

A concise review on comparative studies on the evolution of minority rights in the European and African context

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Abstract

Minority rights refer to the privileges granted to a specific group of people within a particular region. These rights are provided for various reasons, including the fact that this group may have a smaller population compared to others from the same ethnicity or tribe. The topic of minority rights has been a point of dispute in both Europe and Africa. More so, determining who constitutes a minority and granting them rights is a complex and challenging task. The aftermath of colonialism has resulted in a mix of ethnicities living together in a single territory, making the discussion of minority rights particularly difficult in the African context. While progress has been made in Europe with regards to granting rights to minority groups, it is still not a straightforward process. Understanding the evolution of minority rights in both the African and European contexts is crucial to fully comprehending the issue of minority rights and how it somewhat differs from the African to the European context. This paper reviews the historical examination of the evolution of minority rights and presents a comparison of the differences in the way minority rights is understood and dealt with in the African and European contexts.

1. Introduction

The African continent is home to over fifty nation-states, sometimes referred to as state nations, due to the impact of colonialism (Mostafa & Encloe, 1969). As a result, the desire for a political society was initially strongest among the elites or individuals during colonial times, before the emergence of nationalism, unlike in Europe. Most European countries were formed through the strong activation of nationalism, for example in the case of Poland and France. However, in Africa, the process was reversed. This has resulted in one state potentially having over two hundred ethnicities, such as in the case of Cameroon or Nigeria. This has led to significant difficulties in trying to standardize minority rights in these states. The first question that should be addressed before anything else is, "Who are the minority?" This leads to self-identification. But if this question remains unanswered, the question of who we are promoting rights for becomes a major issue.

2. The Definition Problem

In trying to understand the minority problem it is imperative to begin to define what or who a minority is, although, it has been very difficult to get an all-encompassing definition that is accepted by nation-states. However, one definition that is repeatedly mentioned in the discussions of minority rights is that of Francesco Capotorti (1979, p.23). A minority is

“a group numerically inferior to the rest of the population of a State, and 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, a sense of solidarity, directed towards preserving their culture, traditions, religions and language”

And, at the request of the UN Sub Commission, a revision of the term was provided in 1985 by Jules Deschênes (p.3):

“a group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law”

These above-stated definitions present two significant challenges among others (Slimane, 2003), in the context of Africa in trying to find a place for minority rights in the political dispensation in the respective African states.

First, the problem of numbers, in other words, the numerical problem. In states where there is no clear or outright number of who is minority and majority, it becomes a grave misunderstanding in trying to figure out who is the majority or minority based on numbers. Even when there is a clear number which is known by all, some African states have had minority ethnic groups as frontrunners of political dispensation. In this, the minority that is at the helm of political affairs to the exclusion of the majority enjoys on top of their political advantages, extra rights because of their status as minorities. For example, the Hutus of Rwanda and Oromo of Ethiopia, being the majority in their respective states they were surprisingly excluded from political power. This kind of definition when brought into the context of Europe faces fewer challenges like that of Africa.

Second, the question of citizenship, which is stressed in the definition, in other words, the citizenship problem. Although the question of citizenship is much solved by International law, considering African nation-states, citizenship continues to be a significant point that needs a thorough review. Sometimes in some African states because citizenship is linked to active participation in public life or even access or ownership of lands as in the case of DR Congo, Zambia etc. political authorities in their maneuvers could simply deny people citizenship. This unfortunate lack of clear-cut requirements of citizenship leaves some people at the mercy of these political authorities. This type of case is addressed in the General Comment in Article 27 of the ICCPR as follows, *“the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria”* (1994) (See paragraph 5.2 HRC General Comment No. 23, 50th session, 1994. As of 9 December 2002, 149 states are party to the ICCPR. Almost all African states are party, with the exceptions of Comoros, Mauritania, and Swaziland (now Eswatini)).

