eliminated. He concluded insisting that: 'The collapse of religious tolerance and plurality in today's Middle East is not, then, a manifestation of some particularly Islamic barbarism or evidence of a return to the Middle Ages.

23 DA Lake and D Rothschild, 'Containing fear: The Origins and Management of Ethnic Conflict,' *International Security* 21, no 2 (1996), 41–42.

24 E Mansfield and J Snyder, 'Democratization and the Danger of War', *International Security* 20, no 1 (1995), 19–20.

25 BA Catlos, 'Religious nationalism finds a footing in the Middle East', *The Washington Post*, January 2, 2015.

Nor is it religious in motivation, although it may be in expression. It is a symptom of what we call modernization, and its political framework: nationalism.'[26] He further predicts that the future may even experience worse than what we see today. Although we presume nationalism to be loosening its grip on the affairs of the world as a result of globalisation and improvement in technology, it is, however, returning and always will be part of the world in some way or the other. Now we see it playing a major role in ethno-religious conflicts.

It is impossible to separate or disconnect the linkages between war and genocide, which have been the child borne out of excessive stiff nationalism witnessed in many communities around the world, especially during inter-state wars. Jones even goes ahead to describe both as the 'Siamese twins of history'.[27] Extreme nationalism often leads to the outbreak of total war when the tutelage pressures to achieve cultural and ethnic homogenisation attain their uttermost level of forbearance.

Nationalism and populism which can be understood as the rebellion of ordinary citizens against the political elites, the culture and the business elite are sides of the same coin, and this comes as a result of the disintegration of the social contract that holds our societies together. The institutions of the state fail to deliver the desires of people, history and current events shows that the leaders are prone to always turn to populism and nationalism to defend themselves, and this is unhealthy to coexistence. The ideas of patriotism and nationalism that continue to gain grounds today in our societies are results of the economic models that we have, which, while restricting the growth and distribution of people, their free movements across geographic borders, is first and foremost bent on increasing the growth of capital, its distribution and also transfer, making the relations of globalisation almost entirely fiscal. This has left people practically abandoned and disconnected, in a world where the problems are transnational, requesting full international cooperation to deal with them. The moral purpose of nationalism is increasingly faded with increasing income inequality that the world is faced with. We need to understand that the essence of liberalism is to encourage and level up people in terms of income and resource distribution, but unfortunately this is not what is going on, as failure to deliver has fuelled up the populist impulse across the trans-Atlantic world. The end result of these have been nothing less but the elections of populist leaders in the United States, the United Kingdom, Italy, Poland, Hungary and have increasingly gained grounds in many other countries around the globe.

The rhetoric of nationalism as a surge of contemporary and past conflicts remains a debate widely followed and it becomes even more 'difficult to determine whether nationalism is actually the cause or just an accompanying factor into the world's unending wars' as Posen explains.[28] The connectivity between these two variables

26 Ibid.
27 A Jones, *Genocide: A Comprehensive Introduction* (New York: Routledge, 2010), 48.
28 BR Posen, 'Nationalism, the mass army, and military power', *International Security* 18, no 2 (1993), 122.

have, though, received very little attention, as even scholars often neglect nationalism as a war causing factor, says Van Evera.[29] Global and national leaders have made the problem of nationalism more noticeable, the original belief of people being that they are under an exclusive or single gigantic identity; having exclusive loyalty to the leaders has been slowly wrecked because others want to breakdown this gigantic identity into several smaller groups because they do not see it as meeting their needs. The reality remains that nationalistic feelings have been hardly unnoticeable in any conflicts the world has ever known. The underlying ideal political philosophy around nationalism has changed, as it is fractured due to the fact that it neither empowers nor cares much about the ordinary person anymore; and diagnosing the recent surges of nationalistic feelings from this assertion cannot be misleading. The immediate human reaction has retrograded and despite the cooperation in the world, countries, nationals will always want to put themselves first due to patriotism.

Conclusion

This piece has provided from a variety of sources some evidence to identify nationalism's role in the study of International Relations and judged the activities of global international institutions. In doing so, it adds to the already available knowledge and contributes a little bit to understanding how fluctuations in nationalistic feelings across the globe has provoked violent conflicts sparking either from religious, race and even during sporting activities, as explored by Bertoli.[30] Nationalism remains a vital tool for national, social and political development and cohesion, but common grounds have often been largely ignored while translating them to global politics, thus nationalism can be seen as both a curse and boon, depending on the situations to which they are applied, and it is neither a universal virtue nor some absolute wickedness. The outbreak of global pandemics such as the aged long Ebola disease and the more recent recurrent corona virus, which have in their respective times kept the world as a whole in total panic –because they have no respect for geographic or man-made boundaries, nor do they require any visas to get into any country, or choose whom to affect –, have simply proven that the real problem of the world is the idea of us versus them, in-built in unhealthy nationalism. Countries of the world under the guise of nationalism have portrayed the most barbaric behaviour in human history and the empathy we face during global pandemics is that the guns become silent, as have been the case in the protracted conflicts in Syria, Yemen and Libya, which for years drew the world's attention with the inability to arrive at a ceasefire by all parties involved. With the results of these calamities ranging from natural ones such climate change to violent conflicts, which have literally touched every part of the world, not really in essence affecting the spear-headers of nationalism, who in

29 Van Evera, 'Hypotheses', 5.

30 AD Bertoli, 'Nationalism and Conflict: Lessons from International Sports', *International Studies Quarterly* 61, no 4 (2017), 835–849.

the more profound understanding are the upper classes of the society, the bourgeois, the rich, the world lacks yet in globally concerted efforts at curbing this devastation, because of course some groups of people still benefit from the activities causing the devastation and again these groups in the worst-case scenario can afford to at least protect themselves to some extent in an event of total disaster. Nationalism today equates ethno-religiosity and is a maggot that is eating deep into the already worsening wound of the ills of human civilisation.

Without equally denying the possibility of correlation of biological warfare associated with the outbreak of these global pandemics and wars – as multiple sources have claimed already, claiming them to be politically created diseases and wars to weaken economies and gain economic pre-eminence above others –, the reality of things on ground remains that their actions are all based around nationalism and geared at achieving the good of a particular group or country over the other. From all these, nationalism's role in contemporary and past wars cannot be ignored.

References

Bertoli, AD: 'Nationalism and Conflict: Lessons from International Sports'. *International Studies Quarterly* 61, no 4 (2017), 835–849. DOI: 10.1093/isq/sqx029

Catlos, BA: 'Religious nationalism finds a footing in the Middle East'. *The Washington Post*, January 2, 2015. Available: www.washingtonpost.com/gdpr-consent/?next_url=https%3a%2f%2fwww.washingtonpost.com%2fopinions%2freligious-nationalism-finds-a-footing-in-the-middle-east%2f2015%2f01%2f02%2fb1fca096-91f2-11e4-a900-9960214d4cd7_story.html (20. 06. 2020.)

Cameroon's Anglophone Crisis at the Crossroads. International Crisis Group Report No. 250, 2017. Available: www.crisisgroup.org/africa/central-africa/cameroon/250-cameroons-anglophone- crisis-crossroads (20. 06. 2020.)

Cederman, LE, TC Warren and D Sornette: 'Testing Clausewitz: Nationalism, Mass Mobilization, and the Severity of War'. *International Organization* 65, no 4 (2011), 605–638. DOI: 10.1017/s0020818311000245

Farand, C: 'Marine Le Pen Launches Presidential Campaign hardline speech'. *The Independent*, February 5, 2017. Available: www.independent.co.uk/news/world/europe/marine-le-pen-front-national-speech-campaign-launch-islamic-fundamentalism-french-elections-a7564051.html (02. 07. 2020.)

Franck, TM: 'Tribe, Nation, World: Self-Identification in the Evolving International System'. *Ethics & International Affairs* 11 (1997), 151–169. DOI: 10.1111/j.1747-7093.1997.tb00025.x

Fukuyama, F: *The End of History and the Last Man*. New York: Perennial, 1992.

García-García, J: 'After the Great War: Nationalism, Degenerationism and Mass Psychology'. *Journal of Social and Political Psychology* 3, no 1 (2015), 103–123. DOI: 10.5964/jspp.v3i1.371

Harari, YN: *Sapiens: A Brief History of Humankind*. Random House India, 2014.

Hobbes, T: *Leviathan.* Longman Library of Primary Sources in Philosophy. New York: Routledge, 2016. DOI: 10.4324/9781315507613

Holm, HH: 'Introduction: What has Changed?' in *Whose World Order? Uneven Globalization and the End of the Cold War*, ed. by HH Holm and G Sørensen. London: Routledge, 1995. 1–7. DOI: 10.4324/9780429267857-1

Jones, A: *Genocide: A Comprehensive Introduction*. New York: Routledge, 2010. DOI: 10.4324/9780203846964

Kaldor, M: 'In Defence of New Wars'. *Stability: International Journal of Security and Development* 2, no 1 (2013). DOI: 10.5334/sta.at

Lake, DA and D Rothschild: 'Containing fear: The Origins and Management of Ethnic Conflict.' *International Security* 21, no 2 (1996), 41–75. DOI: 10.1162/isec.21.2.41

Mansfield, E and J Snyder: 'Democratization and the Danger of War'. *International Security* 20, no 1 (1995), 5–38. DOI: 10.2307/2539213

McCartney, P: 'American Nationalism and U.S. Foreign Policy from September 11 to the Iraq War'. *Political Science Quarterly* 119, no 3 (2004), 399–423. DOI: 10.2307/20202389

'Our Disgraceful Exit From the Paris Accord'. Opinion by the Editorial Board. *The New York Times*, June 1, 2017. Available: www.nytimes.com/2017/06/01/opinion/trump-paris-climate-change-agreement.html (20. 06. 2020.)

Posen, BR: 'Nationalism, the mass army, and military power'. *International Security* 18, no 2 (1993), 80–124. DOI: 10.2307/2539098

Schrock-Jacobson, GU: *Fighting and Dying for One's Country: Nationalism, International Conflict, and Globalization*. PhD Dissertation. State College: Pennsylvania, 2010.

Stiglitz, JE: *Making Globalisation Work*. New York – London: W.W. Norton & Company, 2006.

Van Evera, S: 'Hypotheses on nationalism and war'. *International Security* 18, no 4 (1994), 5–39. DOI: 10.2307/2539176

Verhás, E: 'The Turkish Minority in Western Thrace: The Long Struggle for Rights and Recognition'. Report, Minority Rights Group Europe, 2019. Available: https://minorityrights.org/wp-content/uploads/2019/10/MRG_Rep_WThrace_EN_Sept19.pdf (04. 01. 2021.)

Walt, SM: 'Nationalism rules'. *Foreign Policy*, July 15, 2011. Available: https://foreignpolicy.com/2011/07/15/nationalism-rules/ (12. 06. 2020.)

World Migration Report 2020. IOM. Available: www.iom.int/wmr/ (20. 06. 2020.)

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The Right to Seek Asylum of 'Climate Refugees'

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Although the issue of climate change mitigation and adaptation is fortunately evermore widely discussed, the problems facing 'climate refugees' only appears sporadically in the discussions adding to the current confusion. Taking recent and forecasted trends into account, the UN declares that states have serious moral obligations to provide humanitarian protection to all those displaced. The question which the international community and international lawyers face is whether states have more than just a moral obligation to provide protection. In this paper I will assess whether or not there are any roots in the various sources of international law – such as conventional law, customary international law, or the fundamental principles of international law – for the legal definition of 'climate refugees.'

Keywords: climate refugees, climate displacement, migration, climate change

As the public and political discourse on climate change gains momentum, and slowly but surely creates consensus to act among the members of the international community, the issue of 'climate refugees' only appears sporadically, causing more confusion than resolution.

According to UNHCR and the Internal Displacement Monitoring Center (IDMC), only in 2017, altogether 30.6 million people were newly displaced globally. Interestingly, almost half of these people were displaced due to conflict and over half were 'internally displaced due to natural disasters.' Overall, between 2008–2018 there were around 265 million people 'displaced due to natural disasters' [2] According to the International Federation of the Red Cross and Red Crescent Societies,[3] there are 210 million people 'affected by natural hazards,' and according to the World Bank, considering a global warming of an average 2–3 degrees (Celsius), by 2050, there may be as many as 200 million people 'forced to migrate due to environmental causes.' Consequently, the position of the International Organisation for Migration (IOM) is that by 2050,

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2 *Global Report on Internal Displacement*, Internal Displacement Monitoring Center, 2019.

3 *World Disaster Report: Focus on Recovery*, International Federation of Red Cross and Red Crescent Societies, 2001. Available: www.ifrc.org/Global/Publications/disasters/WDR/21400_WDR2001.pdf (05. 05. 2020.)

the number of 'climate migrants' may range from 25 million people to as many as 1 billion.

Taking these trends into account, the UN declares that states have serious moral obligations to provide humanitarian protection to all those displaced.[4] The question facing the international community and international legal experts on migration and displacement, is whether states have more than just a moral obligation to provide protection and whether international law obliges them in any way to provide these people with some kind of protection. In this paper I will assess whether the legal definition or a legal definition of "climate refugees" can be derived from the various sources of international law – such as conventional law, customary international law, or the fundamental principles of international law.

