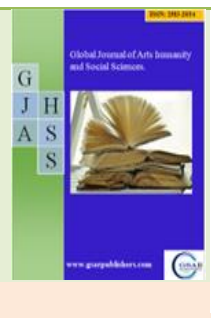


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## United nations Minority rights; international standard and guidance for implementation (Geneva OHCHR 2011)

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### Abstract

This paper focuses on analyzing the different international mechanisms for the protection of minority's rights. The study is divided into different parts. The first one is the general introduction where a researcher will attempt to give different definitions of the term minorities according to the different sources. The second part will be an analysis of different mechanisms for the enforcement and protection of minority rights in both international as well regional levels. The third part will be dealing with the way forward of the study, the recommendation last but not the least part will be the conclusion

### 1.0 Introduction

The notion of minority right has been defined by various human right experts. According to Rhona Smith, defines minority group to mean,

“Any group of person's resident within a sovereign state which constitutes less than half the population of the national society and where members share common characteristics of an ethnic, religious or linguistic nature that distinguishes them from the rest of the population.”<sup>1</sup>

From this definition, one can deduce that, for a certain group to be considered minority, it must contain important criteria, the first one it must be a resident within a sovereign state, this implies that, any person who is a resident and not necessarily a citizen if he/she belongs to a group which compose has less than a half of the population.

Also, the former Special Rapporteur of the Sub- Commission Mr. Francesco Capotorti, Special Rapporteur tempted to define the word minority to mean group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members being nationals of the State possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly essence of solidarity, directed towards preserving their culture, tradition religion or language.<sup>2</sup> Scope of minorities rights includes religious, ethnic, and linguistic minorities

### 1.2 Development of Concept of Minority

After the First World War, the League of Nations (the League), the first international organization dedicated to peace and collaboration was established. It promoted collective security, disarmament, and arbitration to prevent another war.<sup>1</sup> The League was also the first to priorities minority protection and developed a minority protection system. It recognized that peace and security could not be attained without protecting the rights and interests of minorities,

<sup>1</sup> SMITH, Rhona.M.K, (2014), Text Book on the International Human Rights, new york Oxford university press p,382

<sup>2</sup> SEPULVEDA, Matilde, et al (2004), Human Right Reference Book San Jose University For Peace Press



who make up a considerable portion of the world's population and are often persecuted by the majority.<sup>3</sup> The League of Nations created a revolutionary minority protection system that applied to some states, especially in Central and Eastern Europe, with substantial or important minority populations.

## 2.0 MINORITY RIGHTS PROTECTION UNDER INTERNATIONAL ARENA

There are many instruments at the international level which describe the rights of minority groups as we shall hereinafter. In this case we shall pass through different treaties so to begin and then we shall thereafter go to have focus in declarations general comments and other sources.

### 2.1 Universal Declaration of Human Rights 1948.

This is the first international declaration which prescribes human rights. It is like the constitution without a binding power. Despite that fact, the UDHR has gain the power of customary as it has inspired the establishment of many other binding treaties. In what concerns the aspects of minority rights, this instrument provides two principles which are the basis of our discussion which are; people are born free and equal in dignity and in rights, this is provided under the provisions of Article 1 and that everyone can enjoy these rights and liberties regardless of "race, colour, sex, language, religion, political or other opinion,<sup>4</sup> national or social origin, property, birth or other status" through words of Article 2.<sup>5</sup> In addition to that, Article 7 of the same instrument provides for the right against discrimination and equality before the law. This impliedly means that no one should be discriminated on the basis of their colour of skin, their ethnic origins, their religions or anything else. Other Articles in this case which can be related to the rights of minorities are, freedom of religion provided under Article 18 which includes the freedom to manifest religious beliefs in community with others, freedom of expression as it is provided under Article 19, freedom of nation provided under Article 20<sup>6</sup> which would facilitate meetings of minority peoples; All these contain all characteristics which may define minority persons within a State.,

### 2.3 The UN Declaration of 1992 on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

1992 the General Assembly adopted the United Nations Minorities Declaration by consensus (resolution 47/135). It is the main reference document for minority rights. It grants to persons belonging to minorities: Protection, by States, of their existence and their national or ethnic, cultural, religious and linguistic identity Article 1;<sup>7</sup> the right to enjoy their own culture, to profess and practise their own religion, and to use their own language in private and in public Article. 2 (1), the right to participate

effectively in cultural, religious, social, economic and public life Article. 2 (2),<sup>8</sup> the right to participate effectively in decisions which affect them on the national and regional levels Article. 2 (3); The right to establish and maintain their own associations Article 2 (4), The right to establish and maintain peaceful contacts with other members of their group and with persons belonging to other minorities, both within their own country and across State borders Article. 2 (5), and the freedom to exercise their rights, individually as well as in community with other members of their group, without discrimination Article 3. States are to protect and promote the rights of persons belonging to minorities by taking measures to: Ensure that they may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law Article 4 (1), Create favourable conditions to enable them to express their characteristics and to develop their culture, language, religion, traditions and customs Article 4 (2), Allow them adequate opportunities to learn their mother tongue or to have instruction in their mother tongue Article. 4 (3).<sup>9</sup>

### 2.4 International Covenant on Civil and Political Rights 1967

In particular, Article 27<sup>10</sup> inspired the contents of the United Nations Minorities Declaration. It states that: 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 practice their own religion, or to use their own language.