Due to the challenges of recognizing minorities in the African setting, the following five factors suggested by Samia (2003) might serve as a guiding principle in deciding who minorities are in African states. First, the ethnicity or religion within the state, second, who are in a non-dominant position where they reside, third, the group should be composed of individuals who have a sense of belonging to that group, fourth, these groups are centered on preserving their distinct identity and finally, because of their faith or ethnicity, they are ostracized or discriminated against. This criteria could be used to identify persons in the states of Africa as minorities who otherwise do not feel themselves minorities. For example, the Konkombas in Ghana, Ogiek in Kenya, Bakgaladi in Botswana etc. The significant point here is the ability to settle the scuffle on self-identification. After that is achieved then minority rights could gain momentum in the political dispensation of the states in Africa.

3. On The Genesis and Approach of Minority Rights in Africa

Prior to the colonization of the African continent, the talk of fifty-plus names of States was nonexistent in Africa. It was the Berlin Conference in the 1880s that imposed borders on the African continent which as a result caused the clustering of several ethnicities into one territory known as States (Uzoigwe, 1984). This came with consequences, as different ethnicities could not stand one dominant ethnic group having political power over the rest. Moreover, it furthered the division of the African continent to what it has come now to be fifty-four (and counting) nation-states. One troubling consequence is the intrastate conflicts that have torn some states, for example, the 1960s Biafra War in Nigeria.

Indeed, during the colonial period, human rights as it is recognized today were nonexistent. There were several violations of human rights, this then does not give room for the discussion or even the recognition of minority rights (Bonny, 2007). To this extent, the passage of the UN's Universal Declaration of Human Rights was initially opposed by the British because of fear its implementation could extend to their respective colonies (Howard, 1987). Tracing back the evolution of minority rights in Africa, then, it is imperative to note how political power, if there was any, was exercised by the locals during the colonial period. To help manage the population, the colonizers propped up certain people among the population that appeared more European and gave them some amount of political power. Like in the case of Rwanda, the Tutsis were preferred over the Hutus irrespective of the size of the population between these two ethnicities. Among the criteria that caused a population to be chosen were, that they had an organized structure in their leadership, had some level of political consciousness, etc. (Appiagyei-Atua, 2008). Those who were not chosen by the colonial master were those with no or less structure in their ethnicity, had no political consciousness, and lived a simple agrarian life, among others. These oppressed indigenous groups bore the brunt of colonization. When natural riches were discovered on their territory, they were forced off or subjected to other forms of maltreatment to force them to give up ownership over their lands (Barume, 2014). Most of these indigenous groups who were driven out of their lands and settled elsewhere are now termed as the minorities in the political dispensation of most of the African states, like the Maasai, the Ogiek etc. (Appiagyei-Atua, 2008). The Post-colonial period and the need to homogenize and integrate Africa's economies with the rest of the world meant that at the national level each newly recognized state in Africa had to have a strong and central political power to cause rapid development. In other words, the diverse communities were incorporated into statehood. This was recognized in OAU's Cultural Charter article 4, which mentions the diversity in the cultural aspects of the African state. Also, the pursuit of this policy meant "internal colonialism" for the minority groups as they continue to struggle for recognition of their lands, among others (Appiagyei-Atua, 2008).

Another precursor to the contemporary minority issues is that due to the legal notion of *uti possidetis*, (where national borders were maintained as they used to be during the colonial era), the national identity of countries or state took after the dominant population of the country (the core nation or titular), Oded (2015) mentions. This caused a plethora of minority issues since most of the states had several populations not of the dominant population. Although this is not a particular case in the African states, some African states bear some semblance of this situation. Like the dominant Akan tradition in Ghana which influenced much of the political dispensation of the country, among other things.