According to the World Bank, the international community lacks the legal institutions and processes to address the needs of the affected populations and 'to cope with the resulting migration from the affected areas'.[5] Without an appropriate legal definition, the phenomenon to be defined cannot be implanted into an appropriate branch of law, which can leave states impotent and unable to act legally. Moreover, an inappropriate definition cannot fulfil its purpose and function effectively within a given legal framework, leaving vulnerable people without protection. In order to be able to come up with a relevant and practically applicable definition, we must assess those systems of norms within international law that could potentially accommodate the regularisation of 'climate change induced migration' or 'environmental displacement'.

In this article I aim to present some of the concurrent non-legal definitions for 'climate refugees' in order to assess whether this phenomenon could be regularised under international law. When assessing international refugee law, one must start by assessing the historical context within which this branch of international law was born. This is essential in order for us to understand why displaced persons are under – or at least should enjoy – international protection. After this contextual analysis, one must establish those fundamental definitions which construct the current system of norms and identify points of distinction. Finally, it is into this theoretical framework that I will attempt to embed the term "environmentally displaced person" and test their compatibility.

1. Fleeing from climate – the right to seek asylum

The term 'climate refugees' was first used in 2011, in a report commissioned by the U.K. government, which defines them as 'people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-

4 *Global Report on Internal Displacement 2018*, Internal Displacement Monitoring Centre, 2019. Available: www.internal-displacement.org/global-report/grid2018/ (01. 07. 2020.)

5 *Migration and Remittances. Recent Developments and Outlook*, World Bank Group, KNOMAD. Migration and Development Brief, 26 April 2016, iii.

level rise, extreme weather events, and drought and water scarcity.'[6] Although this definition seems fairly comprehensible at first, its practical application would prove difficult. It is unclear what 'having to leave' means, to what extent 'alterations in their natural environment' are acceptable, and how the adverse effects of climate change may be distinguished legally from anthropogenic environmental deterioration.

Within the United Nations and its associated organisations, the term 'climate refugees' as such has never been used or referred to due to the nature of refugee law – as described later. However, in a 1985 United Nations Environment Programme policy paper titled *Environmental Refugees*, the author El-Hinnawi defines 'environmental refugees' as 'those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardised their existence and/or seriously affected the quality of their life. By »environmental disruption« in this definition any physical, chemical, and/or biological changes in the ecosystem (or resource base) is meant that render it, temporarily or permanently, unsuitable to support human life.'[7] This very wide definition encompasses both internal and international migration, as well as temporary and permanent migration. The definition, however, focuses on forced displacement, and does not address mobility as such. It addresses all types of environmental changes, and not only those induced by climate change. The definition was vividly criticised because of its large scope: amongst others, Bates notes that this definition makes no distinction between refugees who flee volcanic eruptions and those who gradually leave their homes as soil quality declines.[8]

At this point it must be highlighted that 'climate refugees' are not the same as 'environmental refugees'. Our climate system is just one of the major components of our natural environment,[9] therefore the adverse effects of climate change are

6 *Migration and Global Environmental Change*, Foresight, Final Project Report. London, The Government Office for Science, 2011, 151.

7 E El-Hinnawi, *Environmental Refugees*, Nairobi, United Nations Environment Programme, 1985. 'Environmental refugees' have alternative definitions as well, making the whole problem of legally defining this phenomenon even more complex. According to Myers: 'Environmental refugees are persons who can no longer gain a secure livelihood in their traditional homelands because of environmental factors of unusual scope, notably drought, desertification, deforestation, soil erosion, water shortages and climate change, also natural disaster such as cyclones, storm surges and floods. In face of these environmental threats, people feel they have no alternative but to seek sustenance elsewhere, whether within their own countries or beyond and whether on a semi-permanent or permanent basis.' Betsy Hartmann, 'Rethinking climate refugees and climate conflict: rhetoric, reality and the politics of policy discourse', *Journal of International Development* 22 (2010), 235.

8 F Gemenne, 'Why the numbers don't add up: A review of estimates and predictions of people displaced by environmental changes', in *Migration and Global Environmental Change – Review of Drivers of Migration*, ed. by R Black, N Arnell and S Dercon. Special issue of *Global Environmental Change* 21, Supplement 1 (2011), 42.

9 See Encylopedia Britannica: 'Environment: the complex of physical, chemical, and biotic factors that act upon an organism or an ecological community and ultimately determine its form and survival. Some of its major components are the atmosphere, the climate, the soil, the hydrosphere and the oceans.' Available: www.britannica.com/science/environment (29. 06. 2020.)

examples of environmental degradation; however, the latter encompasses a much wider variety of biophysical alterations in our natural environment.[10] Therefore, the distinction between 'climate refugees' and 'environmental refugees' is intentional, as climate refugees are just a sub-group of displaced persons within the broader group of environmental refugees. Additionally, according to the Climate And Migration Coalition,[11] environmental degradation can manifest itself in rapid on-set events such as natural disasters (earthquakes, extreme weather events, and so on) and slow on-set events that involve a gradual deterioration of the environment (such as salinisation, land degradation, and so on). As part of the broader environmental system, the adverse effects of climate change can manifest themselves in rapid on-set events (such as forest fires, cyclones, floods) and slow on-set events (such as sea-level rise, droughts, melting ice). It is essential to make these distinctions, since the occurring event will determine the type of 'displacement' it causes. The consequences of rapid on-set events are displacement – internal displacement in particular, since people tend to move towards the nearest safe place –, permanent or temporary migration flows with a bigger probability of return and participation in rebuilding. Slow on-set events result in displacement as well as voluntary migration – as migrants have more time to deliberate on where to move –, international migration is characteristic – since the displaced have more time to plan –, and their move may be permanent, temporary or even circular.

For the purposes of this paper, I will use the term 'environmental refugees' in order to assess the legal context, as it is a broader definition, including climate refugees, and it seems to be easier to manoeuver within the current heated political climate surrounding climate change and migration.

International refugee law derives from a range of – universal and regional – treaties, rules of customary international law, general principles of law, and national laws and standards. Examples are the 1951 (Geneva) Convention relating to the Status of Refugees and its 1967 (New York) Protocol, subsequent regional instruments such as the 1969 OAU Convention on Refugees, the 1984 Cartagena Declaration, the EU Qualification Directive and other relevant instruments of the EU *asylum acquis communautaire* building on universal foundations, as well as the statutes of the UNRWA, the UNHCR and IOM, and the 1966 Bangkok Principles.

The Geneva Convention was drawn up after the horrific events of the Second World War, with an aim to prevent its repetition by prohibiting the events that led to it, namely persecution.[12] As such, a 'refugee' is 'a person who, owing to a well-

10 Environmental degradation can be natural or caused by disproportionate human intervention. Environmental degradation can be slow and rapid on-set, for instance, salinisation of land or the devastation of a natural disaster, such as an earthquake. Within the scope of environmental degradation the adverse effects of climate change may also be rapid or slow on-set, for instance, the huge devastation of a tidal wave or gradual sea-level rise.

11 See Climate and Migration. Available: http://climatemigration.org.uk/ (07. 05. 2020.)

12 Angela Williams, 'Turning the tide: Recognizing Climate Change Refugees in International Law', *Law & Policy* 30, no 4 (2008), 502–529.

founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned before, is unable or, owing to such fear, unwilling to return to it'. Furthermore, analysing the legal text, it must be established that the list of definitive elements of a 'refugee' is exhaustive and as such – as mentioned above – the most difficult prerequisite to fulfil to be qualified as a refugee would be the 'fear of persecution'. Since the term 'persecution' implies an 'element of intent to harm or failure to prevent harm from occurring',[13] we must accept that the term refugee is unsuitable for describing those displaced by environmental factors – under universal conventional law. Consequently, the authors of the above cited policy papers use the term 'refugees' casually, since the Geneva Convention provides an uncontestable definition.

Looking at the regional contexts, while there is no regional convention on refugees in Europe – and even the EU applies the same refugee definition as the Geneva Convention in its acquis –, the refugee definition in Africa and America is broader than the universal definition. According to Article 1 and Paragraph 2 of the African Refugee Convention (signed in 1969): 'The term »refugee« shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.'[14] Moreover, according to the Cartagena Declaration on Refugees: 'the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.'[15] It can easily be argued that an 'event seriously disturbing public order' may include natural hazards, whether these be rapid or slow on-set, since public order can easily be disrupted by environmental disasters and slow-on set biophysical degradation.[16] Although this reasoning has not yet been put forward as legal argument, and has not yet provided a legal basis for a case, these documents – at least – provide a model for

13 F Renaud et al., 'Environmental Degradation and Migration' (Berlin: Berlin Institut für Bevölkerung und Entwicklung, 2016). 2.

14 OAU Convention, Governing the Specific Aspects of Refugee Problems in Africa. UNHCR.

15 Ibid; R Zetter, *Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks*, Research Report (Refugee Studies Centre, Oxford Department of International Development: University of Oxford, 2011).

16 OAU Convention; Zetter, *Protecting*, 19.

legalising the term 'environmental refugees'.[17] Meanwhile in Europe, as Zetter pointed it out,[18] EU member states have implemented the practice of restricting the application of the refugee status. Moreover, although the number of irregular migrants entering the EU has plummeted since the 2015 Refugee Crisis, the securitisation of migration continues.[19] This recent trend therefore substantiates that the legal interpretation of the definitions of the Geneva Convention will continue to be restrictive in the region.

Nevertheless, it must also be established that just because the members of the affected population do not qualify as refugees according to the strict application of the definition, and therefore their right to asylum is restricted, this does not mean that these people do not enjoy the right to seek asylum, and could enjoy international protection – based on customary international law, rather than conventional law.

Some experts suggest that 'environmental refugees' should be dealt with within the international human rights regime, rather than refugee law, which proves to be more strict and less flexible.[20] International law as a whole is based on the so-called Human Rights Based Approach,[21] enshrined in the UN Charter. This means that the international human rights regime is a legal framework that cannot be superseded. As stated by the UNHCR, for example, this conventional refugee law is complemented by international human rights law, which makes up the international refugee protection regime, collectively.[22] More specifically, it is evident that a state must not only protect its constituents, but also non-citizens, that is, migrants or those displaced. First, the UN Charter and the concept of state sovereignty oblige a state to refrain from harming the citizens of another state, even if these people are within their territory. Secondly, the essence of human rights is that they are inalienable from any person, therefore these must be granted and respected by all states regardless of the person's citizenship, or even the lack thereof. Consequently, the international human rights regime, as a framework, provides the legal foundations for the protection of 'environmental refugees' and prescribes an international legal obligation on states – at least in principle.

At this point, it must also be established that the international human rights regime provides for the protection of the human rights of 'environmental refugees' but not for

17 It must be noted that only the OAU Refugee Convention is legally binding upon its member states, the Cartagena Declaration is merely a political statement made by the member states of the OAS, without any legal obligations. See Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama.

18 R Zetter, 'More labels, fewer refugees: remaking the refugee label in an era of globalization', *Journal of Refugee Studies* 20, no 2 (2007), 172–192.

19 Tamirace Fakhoury, 'Tangled Connections between Migration and Security in the Wake of the Arab Uprisings: A European Perspective', IAI Working Papers, 16.06.2016. 6.

20 Hartmann, 'Rethinking climate refugees, 238.

21 TA Aleinikoff, 'International legal norms on migration: substance without architecture', in *International Migration Law*, ed. by R Cholewinski, R Perruchoud and E MacDonald (The Hague: TMC Asser Press, 2007), 469.

22 The refugee concept under international law (Global Compact for safe, orderly and regular migration), UNHCR Statement, New York, 12–15 March, 2018.

that of their right to seek asylum, in particular. Article 14 of the Universal Declaration on Human Rights specifically declares that 'everyone has the right to seek and to enjoy in other countries asylum from persecution'. Building on this, regional human rights conventions and declarations also apply this specification when defining the right to seek asylum. Article 12 of the African Human Rights Charter states that: 'every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.' Article 22 of the American Charter of Human Rights states that: 'every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.' Article 28 of the Arab Charter of Human Rights proclaims that: 'Everyone shall have the right to seek political asylum in other countries to escape persecution. This right shall not be enjoyed by persons facing prosecution for an offense under ordinary criminal law. Political refugees shall not be extraditable.' Article 16 of the ASEAN Human Rights Declaration states that: 'Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.' Interestingly, neither the European Convention on Human Rights, nor the EU Fundamental Rights Charter include particular provisions on the right to seek asylum. This clearly demonstrates that when the Geneva Convention was drawn up, it was tailored to the specifics of the European context at the time so that there was no further need to elaborate on the right to seek asylum in the subsequent regional conventions.

It may thus be concluded that under current international conventions or under customary international law, it is impossible to qualify 'environmental refugees' as 'refugees'. However, as demonstrated above, this does not mean that the vulnerable are left without (international) protection.