This article protects the rights of persons belonging to minorities to their national, ethnic, religious or linguistic identity, or a combination thereof, and to preserve the characteristics which they wish to maintain and develop. Although it refers to the rights of minorities in those States in which they exist, its applicability is not subject to official recognition of a minority by a State. States that have ratified the Covenant are obliged to ensure that all individuals under their jurisdiction enjoy their rights; this may require specific action to correct inequalities to which minorities are subjected.<sup>11</sup>

### 2.5 International Covenant on Social, Economic and Cultural Rights.1966

In addition to that, there is an International Covenant on Social, Economic and Cultural Rights. Under the provisions of Article 2 (2) of the ICSECR, one might deduce that, it prohibits discrimination basing on religion, culture or language.

### 2.6 The Convention on the Prevention and Punishment of the Crime of Genocide of 1948

<sup>3</sup> MARC Weller (2006).the rights of minorities in Europe. Oxford university pres.

<sup>4</sup> Universal Declaration of Human Rights , 1948

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> The UN Declaration of 1992 on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

<sup>8</sup> The UN Declaration of 1992 on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

<sup>9</sup> Ibid

<sup>10</sup> International Covenant on Civil and Political Rights,1967

<sup>11</sup> CORINNE, Lennox, (2021), Transactional Socials Mobilization and Minority Rights. Published by Tylor Francis Group p.201

This is a legal source referred to in the United Nations Minorities Declaration for protecting the rights of minorities. Relates to the protection of groups, including minorities, and their right to physical existence. No mechanism has been established to monitor its implementation. The ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda were the first to apply this international Convention under Article II In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group;

### 2.7 International Convention on the Elimination of All Forms of Racial Discrimination 1965

Under Article 1<sup>12</sup> defines discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

### 2.8 The Convention on the Rights of the Child 1989

Article 30<sup>13</sup> provides that “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 practice this or her own religion, or to use his or her own language”.

## 3.0 International Human Rights Mechanisms Available to Address Issues Concerning Minorities

To ensure that the rights contained in international human rights conventions are realized, committees have been established to monitor the progress made by States parties in fulfilling their obligations. Those of particular relevance to minority rights are:

### 3.1 Human Right Committee

This Committee is established by article 28 of International Conventional of Civil and Political Rights (ICCPR) of 1966 It has mandate to oversee the implementation of the International Covenant on Civil and Political Rights by its state member.

### 3.2 The Committee on Economic, Social and Cultural Rights

This Committee is responsible for monitoring implementation of the International Covenant on Economic, Social and Cultural Rights.<sup>14</sup> It has a fully-fledged complaint procedure, including individual petitions, inquiries and inter-State complaints.<sup>15</sup>

### 3.3 The Committee on the Elimination of Racial Discrimination.

This one is responsible in overseeing the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee is an organ established under Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination this three supervisory mechanisms which are reporting procedure Article 9 of the Convention, Inter-State complaint mechanism as per Article 11 and Individual complaint mechanism as per Article 14 of the same Convention.<sup>16</sup>

### 3.4 The Committee on the Rights of the Child

This is treaty body which oversees the implementation of the Convention on the Rights of the Child. Article 43 of the Convention on the Rights of the Child establishes Committee on the Rights of the Child. The supervisory mechanisms established by the CRC are the reporting system under Article 44 of the CRC and the individual complaint mechanism established by the (Third Optional Protocol) UN Convention on the Rights of the Child.

### 3.5 The Committee on the Elimination of Discrimination against Women,

This one is responsible for governing the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Article 17<sup>17</sup> of the Convention establishes the Committee for the Elimination of Discrimination against Women (CEDAW Committee) which is responsible for supervising international compliance with the Convention. It has different supervisory mechanisms such as Individual complaints mechanism as established by Article 1 of the Convention. This procedure allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the Committee. Another one is, Inquiry procedure as provided under Article 8 of this Convention<sup>38</sup>. The Protocol sets out a unique inquiry procedure that enables the Committee to initiate inquiries into situations of grave or systematic violation of women’s rights and carry out country visits.

## 4.0 REGIONAL INSTRUMENTS ON THE PROTECTION AND PROMOTION OF MINORITY RIGHTS

African Charter on Human and Peoples Rights In this human Rights instrument as we have seen in other instruments it also provides for the right of enjoyments of one’s freedom and rights without being discriminated inter alia on the basis of his/her religion, language, national or culture as per Article 2 of the Charter. It also provides for the right to one to practice his/her own culture as provided under Article 17(2) of the Charter.<sup>25</sup> Furthermore, Article 29(7)<sup>18</sup> of the Charter<sup>26</sup> imposes a duty on all individuals to preserve and strengthen positive African cultural values. Regional mechanisms addressing minority rights are

<sup>12</sup> International Convention on the Elimination of All Forms of Racial Discrimination 1965

<sup>13</sup> The Convention on the Rights of the Child, 1989

<sup>14</sup> International Conventional of Civil and Political Rights (ICCPR) of 1967

<sup>15</sup> The International Covenant on Economic, Social and Cultural Rights, 1966

<sup>16</sup> Internationals convention on the elimination of all forms of Racial Discrimination, 1966

<sup>17</sup> The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW Committee) 1979

<sup>18</sup> The African Charter on Human and Peoples Rights, 1979



African court on human and people's rights and African commission on human and people's right those institutions has mandated to interpret African charter on human and people's rights and to reserve complainants about minority rights.