The Organization of African Union (OAU) came up with its innovative means to help address problems facing the African continent in which concerns of minority rights will not escape attention. The OAU was primarily concerned with promoting unity and solidarity among African governments (as stated in article 2(1a)). The African Charter on Human and Peoples' Rights (ACHPR) was adopted in 1981 to increase the recognition of laws that apply to human rights. Here, it could be understood that, since the ACHPR was walking in the spirit of the OAU, the term 'People' should also be in the form of the nation-state as it is in the Charter of the OAU. In its 2000 Constitutive Act, the now-AU lists "the Promotion and Protection of Human and Peoples' Rights" in accordance with the African Charter as one of its purposes. In the same vein, the African Commission has refrained from using the term "peoples" purely in terms of nations, instead referring to distinct groups or ethnicity as people. It is also noteworthy to mention that the Commission has however not yet defined the term People but, in its interpretation, it has included ethnicities. This new approach differs from the concept that People solely referred to nation-states. As suggested by the Commission, the following is an example of such reasoning in the context of Mauritania according to the Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights, 1999-2000 page 179.

"At the heart of the abuses alleged in the different communications is the question of the domination of one section of the population by another. The resultant discrimination against Black Mauritians is, according to the complainants, the result of a negation of the fundamental principle of the equality of peoples as stipulated in the African Charter and constitutes a violation of its art. 19"

In this interpretation, the Commission interpreted the term “people” as mentioned in the African Charter used to mean not the nation-state but the diverse groups of ethnicities living in the territory of Mauritania.

4. Minority Right in the European Context

Prior to the now robust discussion and demand on minority rights in international politics, minority right was quite unattended to in politics as far as global politics was concerned. It is most often traced back to the creation of the Nation-State through the Westphalian model thus religious rights are acknowledged to be a cornerstone towards enriching the discussion of minority rights. Minority rights are said to have evolved as an indemnification provided by the winners, primarily the then-great powers, to vanquished parties (Andre, 2008). The treaties of Munster and Osnabruck that form the basis of the Peace of Westphalia (1648) gives somewhat an understanding of how territories were transferred to victors and how states gained sovereignty to determine their affairs, but what is important is how those oppressed because of their religious difference got the opportunity to practice their faith without hindrance. The princes were at liberty to determine whether to be Catholics or Protestants without interference. Also, Protestant or Huguenots were given some breathing space to practice their religion as a minority. For decades to come, minority rights shifted from religion to include national minority right in the case of Poland as was discussed in the Congress of Vienna (1815) regardless of the consequences that manifested after granting of the rights to the Poles. In addition, the breakup of empires, including the Ottoman Empire, prompted a significant debate over the rights provided to minorities under the aegis of the League of Nations. Meanwhile, with the demise of the League of Nations, the United Nations Charter and the European Union established novel (though ineffective) methods of protecting minorities' rights.

5. On the Genesis or Evolution of Minority Rights

The definition of the term minority in terms of the discussion of people living within the nation-state has generated enormous disagreement due to the anticipated problems it could bring to the political front if the definition does not agree with the aspirations of the majority people within the state. The definition recognizes religious minority rights as a significant part of rights conferred on groups, it is in line with rights granted to people after the thirty years war of Europe that ended with the peace treaty of Westphalia. The Westphalian Peace treaty was concluded in Munster and Osnabruck with different parties ceding territories and allowing the rights of religions which they considered intolerable especially Protestantism because the predominant religion then was Catholicism. Because of the disastrous effects of the thirty-year war that erupted between 1618 and 1648, the diplomats were dedicated to a Christian and Universal Peace in their sanctimonious invocation of "the holy and individual Trinity" (Andre, 2008). This war was a result of the Protestant Reformation that challenged the dominant religious tenets held by the Catholic Church. The Peace of Westphalia as a cornerstone towards some peace used as its principle the *cujus regio eius religio* which was of the Peace of Augsburg (1555) translated *whose realm, their religion*. This simply meant the princes or leaders of the respective territories are solely in charge of determining the religion they deem fit. The Peace treaty laid down the foundation for what would now become formal provisions of a treaty such as peace clauses, amnesty, guarantees, and territorial arrangements. The Peace of Augsburg predated that of Westphalia, meaning the Peace of Westphalia notably was following the *status quo ante*. One of the principles of the Treaty of Osnabruck was to "patiently endure and accept" minority confessions. It further said that minority subjects should not be exposed to additional miseries, should not be required to pay more than the majority for burial, and should not be barred from guilds, almshouses, or hospitals (per the Treaty of Peace between Sweden and the Empire signed at Osnabruck). According to the Treaty of Munster,