Besides the international human rights regime, some experts suggest that the UNFCCC[23] could accommodate this novel need for a completely new legal instrument that addresses climate change induced migration. Such protection of the rights of vulnerable people could thus be granted even to certain groups of people – such as the populations inhabiting the affected areas –, rather than to individual persons as per the Geneva Convention.[24] Dealing with the issues of 'climate refugees' and viewing it as a single complex phenomenon, as suggested by migration theories such as the migrant trajectory or migrant life-cycle approach,[25] may render long-term solutions. Assessing human mobility as a process enables regulations that address

23 The Cancun Adaptation Framework (adopted at the 2010 UNFCCC Conference in Cancun) 'calls upon states to enhance their action on adaptation by pursuing a range of measures, including to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.'

24 *Migration and Global Environmental Change*, 151.

25 Anne-Grethe Nielsen, 'Cooperation Mechanisms', in *International Migration Law*, ed. by R Cholewinski, R Perruchoud and E MacDonald (The Hague: TMC Asser Press, 2007), 407.

the double needs of the stakeholders; namely the process of moving away from a place and arriving – and integrating – in a new place.[26]

2. Displacement – the point of intersection of international migration law and environmental law

Although at this point in time, it would be an overstatement to call the loose bundle of international legal norms related to the status or refugees, migrants workers, and displaced persons a regime of international migration law, according to Aleinikoff,[27] undoubtedly there is a budding new field of international law in the form of international conventions on certain forms of migration (such as the Geneva Convention relating to the Status of Refugees, the Palermo protocol on trafficking, the international Convention on the Protection of the Rights of All Migrant Workers and their Families), other relevant conventions (such as the Vienna Convention on Consular Relations), regional conventions (such as the right to free movement in certain economic areas superseding state borders, as well as regional refugee conventions), customary international law (such as the right to leave and return to the country of origin in the non-binding Universal Declaration of Human Rights), and fundamental and other principles of international law (such as the Guiding Principles on Internal Displacement and the ILO multilateral framework on labour migration).[28] Additionally, the international community is on the road to a global governance of migration via a wide range of cooperative multi-state processes, which I will present in more detail and with a focus on the topic of 'environmental refugees'.

International cooperation in the field of migration law thus far took various forms ranging from dialogue and sharing information, experiences and practices, to cooperation in policy development and operational implementation, since the management of human mobility is a sovereign right and responsibility of states, and consequently, migration policies have traditionally been developed at the national level,[29] with a focus on national (state) security, rather than operating within the human security paradigm. At this stage of development of international migration law, the relevance to 'environmental refugees' within these mechanisms is not emphasised much – neither in politics, nor in research –, although Fischer describes a definitely noticeable spill-over effect, whereby humanitarian activism spilled over to other issues such as environmental deterioration[30] ever since the international community realised that environmental pollution is borderless. Coupled by now with the slow acknowledgement of the adverse effects of anthropogenic climate

26 Zoltán Hautzinger, 'A magyar idegenjog rendszere és az idegenjogi (szak)igazgatás', *Pro publico bono – Magyar Közigazgatás* no 2 (2014), 69.

27 Aleinikoff, 'International legal norms', 474.

28 Ibid. 472–473.

29 Nielsen, 'Cooperation Mechanisms', 405.

30 PB Fisher, 'Climate change and human security in Tuvalu', *Global Change, Peace & Security* 23, no 3 (2011), 295.

change, this culminated in the current, mainstream global environmental and climate movements. Moreover, with the introduction of the Sustainable Development agenda, first proclaimed by the Limits of Growth report commissioned by the Club of Rome in 1972, the international community started to pay more attention to the social, economic, political and interstate implications environmental deterioration may have, which require international cooperation for a resolution.

As mentioned above, although the principal subjects are still sovereign states, there has been a noticeable shift in the focus of international legal instruments to the human security paradigm away from the traditional state (or national) security approach.[31] The United Nations Development Program acknowledged, for the first time in 1994, that environmental deterioration causes human insecurity which may lead to 'migration'.[32] Contesting – to some extent – the reigning security paradigm, the UNDP identified seven categories of threats to human security and proclaimed that disruptions in the economic lives of individuals and their families, food insecurity, dislocation due to environmental disasters, political conflict – related to climate change and changes in the natural environment – all contribute to human insecurity that drive 'migration on a mass scale'.[33] Moreover, the World Bank has stated multiple times that apart from persecution, armed conflict, generalised violence or human rights violations, 'forced migrants' are displaced also by natural or environmental disasters, human-made chemical or nuclear disasters, and famine. And while forced displacement is typically viewed as a humanitarian issue, it also has – among other economic, social, political implications – important environmental impacts on the places of origin and destination.[34] Finally, the IPCC then went on as far as to report that 'migration and resettlement may be the most threatening short-term effects of climate change on human settlements'.[35] To sum up, it is the effects of natural hazards, including the adverse impacts of climate change, that may overwhelm the resilience or adaptive capacity of an affected community or society, thus leading to a disaster that potentially results in 'displacement'.[36]

In 2001, the Swiss government initiated an intergovernmental cooperation for managing international migration on a national, regional and global level. The Berne Initiative not only started building regional capacity but also allowed for

31 Aramide Odutayo, 'Human security and the international refugee crisis', *Journal of Global Ethics* 12 no 3 (2016), 375.
32 *Human Development Report 1994*, UNDP.
33 With that said, Hammerstad states that although (forced) migration can have serious implications on state security, migration has become so 'over-securitised' that it procreates novel security threats that have not existed before, and undermines the fundamentals of our international regimes on migration, such as refugee protection. Odutayo, 'Human security', 366.
34 *Migration and Remittances*, 15.
35 *Report prepared for Intergovernmental Panel on Climate Change by Working Group II*, ed. by WJMcG Tegart, GW Sheldon and DC Griffiths (Canberra, Australia: Australian Government Publishing Service, 1991), 294.
36 Agenda for the protection of cross-border displaced persons in the context of disasters and climate change, Vol. 1, The Nansen Initiative, 2015, 16.

the assessment of the regional migration situation. In the initiative's final document titled International Agenda for Migration Management (IAMM), natural hazrads, man-made disasters and ecological degradation are identified as causes for 'population displacement.'[37] Without any legal obligations, the participating states agreed on the following: Consider 'the link between natural and man-made disasters, man-made catastrophes and ecological degradation on one side and population displacement on the other in national migration policies'; promote 'the need to reduce the causes and consequences of natural disasters and environmental degradation'; intensify 'international cooperation and efforts among States, international organizations and other interested stakeholders to protect and improve the environment'; implement 'measures to reduce the incidence and scope of natural disasters and the displacements associated with them'; promote 'activities to avoid serious environmental impacts of population displacement, in particular the impacts of prolonged stay'; sensitise 'migrants to the importance of environmental preservation'. The IAMM also stated that: 'Irregular migration results from the voluntary choices of individuals seeking better opportunities for themselves and their families as well as compulsion resulting from armed conflicts, human rights violations, environmental degradation, or severe lack of economic opportunity.'[38]

The acquis of the IAMM has also been incorporated into the International Dialogue on Migration launched by the IOM. The Dialogue has run for about 20 years now as an informal, legally non-binding consultational mechanism with a pre-set topic. The IDM has put 'environmental migration' on its agenda in 2007, and 'climate change induced migration' in particular in 2011.

Meanwhile in 2013, as the result of High-Level Dialogue on International Migration and Development, the UN General Assembly issued a declaration[39] which stated that states should: 'recognize that international migration is a multidimensional reality of major relevance for the development of origin, transit and destination countries, and in this regard recognize that international migration is a crosscutting phenomenon

37 At the same time, the document also establishes that migratory processes also have an impact on our natural environment, especially in urban areas.

38 In 2003, Kofi Annan, Secretary General of the UN at the time, initiated a core group – with Brazil, Morocco, The Philippines, Sweden and Switzerland – and established the Global Commission on International Migration. The mandate of the global commission of 19 independent migration experts was to provide recommendations for a comprehensive and coherent, global response to international migration. After 18 months of research and reporting building on regionalism and multistakeholder approach, the Global Commission submitted its final report to the UN General Assembly. Interestingly enough the only mention of the topic discussed in the present article was the following. As the report states: 'The states of the former Soviet Union have experienced a particularly complex pattern of human mobility', where, among other types of migration patterns, 'ecological migrants' are defined as 'people who have been forced to move by environmental disaster'. The report also mentions that 'a growing number of small farmers [in developing countries] must also cope with the problem of environmental degradation, as well as the appropriation of agricultural land by the state and private enterprise'. GCIM Report 2005.

39 *Migration, human rights and governance*, Handbook for Parliamentarians No. 24. Inter-Parliamentary Union, 2015, 189, 191.

that should be addressed in a coherent, comprehensive and balanced manner, integrating development with due regard for social, economic and environmental dimensions and respecting human rights'; and 'recognize the need to consider the role that environmental factors may play in migration'. Following this in 2016, 193 states declared at the UN General Assembly that it is absolutely necessary for the international community to regulate human mobility globally and comprehensively, and so in Annex 2 of the New York Declaration on Migrants and Refugees a new intergovernmental consultation process was recommended. The process ended on December 10, 2018, and the UN General Assembly approved the Global Compact for Safe, Orderly and Regular Migration on December 19. The Global Compact identified 23 objectives, two of which specifically deals with the topic of the present paper. These are Objective 2:[40] minimise the adverse drivers and structural factors that compel people to leave their country of origin: Natural disasters, the adverse effects of climate change, and environmental degradation; and Objective 5:[41] enhance availability and flexibility of pathways for regular migration.

In the process described above, climate change, environmental degradation, natural disasters are all mentioned to some extent, and usually this is why a specific document raises one specific issue but not the other. Nevertheless, there are processes

40 'Strengthen joint analysis and sharing of information to better map, understand, predict and address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, environmental degradation, as well as other precarious situations, while ensuring effective respect for and protection and fulfilment of the human rights of all migrants; Develop adaptation and resilience strategies to sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, taking into account the potential implications for migration, while recognizing that adaptation in the country of origin is a priority; Integrate displacement considerations into disaster preparedness strategies and promote cooperation with neighbouring and other relevant countries to prepare for early warning, contingency planning, stockpiling, coordination mechanisms, evacuation planning, reception and assistance arrangements, and public information; Harmonize and develop approaches and mechanisms at the subregional and regional levels to address the vulnerabilities of persons affected by sudden-onset and slow-onset natural disasters, by ensuring that they have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are, and by promoting sustainable outcomes that increase resilience and self-reliance, taking into account the capacities of all countries involved; Develop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters, including by taking into consideration relevant recommendations from consultative processes, such as the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, and the Platform on Disaster Displacement.' Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, Marrakech, Morocco, 10 and 11 December 2018 – Draft outcome document of the Conference. Global Compact for Migration. 8. Available: https://undocs.org/A/CONF.231/3 (30. 07. 2020.)

41 'Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible'. Global Compact for Migration, 11.

which focus on the climate change – migration nexus specifically. By now, both the UN and the World Bank recognise 'migration' as a means of adaptation to climate change.[42] According to the IPCC, 'people may decide to migrate in any of the following cases:

- loss of housing (because of river or sea flooding or mudslides);
- loss of living resources (like water, energy and food supply or employment affected by climate change);
- loss of social and cultural resources (loss of cultural properties, neighbourhood or community networks, particularly in the case of a devastating flood).'[43]

Climate change could translate into migration of impoverished people from rural to urban areas (developing countries), from coastal lowlands (particularly densely inhabited delta areas) to inland areas, and possibly across national boundaries. The most vulnerable populations are those exposed to natural hazards.[44] The Cancun Climate Change Adaptation Framework (within the UNFCCC) identified three forms of movement: a) displacement, understood as primarily forced movement of persons; b) migration, understood as the primarily voluntary movement of persons; and c) planned relocation, understood as planned process of settling persons or groups of persons to a new location.[45] Such displacement can occur a) within a country (internal displacement), or b) across international borders (cross-border displacement).[46]

Building on the Cancun Framework, the Nansen Initiative was launched as a state-led, bottom-up consultative process intended to identify effective practices and build consensus on fundamental principles to address the protection and assistance needs of persons displaced across borders in the context of disasters, including climate change. The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (the Protection Agenda) consolidated the outcomes of a series of regional intergovernmental consultations and civil society meetings.[47] The Protection Agenda introduced a new definition. The term 'disaster displacement' refers to situations where people are forced or obliged to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard. Disaster displacement is a multi-causal phenomenon, where population growth, underdevelopment, weak governance, armed conflict, violence, poor urban planning in rapidly expanding cities as well as climate change, natural hazards and environmental degradation, all come into play. Such displacement results from the fact that affected persons are exposed to natural hazards in a situation where they are too vulnerable and lack the resilience to

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42 Kayly Ober, 'Migration as adaptation – exploring mobility as a coping strategy for climate change', The UK Climate Change and Migration Coalition, 2014, 4.

43 *Report prepared for IPCC*, 5–9.

44 *Report prepared for IPCC*, 5–11.