## 5.0 MINORITY RIGHTS AT NATIONAL LEVEL

Tanzania has two unique hunter-gatherer groups, the Akie and Hadzabe, and the pastoralist Barabaig and Maasai, are the four groups in Tanzania that consider themselves as 'minorities' relating to an internationally accepted definition. Although these groups have distinct cultural and social dimensions, they do share a number of commonalities, such as their strong attachment to land and a unique cultural identity, as well as social and political struggles, such as marginalization, poverty, tenure insecurity and inadequate political representation

### 5.1 The Constitution of United Republic of Tanzania of 1977.

The Tanzanian constitution is the mother law of the land, which promotes and protects human rights whereby minorities as human beings have the right to life under Article 14 which states that Every person has the right to live and to the protection of his life by the society in accordance with the law , Right to own property under Article 24 whereby Every person is entitled to own property , and has a right to the protection of his property held in accordance with law This article protects the rights of minorities to own land also minorities as human beings has the right and freedom of participation fully public affairs under Article 21.<sup>19</sup>

A further threat to Hadza society comes from the nature of the education system. Although most Hadza want their children to attend school their only option is for children to board over nine months a year from the age of six, being taught only in Swahili from non-Hadza teachers – a process amounting to forced assimilation on lines which have failed elsewhere Even though the Hadza as minority community in have been partnering with social enterprise Carbon Tanzania so as to benefit from their long-term protection of community forests through the carbon offset market. Companies and individuals buy carbon offsets and the funds are funnelled directly to the community for local projects such as building hospitals and schools and forest conservation.

Generally Tanzania it does not recognize the existence of any indigenous people in the country and there are no specific policies or legislation protecting indigenous rights. Instead, a number of policies and programs actually undermine minority's people's rights

## 6.0 challenges facing minorities

Minorities has been faced with different challenges in their communities due the inferiority of small population than the rest population . those people termed as minorities can not engage in political, economic and social activities . The following are some challenges facing minorities

### 6.1 Discrimination

This act of discrimination against the minority community is a global problem and Women get the worst of it, minorities often experience discrimination from both within and outside their communities and suffer disproportionately from the economic, social and political marginalization affecting their communities as a whole.

### 6.2 Problem of Security

The problem of security is common to all minorities groups in worldwide all people belonging to the minority community are often left feeling more insecure, both physical and psychological and are prone to abuse and threats from both their community and the majority community. This feeling of insecurity gets even worse when the relations between the majority and the minority communities in a society are strained or not much cordial specifically during the time of communal riots, minority women are specifically targeted and are killed, robbed and raped without mercy.

### 6.3 The problem of equity

The minority community in society may remain deprived of the benefit of opportunities for development as a result of discrimination. Because of the difference in identity, the minority community develops the perception of the sense of inequity. Religion is a complex phenomenon . Example in India is declared a 'secular' state, the problem of secularism looms large here. Conversion to Islam and Christianity has been a controversial issue over the last couple of decades.

## 7.0 Way Forward

The strengthening of the rule of law both nationally and internationally holds many opportunities for the effective implementation of minority rights as law. The requirements will be that the rule of law includes the rights of minorities, that minorities understand and are able to use this law, and institutions that implement this rule of law can and do address minority concerns.

## 8.0 Conclusion

Generally, despite the efforts done at both international and regional level, yet some more efforts should be done to evacuate the situation of many minority groups which are victims of persecutions as it is the situation in Sudan where there are mass killings of ethnic Masalit.

## 9.0 Recommendations

### 1) To The United Nations Human rights council

There should establish a specific binding treaty addressing the issues of minority rights. In order to harmonise the situation on the protection and promotion of minority rights at international and regional level. This will help much to clear the ambiguity on the issues of which languages, culture or issue of which religion should be considered as minority as it is the case in Africa where in one country, one may find more than 100 vernacular languages.

### 2) To The African Union .

Africa Union should establish specific legal and institution framework particularly addressing minority rights because Africa

<sup>19</sup> The Constitution of United Republic of Tanzania of 1977



is among of continent has huge problems of minorities communities Example in Sudani there are mass killings of ethnic Masalit this is current situation in sudani those minority community they killed

### 3) To The Tanzanian government .

There should be a specific National body dealing on the minority issues not as it is currently practiced. This can be done as it is the case with other vulnerable groups as women have the Committee on the elimination of discriminations against women and the Committee on the Rights of the Child.

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