That those of the Confession of Augsburg, and particularly the inhabitants of Oppenheim, shall be put in possession again of their Churches, and Ecclesiastical Estates, as they were in the year 1624, as also that all others of the said Confession of Augsburg, who shall demand it, shall have the free Exercise of their Religion, as well in publick Churches at the appointed Hours, as in private in their own Houses, or in others chosen for this purpose by their Ministers, or by those of their neighbors, preaching the Word of God (Article XXVIII).

Here, the newly elected Electorate of Palatine concedes to the emperor. The above article was enjoining on the catholic emperor to respect the right of the Protestant minority. This is explicitly outlining the rights which were enjoyed previously by people who belonged to minority religions. The Peace of Westphalia without any precedence to look up established as a monumental multilateral treaty a paradigm that made the acceptance of minority rights an indemnity to the defeated. This for centuries to come shaped the cause of minority rights. It is not long that the Treaty of Oliva (1660) reproduced what has been laid down in the Westphalia peace treaty about minority right. Poland guaranteed in the pact that Livonian Catholics would adhere to their religious beliefs, and the same was done for other minorities. The Treaties of Nijmegen (1678), Ryswick (1697), and Paris (1763) all granted minority rights to individuals of non-dominant religions to practice their faith in peace and without cohesion.

6. The Significance of the Congress of Vienna of 1815

During the Meeting of Vienna (1815), one of Europe's most important treaties was produced; Henry Kissinger refers to the congress as "a world restored." This assembly was held in response to the grave consequences of the French Revolution and the Napoleonic period. The tradition of recognizing minorities and conferring on them some rights continued as well. The King of Sardinia in ceding part of his territory to Duchy of Savoy of Geneva iterated. *His Majesty unable to consent to having part of his territory united with a state where a different religion is dominant... that they will continue to have the means necessary for the expenses of worship... article III* (Protocol of Conference between the Plenipotentiaries of the Eight Powers (Austria, France, Britain, Portugal, Prussia, Russia, Spain and Sweden) per the pages of the Consolidated Treaty Series (64) 75-76).

The minority rights particularly with religious rights that were provided for in the Peace of Westphalia was replicated again after centuries when confronted with the issue of minority. The Congress of Vienna was momentous in resolving the fate of Poland, which had been partitioned among three great countries, Russia, Prussia, and Austria, between 1772 and 1795. However, this was the first event of this sort to mention a national minority. The Final Act of the Congress of Vienna switched from allowing minority rights based on religion to granting minority rights based on nationality. Then-British Foreign Secretary Castlereagh advocated the concept of uniting Poles, warning that anything less would end in a "hearth of troubles and insurgencies." Talleyrand, the then-French Foreign Minister, also remarked that the Poles would always constitute a family (Andre, 2008). The first item of the Final Acts of the Congress of Vienna, which was signed by, Russia, the Britain, Prussia, Austria, Portugal, Sweden, and France, reads as follows:

The Poles, respectively subjects of Russia, Austria, and Prussia, shall obtain a representation of their National Institutions regulated according to the mode of political existence that each of these Governments to which they belong will judge useful and appropriate to grant them. Protocol of Conference between the Plenipotentiaries of the Eight Powers (Austria, France, Britain, Portugal, Prussia, Russia, Spain and Sweden) per the pages of the Consolidated Treaty Series (64) 75-76).

The importance of this is that, for the first time, minority rights, which had been tied as an indemnification for vanquished parties, were transformed to national minority rights, i.e., the right to self-determination was acknowledged by states or parties at the Vienna Congress. This was a significant step forward in the discussion of the historical process of minority rights. This, however, will have a significant impact on what happens following the collapse of the Russian, Austrian, and Ottoman Empires, which preceded or triggered the foundation of the League of Nations (Andre, 2008).