45 Protection Agenda, 17.

46 Ibid.

47 Ibid. 15.

withstand the impacts of that hazard.[48] Most of the disaster displacement takes place within the borders of a country, however, some displaced persons do cross borders to seek safety, protection and assistance (hence refuge). The Nansen Initiative identified around 50 countries which have received or refrained from returning people in the aftermath of disasters, in particular those caused by natural hazards. [49]

According to the Protection Agenda, persons who have moved across international borders in disaster contexts are protected by human rights law, and where applicable, refugee law. However, the Protection Agenda reaffirms that international law does not address admission, access to basic services during temporary or permanent stay, and conditions for return. Only a few states have national, bilateral or (sub-) regional agreements that address these issues, the vast majority of countries lack any such normative framework[50] and states not only act individually – without any international coordination in practice – but relevant institutions and operational responses revealed a general lack of preparedness leading to ad hoc responses in most cases.[51] As cited above, the World Bank has stated before that the international community still lacks the legal institutions and processes to address the needs of the affected populations. Nonetheless, disaster displacement law conceptualises a comprehensive approach to cross-border disaster displacement, which covers (a) the protection of cross-border disaster-displaced persons, as well as internally displaced persons, (b) measures to manage disaster displacement risks in the country of origin, such as preventing displacement, and (c) helping people to stay, or when movement is unavoidable, to allow people to move away from the danger from areas facing high levels of disaster risk.[52]

In an attempt to summarise the outcomes and the legal acquis of these processes, the IOM distilled two working definitions and referred to these people as "environmentally displaced persons" and "environmental migrants". Building on the definition of "internally displaced person" formulated in the Guiding Principles on Internal Displacement by the UNHCR and the IDMC, an environmentally displaced person is a person who is displaced within their country of habitual residence or who has crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one.[53] This term must be distinguished from the European Migration Network's definition of 'environmentally displaced person', which simply refers to 'a person subject to forced migration as a result of sudden, drastic environmental changes'.[54] The other term defined by IOM is 'environmental migrant' referring to 'persons or groups of persons who, predominantly for reasons

48 Ibid. 16.
49 Ibid. 16.
50 Ibid. 18.
51 Ibid.
52 Ibid. 19.
53 MECLEP Glossary, International Organisation for Migration, 2014, 13.
54 Asylum and Migration Glossary 6.0. European Migration Network (EMN), 2018.

of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad'. According to IOM this term is used as a less controversial alternative to 'environmental refugee' or 'climate refugee' that have no legal basis in international law, to refer to a category of environmental migrants whose movement is of a clearly forced nature.[55]

It can be established from all of the processes introduced above, that there is no single definition or description even for the phenomenon that is currently referred to as the issue of climate or environmental refugees. The definitions put forward by the UNHCR, IDMC and IOM are just as broad as El-Hinnawi's definition submitted to UNEP back in the 1970s, which may prove to be difficult to apply for states within their national immigration policy, but which at least gave the mandate for UNHCR and other relevant international organisations to provide protection to people in un-regularised, vulnerable situations. Moreover, international cooperation will most certainly contribute to more effective national policy development, avoiding overlap and duplication and facilitating a more efficient use of resources at national, regional and international levels.[56]

3. State practice(s)

International legal developments are necessary but insufficient on their own to serve as sources of international law. Cooperation mechanisms, guidelines and directives must be backed up by state practice. As mentioned above, state practice is ad hoc, inconsistent and totally autonomous. As it was also pointed out above, precisely defined legal definitions are necessary for national immigration and asylum authorities to fulfil their (international) legal obligations and provide the protection needed.

According to the Protection Agenda, providing protection abroad to cross-border disaster-displaced person can take two forms: a) states can either admit such persons to their territory and allow them to stay at least temporarily, or b) states can refrain from returning these foreigners to a disaster affected country who were already present in the receiving state when the disaster occurred. Either way, such humanitarian protection measures are usually provided temporarily, giving rise to the need to find lasting solutions for them.[57] In the event of a devastating disaster that induces the cross-border movement of the affected people, the receiving states use ad hoc measures, such as humanitarian visas issued to individuals, or temporary protection measures applied to a group of people in case of mass migratory flows. Recently though, acknowledging that adapting to the adverse of climate change and

55 MECLEP Glossary, 13.

56 Nielsen, 'Cooperation Mechanisms', 405.

57 Protection Agenda, 7.

their social consequences is inevitable, and needs a more institutionalised form of management, New Zealand introduced the so-called Pacific Access Category Resident visa in 2018, which is issued to citizens of Tuvalu (75 visas per year), Kiribati (75 visas per year), Tonga (250 visas per year), and Fiji (250 visas per year). In this way, New Zealand identified highly vulnerable geographical areas within its vicinity, where people will be affected the most and which may serve as countries of origin vis-a-vis the state of New Zealand, a country of destination. Not going into any further detail on their personal contexts though, perhaps ignoring the emergency of the situation for now, the government decided to issue these visas in a lottery system.[58] This new visa regime is based on the sovereign decision of New Zealand to act and provide (national) protection to vulnerable people arriving to their country, regardless of their international legal obligations to provide protection.

A more practical point of view on whether or not 'environmental refugees', 'climate refugees', 'environmentally displaced persons' or 'environmental migrants' must be provided international protection (complementary protection), is the simple fact that these people cannot return home. Complementary protection is a form of legal protection accorded to a person who is not entitled to protection under the Geneva Convention, but cannot be returned to their country of origin based on expanded non-refoulement obligations under international human rights law. As has been suggested before by both Zetter and Nagy,[59] among others, the principle of non-refoulement may also apply to these novel categories of displaced persons. Most recently this theory has been confirmed by the decision of the UN Human Rights Committee (HRC) pursuant to the Teitiota v. New Zealand case offers, which recognises that climate change impacts affecting migrants in their State of origin can trigger obligations of non-refoulement binding on the States they enter,[60] not leaving anyone in vulnerable position without protection. Considering the trends in international law, this case offers a possible solution on how the international community with its international legal system is going to address climate change displacement.

Conclusions

The Geneva Convention in its current form is unsuitable to provide international protection to 'climate refugees' however, there is nothing prohibiting the international community from amending the Convention in order to accommodate new historic needs, and as I have presented it above, there are model regional initiatives in force already which could serve as examples for the international community. In the past two decades international environmental law has gained momentum, and especially

58 See www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa (31. 07. 2018.)

59 Zetter, *Protecting*, 20; Boldizsár Nagy, *A magyar menekültjog és menekültügy a rendszerváltozástól az Európai Unióba lépésig* (Budapest: Gondolat, 2012), 59.

60 UN Human Rights Committee, Views Adopted on Teitiota Communication, 2015.

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in the past decade the call for global governance on international migration has also strengthened launching numerous international, regional, bilateral intergovernmental cooperation mechanisms complemented by consultations with international and other relevant civil society organisations. Although for the time being the definitions of 'climate refugees', 'environmental refugees', 'environmental displacement', 'environmental migration', as well as 'disaster displacement' are broad or too vague, are applied interchangeably, inconsistently or in consistence with the political agendas of the negotiation platforms, there is definite consensus regarding the environmental deterioration (and climate change in particular) – migration nexus. And although at first international lawyers may urge for a single, uniform definition, since that would be the most legally sound response, there are some institutional and international legal means of providing protection to vulnerable people, without having to engage in uncomfortable political debates.

References

Aleinikoff, TA: 'International legal norms on migration: substance without architecture', in *International Migration Law*, ed. by R Cholewinski, R Perruchoud and E MacDonald. The Hague: TMC Asser Press, 2007, 467–479.

Asylum and Migration Glossary 6.0. European Migration Network (EMN), 2018.

El-Hinnawi, E: *Environmental Refugees*. Nairobi: United Nations Environment Programme, 1985.

Fakhoury, Tamirace: 'Tangled Connections between Migration and Security in the Wake of the Arab Uprisings: A European Perspective'. IAI Working Papers, 16.06.2016. Available: www.iai.it/sites/default/files/iaiwp1606.pdf (05. 01. 2021.)

Fisher, PB: 'Climate change and human security in Tuvalu'. *Global Change, Peace & Security* 23, no 3 (2011), 293–313. DOI: 10.1080/14781158.2011.601852

Gemenne, F: 'Why the numbers don't add up: A review of estimates and predictions of people displaced by environmental changes', in *Migration and Global Environmental Change – Review of Drivers of Migration*, ed. by R Black, N Arnell and S Dercon. Special issue of *Global Environmental Change* 21, Supplement 1 (2011). DOI: 10.1016/j.gloenvcha.2011.09.005

Global Report on Internal Displacement 2018. Internal Displacement Monitoring Centre, 2019. Available: www.internal-displacement.org/global-report/grid2018/ (01. 07. 2020.)

Hartmann, Betsy: 'Rethinking climate refugees and climate conflict: rhetoric, reality and the politics of policy discourse'. *Journal of International Development* 22 (2010), 233–246. DOI: 10.1002/jid.1676

Hautzinger, Zoltán: 'A magyar idegenjog rendszere és az idegenjogi (szak)igazgatás'. *Pro publico bono – Magyar Közigazgatás* no 2 (2014), 69–77.

Human Development Report 1994. UNDP. Available: http://hdr.undp.org/en/content/human-development-report-1994 (01. 07. 2020.)

MECLEP Glossary. International Organisation for Migration, 2014. Available: https://publications.iom.int/system/files/pdf/meclep_glossary_en.pdf?language=en (22. 06. 2020.)

Migration and Global Environmental Change. Foresight, Final Project Report. London: The Government Office for Science, 2011. Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf (05. 01. 2021.)

Migration and Remittances. Recent Developments and Outlook. World Bank Group, KNOMAD. Migration and Development Brief, 26 April 2016. Available: https://openknowledge.worldbank.org/bitstream/handle/10986/24012/9781464809132.pdf?sequence=2&isAllowed=y (05. 05. 2020.)

Migration, human rights and governance. Handbook for Parliamentarians No. 24. Inter-Parliamentary Union, 2015. Available: https://tbinternet.ohchr.org/Treaties/CMW/Shared%20 Documents/1_Global/INT_CMW_INF_7826_E.pdf (07. 05. 2020.)

Nagy, Boldizsár: *A magyar menekültjog és menekültügy a rendszerváltozástól az Európai Unióba lépésig.* Budapest: Gondolat, 2012.

Nielsen, Anne-Grethe: 'Cooperation Mechanisms', in *International Migration Law*, ed. by R Cholewinski, R Perruchoud and E MacDonald. The Hague: TMC Asser Press, 2007, 405–427.

Ober, Kayly: 'Migration as adaptation – exploring mobility as a coping strategy for climate change'. The UK Climate Change and Migration Coalition, 2014. Available: http://climatemigration.org.uk/wp-content/uploads/2014/02/migration_adaptation_climate.pdf (15. 12. 2019.)

Odutayo, Aramide: 'Human security and the international refugee crisis'. *Journal of Global Ethics* 12 no 3 (2016), 365–379. DOI: 10.1080/17449626.2016.1251484

Renaud, F et al.: 'Environmental Degradation and Migration'. Berlin: Berlin Institut für Bevölkerung und Entwicklung, 2016. Available: https://web.archive.org/web/20160705141123/http://www.berlin-institut.org/fileadmin/user_upload/handbuch_texte/pdf_Renaud_Environmental.pdf (29. 06. 2020.)

Report prepared for Intergovernmental Panel on Climate Change by Working Group II, ed. by WJMcG Tegart, GW Sheldon and DC Griffiths. Canberra, Australia: Australian Government Publishing Service, 1991.

Williams, Angela: 'Turning the tide: Recognizing Climate Change Refugees in International Law'. *Law & Policy* 30, no 4 (2008), 502–529. DOI: 10.1111/j.1467-9930.2008.00290.x

World Disaster Report: Focus on Recovery. International Federation of Red Cross and Red Crescent Societies, 2001. Available: www.ifrc.org/Global/Publications/disasters/WDR/21400_WDR2001.pdf (05. 05. 2020.)

Zetter, R: 'More labels, fewer refugees: remaking the refugee label in an era of globalization'. *Journal of Refugee Studies* 20, no 2 (2007), 172–192. DOI: 10.1093/jrs/fem011

Zetter, R: *Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks.* Research Report, Refugee Studies Centre, Oxford Department of International Development: University of Oxford, 2011. Available: www.refworld.org/pdfid/4da579792.pdf (05. 01. 2021.)

Legal sources

Agenda for the protection of cross-border displaced persons in the context of disasters and climate change, Vol. 1. The Nansen Initiative, 2015. (Protection Agenda.) Available: https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_-low_res.pdf (22. 06. 2020.)

Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama. Available: https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf (04. 05. 2020.)

Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, Marrakech, Morocco, 10 and 11 December 2018 – Draft outcome document of the

Conference. (Global Compact for Migration.) Available: https://undocs.org/A/CONF.231/3 (30. 07. 2020.)

OAU Convention. Governing the Specific Aspects of Refugee Problems in Africa. UNHCR. Available: www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html (04. 05. 2020.)

The refugee concept under international law (Global Compact for safe, orderly and regular migration). UNHCR Statement, New York, 12–15 March, 2018. Available: https://www.unhcr.org/5aa290937.pdf (22. 06. 2020.)

UN Human Rights Committee: Views Adopted on Teitiota Communication, 2015. Available: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200107_CCPRC127D27282016-_opinion.pdf (23. 01. 2021.)

United Nations, Framework Convention on Climate Change, The Cancun Agreements (UNFCCC, Cancun Adaptation Framework). Available: http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=4 (13. 07. 2020.)

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Education, language and the human rights of minorities

Report of the UN Special Rapporteur on minority issues

Summary

In his report, the Special Rapporteur on minority issues, Fernand de Varennes, provides a clear working definition of the concept of a minority in order to guide his activities and those of the United Nations. He describes a series of initiatives, including three regional forums that complement the Forum on Minority Issues. In the thematic section of his report, he sets out the often misunderstood language dimension of education for minorities, which emanates from the proper understanding and implementation of international human rights obligations. He describes the parameters of the application of human rights, and in particular the principles of equality without discrimination, as of primary importance for the achievement of Sustainable Development Goal 4 on quality education for all, including linguistic minorities such as users of sign languages.

I. Introduction

1. The mandate of the Special Rapporteur on minority issues was established by the Commission on Human Rights in its resolution 2005/79 of 21 April 2005. It was subsequently extended by the Human Rights Council in successive resolutions, the most recent being resolution 34/6, which extended the mandate under the same terms as provided for in resolution 25/5.

2. The Special Rapporteur, Fernand de Varennes, was appointed by the Human Rights Council on 26 June 2017 and assumed his functions on 1 August 2017. His term in office may be renewed for one three-year period.

3. The Special Rapporteur is honoured to be entrusted with the mandate and thanks the Human Rights Council for its trust in him. He also wishes to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its support in the implementation of the mandate.

4. The present report is the third submitted by the Special Rapporteur to the Human Rights Council. Section II provides an overview of the activities of the Special Rapporteur in 2019, including an update on the Forum on Minority Issues. In section III, the Special Rapporteur reports on education, language and the human rights of minorities. In section IV, the significance of raising awareness and increasing the visibility of minority issues is highlighted. Section V refers to the recommendations and other documentation emanating from the Forum on Minority Issues and those of three regional forums, which for the first time were organized under the mandate of the Special Rapporteur in order to provide more accessible and context-relevant consultations and exchanges in different parts of the world. The final section of the report contains the main recommendations of the Special Rapporteur.

II. Activities of the Special Rapporteur

5. The Special Rapporteur wishes to draw the attention of the Human Rights Council to the information published on the web page of the Special Rapporteur, which provides general information on the activities associated with the Special Rapporteur, including communications, press statements, public appearances, country visits and thematic reports.[1]

6. The second year of the Special Rapporteur's mandate has been focused on raising awareness and increasing the visibility of minority issues, both

1 www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/SRminorityissuesIndex.aspx.

within United Nations institutions and more generally with other regional and international organizations and members of the public, and on exploring new approaches in order to improve the accessibility of the Special Rapporteur's activities, such as the Forum on Minority Issues. This has included two main initiatives:

(a) Developing, in cooperation with the Tom Lantos Institute and numerous regional minority and human rights organizations, a series of three regional forums (Africa and the Middle East, Asia and the Pacific, and Europe) on the same theme as that of the 2019 Forum on Minority Issues;

(b) Clarifying, for the purposes of the mandate, a working definition of the concept of a minority.

A. Country visits

7. In pursuance of his mandate to promote the implementation of the Declaration on the Rights of Minorities and to identify best practices in every region, the Special Rapporteur looks forward to continuing a dialogue with Cameroon, India, Jordan, Kenya, Nepal, Paraguay, South Africa, South Sudan, the Syrian Arab Republic, Timor-Leste and Vanuatu, to whom he has made requests to visit.

8. The Special Rapporteur wishes to thank the States that had accepted visits by previous special rapporteurs on minority issues for their cooperation and encourages other States, including those to which requests for visits have been made, to engage positively with the Special Rapporteur. Country visits have helped in addressing fundamental issues pertaining to minorities and in creating effective communication channels to bring together the means to improve technical cooperation and to respond to the need to capitalize on existing and evolving positive practices. In addition to country visits, the Special Rapporteur will ensure continuous and consistent exchanges with Member States on all matters relevant to his mandate.

9. In all of his country visits, the Special Rapporteur focuses on the importance of addressing discrimination, exclusion and other violations of human rights involving particularly vulnerable minorities such as the Roma, of doubly or triply marginalized minority women, and issues pertaining to deaf and hearing-impaired persons who, as users of sign languages, are members of linguistic minorities. During his country visits, the Special Rapporteur emphasizes the need to have consultations with members of those and other marginalized groups and communities.

10. The Special Rapporteur undertook an official visit to Spain from 14 to 25 January 2019. He also conducted a visit to Kyrgyzstan from 6 to 17 December 2019, and the report will be presented to the Human Rights Council in March 2021.

B. Communications

11. The Special Rapporteur sent letters of allegation and urgent action letters to the Member States concerned based on information received from diverse sources about human rights violations perpetrated against national, ethnic, religious and linguistic minorities. Those communications and the responses thereto are publicly available.[2]

12. A total of 52 communications have been sent to Governments since January 2019. All of those were sent jointly with other special procedure mandate holders. Of those, 13 were urgent appeals, 32 were letters of allegation, and 7 were other letters expressing legislation and policy concerns.

13. The largest number of communications were sent to States in Europe and Central Asia (17), followed by the Asia and the Pacific (16), the Middle East and North Africa (14) and sub-Saharan Africa (3). Two communications were sent to States in the Americas region.

C. Conferences and awareness-raising activities

14. Raising awareness and increasing the visibility of the human rights of minorities has been repeatedly highlighted as an important dimension of the Special Rapporteur's mandate since his election by the Human Rights Council in June 2017. This has, among other things, taken the form of frequently speaking and contributing to numerous conferences, seminars and meetings internationally, regionally and nationally, throughout the world. He has in particular, whenever the opportunity has presented itself, continuously referred to the minority issues that have been identified as the thematic priorities of his mandate, such as statelessness, education and the language of minorities, hate speech and social media, and the prevention of ethnic conflict. Cross-cutting issues have also frequently been highlighted, including the double or even triple marginalization of minority women, and particularly vulnerable groups such as the Roma and the Dalit. The Special Rapporteur has additionally emphasized on many occasions in his activities the status of users of sign languages as members of a linguistic minority. The present report contains the

2 See www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

main activities from July to December 2019. The activities prior to this period are identified in his 2019 annual report to the General Assembly (A/74/160).

15. On 23 July 2019, the Special Rapporteur was the keynote presenter at the opening of the 18th World Congress of the World Federation of the Deaf, held in Paris. The overarching theme of the Congress was sign language rights for all, and in his presentation at the opening session, before more than 2,000 participants from 137 countries, the Special Rapporteur referred to his confirmation at the Forum on Minority Issues, held in Geneva in December 2017, that users of sign languages were members of linguistic minorities because sign languages were fully fledged languages.

16. On 1 August 2019 in Kota Kinabalu, Sabah, Malaysia, at the 9th National Conference on Non-discrimination, with the theme of achieving unity in a plural society, the Special Rapporteur gave the keynote address, entitled "Minorities and non-discrimination in international human rights law: unity, respect and inclusion". His address described, among other things, his mandate and raised a number of topical human rights concerns involving minorities, including the potential for millions of members of religious minorities to become stateless in Assam, India. The previous day, on 31 July, the Special Rapporteur visited the offices of the Human Rights Commission of Malaysia (SUHAKAM) and had an exchange with a number of commissioners on his role and mandate and on the significance of minority rights and issues in Malaysia. He also held courtesy meetings on the same day with high ranking Malaysian officials, including the Minister for National Unity and Social Well-being, Y.B. Waytha Moorthy, and at the Ministry of Foreign Affairs.

17. On 2 August 2019, the Special Rapporteur held a seminar entitled "United Nations special procedures and the role of the United Nations in the protection of human rights" at the University of Malaysia Sabah in Kota Kinabalu.

18. On 20 and 21 September 2019, the Special Rapporteur was a speaker at the Asia-Pacific Regional Forum on Education, Language and the Human Rights of Minorities, which was held at Mahidol University in Bangkok. There were some 70 registered participants, including representatives from eight States, who met to develop a recommendation aimed at reflecting the conditions and challenges relating to the teaching of and education in minority languages.

19. On 30 September 2019, the Special Rapporteur gave the opening statement at the round table on the International Year of Indigenous Languages, entitled "Writing the future in indigenous languages", held at the 85th PEN International Congress in Manila. The annual congress, whose theme for 2019

was "Speaking in tongues: literary freedom and indigenous languages", brought together some 250 writers, essayists, playwrights and poets from around the world. In addition, on 1 October 2019, the Special Rapporteur participated in a panel discussion on the human rights of minorities in South-East Asia.

20. On 7 October 2019, the Special Rapporteur was the keynote speaker at the 26th Annual International Law and Religion Symposium, convened by the International Center for Law and Religion Studies at Brigham Young University in Provo, Utah, United States. The theme was "Human dignity and freedom of religion or belief: preventing and addressing persecution", and the Special Rapporteur spoke on the challenge of confronting hate speech worldwide, particularly in social media, which appears to increasingly target religious and other minorities. He also emphasized the importance of strengthening international human rights mechanisms.

21. On 25 October 2019, the Special Rapporteur gave the keynote address, on the United Nations main principles and actions on language rights, at the European Forum on Language Rights, organized by the Conseil régional de Bretagne, the European Language Equality Network and Kevre Breizh. The next day he spoke on the strategic use of United Nations and other human rights mechanisms to protect and implement the rights of minorities during the annual European Language Equality Network General Assembly. Both events were held in Rennes, France.

22. On 28 and 29 October 2019, the Special Rapporteur participated in the Africa-Middle East Regional Forum on Education, Language and the Human Rights of Minorities, held in Tunis. Some 50 participants met to develop recommendations aimed at reflecting the regional conditions and challenges relating to the teaching of and education in minority languages in Africa and the Middle East.

23. On 4 November 2019, the Special Rapporteur made an opening statement at the 19th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights: Human Rights Education and Training, held in Tromsø, Norway. He highlighted the need to give minority issues greater visibility by international organizations and in human rights discourse.

24. On 6 November 2019, the Special Rapporteur gave a presentation entitled "Hate speech and incitement to hatred against minorities: how can the challenges be met?" and discussed potential collaboration with staff and researchers at the Norwegian Center for Holocaust and Minority Studies, University of Oslo.

25. On 11 November 2019, the Special Rapporteur participated in an academic workshop on confronting inequality and social exclusion in Hong Kong, China, organized by the Justice Centre Hong Kong and the Department of Asian and Policy Studies at the Education University of Hong Kong, China.

26. On 14 November 2019, the Special Rapporteur gave the closing remarks at the high-level conference of the Organization for Security and Cooperation in Europe (OSCE) High Commissioner on National Minorities to commemorate the 20th anniversary of the Lund Recommendations on the Effective Participation of National Minorities in Public Life. The conference, entitled "From Lund to Ljubljana: promoting the participation of national minorities as a pathway to the integration of diverse societies", was held in Lund, Sweden.

27. On 18 and 19 November 2019, the Special Rapporteur participated in the United for Intercultural Action conference UNITED #WithoutHate: Building Partnerships towards a Hate-free Society, held in Poprad, Slovakia. During the initial panel discussion of the conference, he addressed the theme "Protecting minorities, resisting hate", highlighting how a human rights approach was essential to tackle the upsurge of hate speech and hate crimes, which mainly targeted minorities around the world.

28. On 4 December 2019 in Paris, the Special Rapporteur addressed the Parliamentary Assembly of the Council of Europe's Committee on Equality and Non-Discrimination hearing on preserving Europe's linguistic, ethnic, cultural and national diversity. In his presentation, he discussed the differences between international norms protecting minorities and the experiences of persons belonging to minorities in Europe.

29. Between 6 and 17 December 2019, the Special Rapporteur was on a country visit to assess the situation of minorities and the protection and promotion of their human rights in Kyrgyzstan.

30. On 18 and 19 December 2019, the Special Rapporteur participated in an expert workshop on a human rights training toolkit for faith actors, held in Collonges-sous-Salève, France. The workshop was organized by OHCHR to strengthen the implementation of minority rights and the freedom of religion or belief and to prevent violent extremism by designing a human rights training toolkit for faith actors.

III. Education, language and the human rights of minorities

A. Introduction

31. Language is undeniably central to the identity of linguistic minorities. Language also refers to all of the world's 6,000 or so recognized languages, including sign languages. Language issues are at times among the main grievances that may contribute to toxic environments of exclusion and claims of discrimination in education that can lead to tensions and even conflicts between minorities and authorities, as shown unfortunately in different parts of the world.

32. The centrality of language for individuals and communities alike is acknowledged in article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which solemnly affirms in paragraph 1 that "States shall protect the existence and the... linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity", adding in the next paragraph that they "shall adopt appropriate legislative and other measures to achieve those ends". One could therefore expect that this would entail significant measures for the use of minority languages in education, since, to state the obvious, as does a quote attributed to French historian Camille Jullian, "une langue qu'on n'enseigne pas est une langue qu'on tue" ("you kill a language if you do not teach it").

33. The central importance of a minority's language in education was furthermore left in no doubt both in the large number of responses from various States and other interested parties to the questionnaire that was issued with the objective of collecting information from the contributors involved in the topic of the present report,[3] as well as the almost 1,000 participants – including States and international and regional organizations – that provided information and insights during the three regional forums conducted in 2019 on education, language and the human rights of minorities, and during the Forum on Minority Issues held in Geneva in November 2019. The point cannot be understated: language is perhaps the central defining characteristic of humanity. "Language is the key to inclusion. Language is at the centre of human activity, self-expression and identity. Recognizing the primary importance that people place on their own language fosters the kind of true participation in development that achieves lasting results."[4]

3 See annex.
4 UNESCO Bangkok, *Why Language Matters for the Millennium Development Goals* (UNESCO, 2012), p. 1.

B. The growing visibility of language in education as a human rights issue

34. After 1945, with the establishment of the United Nations, the emphasis was on the universal protection of individual rights and freedoms instead of what has at times been perceived as the more "collective" minority approach under the League of Nations. This, however, is not quite the full picture: some peace treaties concluded immediately following the Second World War included general human rights and some specific minority provisions. These treaties, just as in the case of their predecessors before the Second World War, contained mainly human rights standards and a few specific provisions focusing on "resident" minorities. Thus the Treaty of Peace with Italy of 1947 contained, in addition to the usual general provisions on human rights, provisions guaranteeing citizenship to all those normally residing in Italy who did not acquire nationality in a neighbouring State (and in the main targeting the largest affected minorities) and, in annex IV, specific sections on minorities, in relation to the German-speaking minority, particularly in education:

> 1. German-speaking inhabitants of the Bolzano Province and of the neighbouring bilingual townships of the Trento Province will be assured complete equality of rights with the Italian-speaking inhabitants, within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element.
>
> In accordance with legislation already enacted or awaiting enactment the said German-speaking citizens will be granted in particular:
>
> (a) elementary and secondary teaching in the mother tongue.

35. Article 6 of the State Treaty for the Re-establishment of an Independent and Democratic Austria (Austrian State Treaty) of 1955 includes, among other bilateral or peace treaties of this period and like most treaties relating to the rights of minorities, known as "minority treaties" of the interwar period, a provision guaranteeing, without discrimination, "all measures necessary to secure to all persons under Austrian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting". More to the point, article 7 grants to Austrian nationals who are members of the Croat and Slovene minorities in the parts of the country where they are concentrated (Carinthia, Burgenland and Styria) "the same rights on

equal terms" as other citizens in their own language, as well as in relation to education:

> 2. They are entitled to elementary instruction in the Slovene or Croat language and to a proportional number of their own secondary schools; in this connection school curricula shall be reviewed and a section of the Inspectorate of Education shall be established for Slovene and Croat schools.

36. The Treaty of Peace with Italy and the Austrian State Treaty were directly inspired by the human rights approach reflected in the content of the minority treaties of the interwar period, in that their content appears to be anchored to the principle of equality and they recognize general human rights for all. Furthermore, the minority language rights they refer to are, in relation to education and access to services in minority languages, dependent on what is reasonable and justified, that is, in those parts of the country where most speakers of these languages reside and according to a proportional approach.

37. By the end of the 1950s, international law had gradually shifted towards a more straightforward acknowledgement of the rights of minorities or language rights, starting with the International Labour Organization (ILO) Indigenous and Tribal Populations Convention, 1957 (No. 107), which, although avoiding the word "minority",[5] provided that indigenous populations had the right to be taught in their mother tongue or, where this was not practicable, in the language most commonly used by the group to which they belonged. A few years later, the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education of 1960 prohibited, under article 1, "any distinction, exclusion or preference" based upon language or other grounds, which "has the purpose or effect of nullifying or impairing equality of treatment in education", while making clear, in article 2 (b) that it did not constitute discrimination to establish or maintain, for linguistic reasons, separate educational systems or institutions.

38. For the global human rights system, this UNESCO treaty is significant. Article 5 (1) (c) indicates that "it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language", provided that "this right is not exercised in a manner which prevents the members of these minorities

5 While indigenous peoples are a distinct legal category, factually indigenous peoples may simultaneously constitute a minority in countries where they live. Being a minority does not extinguish or diminish any indigenous rights.

from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty".

39. In the 1960s, language continued to be referred to as impermissible grounds of discrimination in the two United Nations covenants on human rights, namely the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both adopted on 16 December 1966. The latter treaty provided a specific reference to some rights for linguistic minorities: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

40. A few decades later, only one other United Nations treaty, namely the Convention on the Rights of the Child, adopted on 20 November 1966, would entrench an almost identical provision. Article 30 of the Convention states: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language." By the 1990s, however, any remaining reluctance to address and acknowledge minority language rights was gone, with other regional or international treaties incorporating language or minority rights standards, such as the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), the European Charter for Regional or Minority Languages, and the Framework Convention for the Protection of National Minorities. It is also at the end of the twentieth century that non-binding documents dealing with minority language rights or minority rights generally proliferated, including in education, with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the United Nations Declaration on the Rights of Indigenous Peoples, the Vienna Declaration and Programme of Action and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, among others, as well as guidance documents such as the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, the Hague Recommendations Regarding the Education Rights of National Minorities, the Lund Recommendations on the Effective Participation of National Minorities in Public Life and *Language Rights of Linguistic Minorities: A Practical Guide for Implementation*, a handbook developed by the Special Rapporteur on minority issues.

C. Interpretation by United Nations treaty bodies

41. Contemporary jurisprudence has also neither been consistent nor comprehensive: different treaties are still relatively "young" and there have been different approaches and views in the interpretation of the extent to which there is a "right" to use the language of minorities in education, and what this use implies. For example, in one of the most important cases in this area, the European Court of Human Rights clearly stated that there was no "automatic" right to be educated in one's language under article 2, Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Belgian Linguistics Case[6]), even in combination with the prohibition of discrimination on the ground of language. However, contrary to what has often been written by some experts, it did not exclude the possibility that, in appropriate circumstances, it could be discrimination on the ground of language not to use one's mother tongue as a medium of instruction.

42. Nevertheless, United Nations treaty bodies have at times left little doubt that minorities and indigenous peoples do have a right to be educated in their own language in some circumstances. In addition, such a right where it is practical would also seem to be enshrined in treaties such as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, as interpreted by the advisory committee of experts of each of these treaties.[7]

43. There are undoubtedly contradictions and inconsistencies. Over a period of decades, there may be an evolution as to how international law standards are interpreted in their meaning and application, especially in relation to indigenous peoples or minorities. Additionally, certain concepts, such as an individual's right to identity – even though not actually recognized in most treaties – have had an influence on how various bodies interpret and apply legal obligations in areas such as education, of which language is an important component.

44. Most reports tend to confirm an acceptance of the right to education in a minority's or indigenous people's mother tongue. At times this acceptance includes higher education in public institutions without restrictions, while

6 See European Court of Human Rights, *Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium (Merits),* (application Nos. 1474/62, 1677/62, 1691/62, 1994/63 and 2126/64), judgment of 23 July 1968.

7 See Advisory Committee of the Framework Convention for the Protection of National Minorities, "Thematic commentary No. 3: the language rights of persons belonging to national minorities under the Framework Convention", ACFC/44DOC(2012)001 rev, Strasbourg, 5 July 2012, part VI.

at others it means that there should be "multilingual" schools that include children from the majority linguistic community. It is not always clear whether, in practical terms, this means that single-medium education in a State's official language should itself be avoided. This would seem to be impractical, especially in countries with a large number of minority languages.

45. What has therefore emerged more recently is that differences of treatment between two languages, including where the privileged language is an official language and in the area of public education, may be discriminatory in international human rights law if they are not demonstrated to be reasonable and justified preferences. In *Diergaardt v. Namibia* (CCPR/C/69/D/760/1997), the majority of the members of the Human Rights Committee concluded that non-discrimination might permit the use of other languages in addition to an official one where it was unreasonable and unjustified for administrative authorities not to use another language in addition to that country's only official language at the time, namely English. Similarly, the African Commission on Human and Peoples' Rights concluded in 2009 that the almost exclusive use of one official language, French, in banking matters regulated by the Government of Cameroon so disadvantaged English-speaking citizens as to be unjustified, and therefore in violation of a substantive approach to equality and non-discrimination on the ground of language,[8] suggesting therefore that the anglophone minority in that country was entitled to language rights anchored in this general human rights standard.

46. The above human rights conclusions suggest that a State language preference can constitute discrimination if it is unreasonable or unjustified, or not based on what is proportionate, practical and justified. It would seem therefore that public education not provided in a child's language could be a breach of the right to education if students are imposed with an unrealistic burden through the language choice of authorities,[9] or excluded from the opportunity of learning the national language.[10] The implications are that the prohibition of discrimination on the ground of language can lead to situations where State authorities have an obligation to communicate with members of the public in a non-official language, often a minority language, where this is reasonable and justified. In relation to the right to education, there can, for example, be situations of a denial of the substance of the right if the language

8 African Commission on Human and Peoples' Rights, *Mgwanga Gunme et al. v. Cameroon*, Communication No. 266/2003, 27 May 2009.

9 European Court of Human Rights, *Cyprus v. Turkey* (application No. 25781/94), judgment of 10 May 2001.

10 European Court of Human Rights, *Catan and Others v. Moldova and Russia*, Application Nos. 43370/04, 18454/06 and 8252/05, judgment, 19 October 2012.

used as a medium of instruction is not a child's mother tongue for as long and as extensively as is reasonably practicable.

47. Whereas for language rights in private activities the defining principle would be a laissez-faire approach, the use of minority languages by State authorities would seem to call for the use of a proportionality principle – based on what is reasonable or justified after consideration of all the relevant circumstances in order to comply with the prohibition of discrimination. This is essentially also the principle enshrined in treaties and documents specifically dealing with the human rights of minorities, such as the Framework Convention for the Protection of National Minorities. This tends to take the shape of a provision indicating, among others, an obligation for State authorities to use proportionally a minority language where the numbers, demand and geographic concentration of its speakers make it a reasonable or justified use of a minority language. Beyond the legal principle itself at the supranational level, there is a fairly widespread understanding that a proportionate response is highly desirable for a number of very practical reasons:

> Access to public services, particularly in areas such as health and social services, is most effective when offered in a minority's language, particularly indigenous or traditional minorities. This includes public education generally.
>
> Education in a minority's own language generally results in better student retention and academic results, including in learning the official language, particularly for vulnerable segments of society such as indigenous peoples and women.[11]

48. What this describes is at the same time an essential aspect of Sustainable Development Goal 4 on ensuring inclusive and quality education for all and promoting lifelong learning. Inclusive and quality education for members of linguistic minorities means, as far as is practicable, education in their own language. Not using a minority language as a medium of instruction where this is possible is to provide education but not which is of equal value or effect. As demonstrated in numerous studies, teaching children in a language other than their own is not education of the same quality as that of children who are taught in their mother tongue.

49. Studies and practices in many countries demonstrate that an appropriate and proportionate use of minority languages can increase inclusion,

11 Carol Benson, *Girls, Educational Equity and Mother Tongue-Based Teaching* (Bangkok, UNESCO Asia and Pacific Regional Bureau for Education, 2005).

communication and trust between members of minorities and authorities. This is not simply a matter of authorities using a minority language once a minority has reached a numerical or percentage threshold, since every country and situation is unique. Factors that may be considered in determining the appropriate scale of use of a minority language by public authorities, or as to what is a sufficient number or is justified in a particular case, will depend on the circumstances. Prominent among these would be the already existing use of a minority language by State authorities, the number of speakers of a minority language, the level of demand for the use of a minority language, the territorial concentration of the minority, a State's available resources in light of any additional costs in training or materials, the type of service being requested in the minority language and the relative ease or level of difficulty in responding to the demand.

50. Studies around the world, including some published by the World Bank, UNESCO and the United Nations Children's Fund, arrive at broadly similar results on the effects of education in a minority's mother tongue,[12] combined with quality teaching of the official language, which are that it:

(a) Is more cost-effective in the long term;

(b) Reduces dropout and repetition rates;

(c) Leads to noticeably better academic results, particularly for girls;

(d) Improves levels of literacy and fluency in both the mother tongue and the official or majority language;

(e) Leads to greater family and community involvement and support.

51. The use of minority languages in a State's administrative and other public activities thus involves fundamental issues of inclusiveness, participation, access, quality and effectiveness.[13]

52. Children thus stay in school longer, obtain on average better grades, and obtain on average a higher degree of fluency in both the official language and their own language.[14] Put differently, minority students taught only in the

12 See generally, UNESCO, *Improving the Quality of Mother Tongue-based Literacy and Learning: Case Studies from Asia, Africa and South America* (Bangkok, UNESCO, 2008).

13 For a list of some of these studies, see United Nations Special Rapporteur on minority issues, *Language Rights of Linguistic Minorities.*

14 For example, in one ranking of high schools in France (*lycées*) for 2013, the top educational

official language will on average repeat grades more often, drop out of school more frequently, receive worse results, end up later in life with the lowest paying jobs and highest unemployment rates, and learn the official language less well than students who were taught in their own language. If persons belonging to linguistic minorities have a responsibility to integrate into the wider society, then it would seem that this can be best achieved through effectively teaching them in their own language because of generally better outcomes from education in one's language, even in acquiring fluency in the official language.[15]

D. Human rights obligations and the use of minority languages in education

53. Although there is no unanimity, there are trends in the numerous views of United Nations treaty bodies.[16] While some treaty bodies link the choice of the language of instruction to the right to education by itself, or to the right of minorities to use their own language among themselves, a perusal of the views of various treaty bodies also shows that it is often referred to in association with the prohibition of discrimination. For example, it is the only possible basis for the Committee on the Elimination of Racial Discrimination to comment on the issue of language and education in its concluding observations where it has formed the view that in some cases minorities are entitled to education in their own language. The possibility of using non-discrimination to support the use of a particular language in public education was also admitted by the European Court of Human Rights in the Belgian Linguistics Case, where a refusal to do so by authorities could in some situations be deemed to be arbitrary, unreasonable or unjustified, and therefore discriminatory. As explained previously, the disadvantages that children may encounter when not taught in their own language, and this includes the use of sign languages, could under certain conditions constitute direct discrimination on the ground of language, or indirect ethnic or racial discrimination. Simply put, children from indigenous or minority backgrounds will have better academic results (they learn better) and will stay in school longer (lower dropout rates) when they are taught in a language with which they are the most familiar – usually their own. When this happens, especially when they stay in school longer, they

facility for the whole country was the Lycée Diwan, where teaching is done in the minority Breton language rather than the country's only official language. This school also had a higher average fluency in the French language than schools that taught in French, even though most of the instruction was in Breton.

15 Nadine Dutcher, in collaboration with G. Richard Tucker, "The use of first and second languages in education: a review of educational experience", Pacific Islands Discussion Paper Series, No. 1 (Washington, D.C., World Bank, 1997).

16 Excerpts of international and regional documents on education, language and the human rights of minorities are available at www.ohchr.org/Documents/Issues/Minorities/SR/documentsexcerpts.docx.

will not only acquire a stronger basis and literacy in their own language, they will also be able to gain greater fluency in the official/majority language.

54. It is also important to emphasize that the use of a minority language includes the use of sign languages: sign languages are fully fledged languages, and their users can therefore be considered as members of linguistic minorities where they represent less than half of the entire population of a State, as set forth in the working concept the Special Rapporteur submitted in October 2019 in his report to the General Assembly. As members of linguistic minorities, users of sign languages can experience the same disadvantages or exclusion as other minorities if their languages are not used as languages for instruction. In fact, the obstacles to effective, quality education can be said to be even more pronounced.

55. Despite the uncertain references at times to an unqualified "right to education in the mother tongue" – and on other occasions to something as vague as simply "bilingual education" or "multilingual education" – and no clear guidance of the exact extent to education in a particular language, there are still a few indications as to the extent a minority or indigenous people could claim the use of its language as a medium of education.

1. "Where reasonable and justified": the degree and use of a minority language in education

56. All United Nations treaty bodies are sensitive to what is realistically feasible. This explains the wording used in treaties such as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages: the degree a minority language is used in education must be appropriate or "according to the situation of each language". In terms of the prohibition of discrimination, it is obviously not unreasonable and unjustified not to use a minority or indigenous language as a language of instruction where this would be nearly impossible, as where the language is only spoken by a small number of individuals.

57. Most treaty bodies appear to be less hesitant to recognize the right to be educated in the mother tongue when dealing with a large, well-established minority. This is particularly true when education in a minority language has been used as a medium of instruction or has a long literary tradition with educational material already available in that language. In such situations where there is no reasonable justification to refuse or restrict the use of a minority language as a medium of instruction in public schools, various treaty bodies have been more willing to recognize the right to education in a minority

language. In this type of situation, what is "reasonable and justified" would be for the minority language to be used as the main language of instruction to the final years of public education, up to and even including general instruction in the minority language in public university programmes. The European Charter for Regional or Minority Languages recognizes this possibility when it refers to the obligation of Governments "to make available university and other higher education in regional or minority languages" where appropriate for the situation of a particular language.

58. When dealing with much smaller groups of students or where there is not a well-established educational tradition, particularly with indigenous populations, many of the treaty bodies tend to lean towards what is called a "bilingual, multicultural" form of education, though what this means in practice is of course vague and will depend on the circumstances in place. At a minimum, some teaching of the mother tongue during the primary years of education would seem to be required, if at all possible. Beyond that, the degree to which a minority language should be used in upper grades would be to the degree possible, in a type of sliding scale based on local conditions, such as the number of students, if education is already provided in a minority language, and the availability of teachers and educational material in a minority language.

59. The easiest way to describe what would be "reasonable and justified" in the use of a minority language in education could be as much teaching as possible, at the highest level possible: for pedagogical and other reasons a mother tongue should be the language of instruction, where practical, and at the very least be taught as a subject where this is not really feasible. While no treaty body has yet commented directly on the use of sign languages in education based on the prohibition of discrimination, the Special Rapporteur is aware of a number of national judgments that have made such a linkage. In his view, it is clear that users of sign languages can face barriers that are discriminatory in some contexts if their languages are not used as a medium of instruction where it would be reasonable to do so.[17]

17 Article 24 of the Convention on the Rights of Persons with Disabilities makes the linkage between equality and the use of sign language, stating in paragraph 3, among others, that States parties shall take appropriate measures, such as facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community, and ensuring that the education of children who are deaf is delivered in the most appropriate languages, and employ teachers who are qualified in sign language.

2. Public and private education

60. A few treaties, such as the UNESCO Convention against Discrimination in Education and the Framework Convention for the Protection of National Minorities, make it clear that minorities have the right to establish and operate private schools and educational institutions that use their language as a medium of instruction. General human rights treaties do not clarify this, nor do such provisions as article 27 of the International Covenant on Civil and Political Rights on the right of linguistic minorities to use their own language among themselves, or article 28 of the Convention on the Rights of the Child on the right to education.

61. The concluding observations from different United Nations treaty bodies seem, however, to take it for granted that minorities are entitled to such private schools, and have been willing to recognize it in their responses – even though at times it is not always clear if they are referring to public or private schools, or what a national Government's legal obligations are under the right to education, or article 27 of the International Covenant on Civil and Political Rights, in relation to public as opposed to private schools using a minority language. For example, article 27 refers only to the use of a minority language among members of a minority themselves, not between members of a minority and a public institution (such as a State school).

62. None of the general human rights treaties refer to an obligation to financially support private schools for minorities, although there is one case where the Human Rights Committee concluded that it could be discriminatory to fund some private religious schools and not the private schools of other (minority) religious groups (CCPR/C/67/D/694/1996).

63. This is therefore an area where there is a great deal of uncertainty. The following interpretations appear to be fairly well supported, at least for private education activities:

(a) Private schools for minorities and educational activities using a minority language seem to be guaranteed under article 27 of the International Covenant on Civil and Political Rights (and similar provisions). It is less clear if the right to education in general includes this aspect;

(b) The prohibition of discrimination suggests that minorities may be able to claim the right to establish private schools, even if private schools in general are prohibited in a country (Minority Schools in Albania Case[18]);

(c) It could also be discriminatory to allow private schools to operate in some languages, but not others;

(d) Financial support for private minority schools is less well defined in the observations of various treaty bodies: while it is clear that Governments cannot discriminate if they provide funding to some private schools, this does not mean that there is an automatic entitlement to financial support for private minority schools;

(e) There are comments that seem to suggest that, to truly respect the identity of minorities, some degree of support must be provided to their private institutions;

(f) States are entitled to require that the curriculum in private minority schools conform to national quality and content standards in different subject matters, although this cannot be used to affect the use of a minority language as a medium of instruction in these schools;

(g) Students in private minority schools must always have the opportunity to learn the official, national or majority language.

64. There is another issue concerning the interaction between public and private schools that is not yet clear in the interpretation of various committees and the right to education in general. While individuals have a right to education, it appears that States may comply with this right through private or public education measures. What counts is not a particular model of education, but that the right to education of individuals is respected in practice. If State authorities have an obligation to provide instruction in a mother tongue (whether it is on the basis of article 27 of the International Covenant on Civil and Political Rights, the right to education or the prohibition of discrimination in education), and this is done completely or in part with private education measures, then these same authorities would need to provide the necessary support, financial and material, to ensure that this is done on the basis of equality with similar measures or institutions in the official or majority language.

18 Permanent Court of International Justice, Advisory Opinion No. 26, 6 April 1935.

3. Teaching and the official/majority language

65. One aspect that is absolutely clear from an international legal point of view is that whatever the degree of use of a minority language as a medium of instruction, in private or public schools, students must always be afforded the opportunity of learning the official or majority language. Article 14 (3) of the Framework Convention for the Protection of National Minorities refers to implementation (of education in a minority language) "without prejudice to the learning of the official language or the teaching in this language".

66. Put differently, whatever model or approach is in place in relation to the use of a minority language as a medium of instruction, children must always have an opportunity to effectively learn the official or majority language where they live.

IV. Focus on awareness-raising and the visibility of minorities and their human rights

A working definition of the concept of a minority for the mandate of the Special Rapporteur

67. The Special Rapporteur's 2019 annual report to the General Assembly in October 2019 (A/74/160) addressed the need for a working definition of the concept of a minority in order to:

(a) Comply with the Special Rapporteur's mandate;

(b) Clarify the meaning of the concept in order to avoid controversies and contradictions, within and outside the United Nations, which weaken the full and effective realization of the rights of minorities;

(c) Clarify the concept according to international law, including the jurisprudence of the Human Rights Committee and the applicable principles under the Vienna Convention on the Law of Treaties.

68. As part of his mandate, the Special Rapporteur must raise awareness and work for the full and effective realization of the rights of persons belonging to minorities. This includes clarifying key concepts such as who can claim to be a minority under the United Nations system. The absence of consistency in understanding who is a minority is a recurring stumbling block to the full and effective realization of the rights of minorities. Different United Nations entities may contradict one another because they consider different groups

of persons as constituting a minority and diverge from the practices in other entities. Some States Members of the United Nations hesitate to engage on matters relating to minorities since they do not know who is a minority and what that entails. In other States, there may even be the assumption that the absence of a definition means it is left to each State to determine freely who is or is not a minority. In most of these situations, the uncertainty leads to restrictive approaches: in many situations, persons are deemed to be "undeserving" because they are not "traditional" minorities, not citizens or not sufficiently "dominated". The end result is that some minorities are excluded because they are not the "right kind" of minority according to different parties.

69. It is for this reason the Special Rapporteur has opted for a working definition that conforms with the general rule of treaty interpretation and the ordinary meaning of the word "minority" in its "context and in the light of its object and purpose" in the absence of a clearly intended special meaning,[19] as well as a working definition that is consistent with the Human Rights Committee's own views and interpretation of article 27 of the International Covenant on Civil and Political Rights.[20]

70. The Special Rapporteur, as part of his mandate to promote the full and effective realization of the human rights of minorities, will therefore be using and promoting the following concept of a minority, both within the United Nations and in carrying out his activities: an ethnic, religious or linguistic minority is any group of persons that constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status.

V. Update on the 2019 Forum on Minority Issues

71. The Forum on Minority Issues was established in 2007 by the Human Rights Council by its resolution 6/15 and reaffirmed in 2012 by its resolution 19/23. It is mandated to provide a platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities, and to provide thematic contributions and expertise to the work of the Special Rapporteur on minority issues. The Special Rapporteur is tasked with guiding the work of the Forum, preparing its annual meetings and reporting to the Human Rights Council on its thematic recommendations. The Forum meets annually in Geneva for two working days allocated to thematic discussions.

19 Vienna Convention on the Law of Treaties, art. 31.
20 General comment No. 23 (1994) on the rights of minorities.

It brings together an average of 500 participants, including minorities, Member States, United Nations mechanisms, regional intergovernmental bodies and non-governmental organizations.

72. The twelfth session of the Forum was held on 29 and 30 November 2019, with the theme "Education, language and the human rights of minorities". As in 2018, the number of participants far exceeded the average level of previous years, with more than 600 participants counted.

73. Exceptionally, two co-chairs were appointed for the twelfth session by the President of the Human Rights Council, namely Anastasia Crickley, former chair of the Committee on the Elimination of All Forms of Racial Discrimination, and Astrid Thors, former OSCE High Commissioner on National Minorities. A total of 12 experts and members of minorities from different parts of the world took part in the four main panel discussions, on the topics of: human rights and minority language education; public policy objectives for education in, and the teaching of, minority languages; effective practices for education in, and the teaching of, minority languages; and language, education and the empowerment of minority women and girls. The Forum was opened on 28 November 2019 by the President of the Human Rights Council, followed by statements by the United Nations High Commissioner for Human Rights, the OSCE High Commissioner on National Minorities, Lamberto Zannier, and the Special Rapporteur on minority issues, as well as remarks by the co-chairs.

74. The Special Rapporteur reiterated the crucial importance of the Forum on Minority Issues, which represents the only avenue for a number of minority rights activists to advocate for change at the international level. It is a positive and unique platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities. He noted the high levels of participation in the Forum in 2019, with more than 200 declarations being made over the two days, as evidence of the timeliness and relevance of the theme of the 2019 Forum for many minorities around the world, and the vital role the Forum continued to play as a unique focal point of discussions and exchanges at the United Nations for minorities, civil society organizations and Member States. A total of 140 recommendations emanated from the three regional forums[21] and more than 100 from the Forum on Minority Issues itself.

21 The recommendations of the three regional forums are available at www.ohchr.org/Documents/Issues/Minorities/IntegratedAfricaRecommendations.pdf, www.ohchr.org/Documents/Issues/Minorities/IntegratedAsiaPacificRecommendations.pdf and www.ohchr.org/Documents/Issues/Minorities/IntegratedEuropeRecommendations.pdf.

75. The Special Rapporteur notes that, among the many recommendations made at the Forum, the emphasis was on the importance of ensuring the implementation of Sustainable Development Goal 4 on ensuring inclusive and equitable quality education and promoting lifelong learning opportunities for all. Many minorities from around the world who had participated in the Forum emphasized the importance of equal treatment and non-discrimination based on the language they spoke or chose to learn. The Special Rapporteur also notes that, for the first time, international sign language interpretation was provided during the Forum, and that it was recommended that sign languages be recognized as languages instituted in law and that legally deaf children have the right to access bilingual education within a sign language environment.

76. The Special Rapporteur notes in particular a call made for regional forums to be held each year before the Forum on Minority Issues in order to provide more accessible and flexible platforms that would enable more contextualized discussions on regional realities. Regional forums would lead to greater regional insights and suggestions that would subsequently be taken into account at the Forum in Geneva and be part of a larger debate. The final report on the 2019 Forum had not yet been finalized at the time of writing of the Special Rapporteur's report.

77. Although a number of objectives were achieved through the Forum, the Special Rapporteur reiterates his view that there remains the need to consolidate the Forum as a space for interactive dialogue and to increase the engagement of States, United Nations bodies, regional organizations and other stakeholders. Additionally, from a procedural viewpoint, the increasingly large number of participants continues to create frustration as not everyone is able to take the floor under the desired agenda item and to delve into specific thematic issues or concerns, particularly when they are limited to two or three minutes to do so. While a more regional approach may make an interactive dialogue more accessible to minorities in different parts of the world and more receptive to regional concerns and contexts, other possible improvements should also be examined in 2020.

Regional forums

78. In his first report to the Human Rights Council, dated 16 January 2018, the Special Rapporteur raised the possibility of taking a more regional approach to the Forum on Minority Issues in order to make the Forum more accessible to minorities in different parts of the world and more receptive to regional concerns and contexts (A/HRC/37/66, para. 64). The first steps towards implementing such an approach were undertaken in 2019, with the organization of three

regional forums. The first forum for Europe, with the theme of "Education, language and the human rights of minorities", was held at the European Parliament in Brussels on 6 and 7 May 2019. The success of this first regional forum created favourable momentum for the subsequent Asia-Pacific regional forum, held at Mahidol University in Bangkok on 20 and 21 September 2019, and the Africa-Middle East regional forum, held in Tunis on 28 and 29 October 2019. It is hoped that four regional forums might be possible in 2020, which would be on the Special Rapporteur's third thematic priority, that is, tackling through social media hate speech and incitement to hatred against persons belonging to minorities. For the organization and coordination of the three regional forums in 2019, the Special Rapporteur had received the support of numerous regional civil society partners, as well as material and other support from States such as Austria, Canada, Hungary and Slovenia. All three regional forums were coordinated thanks to the Tom Lantos Institute in Budapest. Nearly 300 participants – including from non-governmental and minority organizations, States, and regional and international organizations (such as UNESCO, OSCE, the European Union and the Council of Europe) – attended this initial round of regional forums.

VI. Recommendations

A. Recommendations relating to the working definition of the concept of a minority

79. **The Special Rapporteur invites United Nations entities to take note of the working definition of the concept of a minority under article 27 of the International Covenant on Civil and Political Rights and of the jurisprudence of the Human Rights Committee and comment on who is a member of a minority in order to adopt and apply more consistently a common approach and understanding and therefore more effectively ensure the full and effective realization of the rights of persons belonging to minorities.**

80. **He recommends in particular that OHCHR, other United Nations entities, and the treaty bodies and special procedures review how they publicly describe who is considered a minority so as to avoid confusion and contradiction within the United Nations. The Special Rapporteur urges avoidance of the use of definitions that had previously been rejected by the United Nations Commission on Human Rights.**

B. Recommendations relating to education, language and the human rights of minorities

81. **The Special Rapporteur recommends that, as part of his mandate on minority issues, a series of practical guidelines be drafted to provide concrete guidance on the content and implementation of the human rights of minorities and the use of their languages in the field of education. These are to be more focused than, but built upon, the basic principles already identified in the *Language Rights of Linguistic Minorities: A Practical Guide for Implementation*.**

82. **Given the prominence and importance of language for the identity of linguistic minorities and the numerous examples of good practices shared with the Special Rapporteur by States and other stakeholders in response to the questionnaire on this topic,[22] he further recommends that the guidance document be made available in all six official languages of the United Nations, and be widely circulated to interested parties both within the United Nations and with other international and regional organizations and civil society organizations.**

C. Recommendations relating to the Forum on Minority Issues and the regional forums

83. **The Special Rapporteur reiterates the call made by numerous participants at the Forum on Minority Issues and in the three regional forums, and recommends the consolidation and institutionalization of a regional approach to the constructive dialogue between all stakeholders on minority issues. He recommends specifically that OHCHR and other interested parties consider practical means to ensure and support, under the mandate of the Special Rapporteur on minority issues, the annual organization of four regional forums to ensure that regional voices and contexts are more fully presented and can complement more effectively the Forum on Minority Issues as a platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities, and for the further implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.**

22 See the annex for a sample questionnaire and a list of contributors.

D. Other recommendations

84. **The Special Rapporteur noted the recommendation that was often raised during the regional forums and other activities, that the human rights of minorities be highlighted more frequently and that a more detailed approach be considered in their recognition and protection within the United Nations system. He recommends in particular that OHCHR, in collaboration with the Special Rapporteur, consider setting up a working group to examine the possibility of establishing a future instrument on the human rights of minorities, along the same lines as those for other marginalized or vulnerable segments of society, such as migrants, persons with disabilities and women.**

Annex

Education, language and the human rights of minorities: sample questionnaire and list of contributors

A. Sample questionnaire

Call for Submissions by 30 September 2019
Education, Language and the Human Rights of Minorities

In accordance with his mandate pursuant to Human Rights Council resolution 34/6, the Special Rapporteur on minority issues, Dr. Fernand de Varennes, intends to present a thematic report at the 43rd Session of the UN Human Rights Council, which will provide a detailed analysis and highlight the issue of "Education, Language and the Human Rights of minorities". The report will address areas pertaining to the recognition, protection and promotion of minority language in education, including the teaching of and in minority languages, and the adoption of inclusive pedagogical and educational approaches, with the view to ensuring equal access to quality education by persons belonging to minorities, in line with the international commitments under the post-2015 development agenda (SDG 4).

The report will also provide suggestions and recommendations addressed to all relevant stakeholders at the local, national, regional and international levels, and identify examples of good practices and initiatives that recognize and support the linguistic rights of minorities and promote inter-culturalism and multilingualism in the educational systems.

Context

The issue of education as a human right and its contours and impact for minorities constitutes one of the thematic priorities of the Special Rapporteur. It is also a topical issue, given the persisting significant challenges faced by minorities around the world today in accessing quality education and in particular education that contributes to the preservation of their language and identity.

Laws and policies which provide for a monolingual approach to education and to the provision of services, and which also impose restrictions on the use of minority languages in the public sphere, especially as medium of instruction, are often based on the misconception that investing in minority languages and creating an environment for their use and further development would alienate minorities from the learning of the national/official language, create linguistic segregation that would undermine minority integration and threaten national unity, societal cohesion and harmony.

Research has shown that inclusion of minority languages in education, both as separate subjects and as mediums of instruction, and the adoption of inter-cultural and multi-lingual approaches and methods in educational and vocational training programmes, have a direct positive impact on the educational performance of minority students, their self-esteem and development, and their integration in society in general.

In addition, protection of minority languages and the recognition, respect and promotion of the educational needs of minorities, is a crucial component of the protection and preservation of minorities' cultural heritage and promotion of society's diversity and development, and thus an important factor in reducing inter-ethnic tension and preventing conflicts.

In 2009, the inaugural session of the Forum on Minority Issues focused on minorities and the right to education and recommended that States provide adequate opportunities to persons belonging to minorities to learn their mother tongue or to learn through the medium of the mother tongue, and such opportunities be chosen in consultation with them. It also recommended that teachers and appropriate teaching and reading materials, including textbooks, should be available in the mother tongues of minorities.

Furthermore, in its section on education, the 2017 publication by the mandate of the Special Rapporteur on minority issues entitled "Language Rights of Linguistic Minorities: a practical guide for implementation" highlights the

importance of designing and implementing educational programmes in minority languages along with the teaching of the official language(s), and advocates for the preservation of minority languages, because as stated "a language that is not taught is a language that will ultimately vanish". Furthermore, the Practical Guide emphasizes that "the rights of linguistic minorities are human rights", and that education "deals with what is perhaps the central linguistic right of minorities, and is also fundamental to the maintenance of linguistic diversity." It also indicates that "quality public education in the mother tongue should 'be extended to as late a stage in education as possible', up to and including public university education where practicable."

The thematic report will address existing challenges with regard to such access to quality education by persons belonging to minorities, and will highlight good practices with regard to the inclusion of minority languages in national curricula, the effective involvement of minorities in the design and implementation of educational programmes, as well as other positive legal and policy developments that recognize and guarantee the right of minorities to learn and study in their own language.

In his analysis on minority language integration in the educational systems, the Special Rapporteur will pay particular attention to the educational needs of deaf people, as members of a linguistic minority, the recognition of sign languages as minority languages and their inclusion as a medium of instruction at all educational levels.

Call for submissions

In accordance with the established practice of thematic mandate holders, the Special Rapporteur welcomes inputs by States, UN agencies, regional and international organizations, national human rights institutions, civil society, scholars and research institutions, and others who may wish to submit for this purpose. Such submissions may include, for instance, recommendations, evidence and case studies, as well as analyses relevant to

1. Please provide information on the specific legislative, institutional and policy framework at the national and local level that address minority education, and education of and in minority languages, including sign languages. Please provide examples of key laws, policies and practices, including good practices, as well as gaps.

2. Please provide examples of programmes of linguistic diversity, learning materials, multi-lingual and multi-cultural approaches to and methods

of teaching and learning, involving the teaching and learning of minority languages and cultures.

3. Please provide information on initiatives and programmes that effectively address challenges faced by minorities in accessing quality education, including the issue of direct and indirect costs of education.

4. Please provide examples of training programmes for teaching staff and educational administrators, including inter-cultural training, aiming at preparing them to respond to the educational needs of minority students.

5. Please provide examples of programmes and initiatives to strengthen the availability of teaching staff who speak minority languages, including teaching staff from minority communities.

6. What are the identified challenges in the design and implementation of programmes and initiatives to facilitate access to education, including vocational education and training, by persons belonging to minorities and to integrate minority languages in the national curricula as separate subjects and as mediums of instruction?

7. Please describe to what extend and how are persons belonging to minorities and their representative organizations involved in the design, implementation and evaluation of educational programmes and curricula.

8. Please provide any other relevant information and statistics on access to education by persons belonging to minorities, covering all educational levels. Such information may include:

(a) the number of educational institutions (public and private) at each education level, in which minority languages, including sign languages, are either taught as a separate subject or are used as mediums of instruction, and their proportion to the total number of educational institutions. Please indicate the average weekly frequency of hours of teaching both of and in minority languages;

(b) the number of bi-/multi-lingual classes.

Submissions and inputs on the above-mentioned areas can be submitted in English, French or Spanish and addressed to the Special Rapporteur by email to minorityissues@ohchr.org by 30 September 2019.

Submissions and inputs will be considered public records unless otherwise expressed by the submitter and will be published on the website of the Special Rapporteur.

B. List of contributors

States:

Armenia, Austria, Azerbaijan, Colombia, Croatia, Estonia, Finland, Georgia, Greece, Hungary, Jordan, Kyrgyzstan, Latvia, Lebanon, Norway, Russia, Senegal, Serbia, Sweden, Ukraine

International and Regional Organizations:

Council of Europe

EU Fundamental Rights Agency

UNESCO

UNHCR

UNICEF

National Human Rights Institutions:

Australian Human Rights Commission – Australia

Comisión Nacional de los Derechos Humanos – Mexico

Defensor del pueblo de la nación – Argentina

Institucija ombudsmena/ombudsmana za ljudska prava – Bosnia and Herzegovina

Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman) – Cyprus

Protector of Citizens (Ombudsman) – Serbia

Public Defender (Ombudsman) of Georgia – Georgia

Civil society organizations and Academia:

European Union of the Deaf

Human Rights Association – Turkey

International Campaign for Tibet

Minority Rights Group International

Scholars at Risk

Unrepresented Nations and Peoples Organization (UNPO)

International Human Rights Committee

International Association of Library Associations
International Service for Human Rights
Latvian Human Rights Committee
Legal Information Centre for Human Rights – Estonia
Maat for Peace, Development and Human Rights
Vassar College
World Uyghur Congress

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