7. The Two World Wars and their Ramifications on Minority Rights

Following World War I and the collapse of the three multinational empires, namely Austria-Hungary, the Ottoman Empire, and Russia, a large number of people belonging to ethnicities or religions were considered minorities in comparison to the dominant population of a particular state spread all over the world. The League of Nation's innovative response to such an incident was to convene parties in Paris and signed the Paris Peace Conference. In this conference or treaty, special provisions were incorporated and signed by parties, other states too made unilateral declarations relating to the protection of minority rights. Agreements were also reached between States that had minorities across each to protect the rights of these minorities. An example is an agreement between German and Poland, Austria and Czechoslovakia and Greece and Italy etc. The provisions of the treaties or agreements centered on the state providing the minorities equal rights, non-discrimination, speaking one's own language, religious support, and citizenship. A significant part of the League of Nations-led protection of minority rights also known as the Minority Treaties, was the special provisions to be enjoyed by minorities as well as making states recognize minority rights within their political space. This, however, is criticized as granting a lot of attention to the minorities which make these minorities exploit the opportunities granted them. In other words, the Philosophy of recognizing a special right for the minorities as championed by the League of Nations was to be later considered a part of the reason why the League of Nations was not sustained. Because states that were made to recognize the existence of minorities in their state and eventually granting those special rights were not comfortable with such an idea. Since these minorities then could secede or claim self-determination. It also made states that had ethnicities in a different state have a sense that they could intervene if they think the need be. The United Nations Charter was established following the end of World War II. This charter's innovation rejected the philosophy of special recognition of minority rights in favor of the principle of equality and non-discrimination of all individuals; in other words, the new charter's philosophy was the individualistic approach, which prioritized human rights over special minority rights. According to Study on the Legal Validity of the Undertakings Concerning Minorities, U.N. ESCOR, 6th Sess., at chap. XIV, U.N. Doc. EICN.41367 (1950) page 19, the Secretary-General iterated as follows-

"As a whole was overthrown by the Second World War and that the international decisions reached since 1944 had been inspired by a different philosophy that is by the idea of a general and universal protection of human

rights. Reviewing the situation, therefore, one is led to conclude that between 1939 and 1947 circumstances changed to such extent that, generally speaking, the system should be considered as having ceased to exist."

This is evident in the United Nations-sponsored Universal Declaration of Human Rights. Minorities are not mentioned or referred to anywhere in the United Nations Charter or the Universal Declaration of Human Rights. Article 27 of the treaty International Covenant on Civil and Political Rights (1966) under the auspices of the United Nations is a significant milestone in the history of minority rights, it reads *-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...or to use their own language.* This was the first multilateral treaty of its kind to clearly specify the minority rights that should be enjoyed within the respective parties.

In terms of the contemporary struggle for minority rights, the United Nations General Assembly enacted the Declaration on the Rights of Persons Belonging to National or Ethnic Minorities, Religious and Linguistic Minorities in 1992, expanding on the provision of the ICCPR art. 27. On a regional level, the efforts done by the Organization for Security and Cooperation in Europe (OSCE, 1975) to improve minority rights among member nations are also regarded comprehensive. Member States agreeing to respect minority rights is one of the significant principles included in the Helsinki Final Act. The Copenhagen Text of 1992 is another key document that describes strongly the list of privileges that minorities should have, such as the use of mother tongue in school or usage in public, as well as freedom to cultural and religious organizations. Furthermore, the Council of Europe Framework Convention on Minority Rights is a new initiative to improve minority rights. Although the European Convention on Human Rights (ECHR, 1950) does not use the term minority, it does refer to it by declaring that persons would not be disappointed because of their gender, color, ethnicity, or language. The establishment of the Office of the High Commissioner for National Minorities was a significant OSCE initiative. This office oversees or carefully follows the happenings of minorities in the member states.

8. Conclusion

With regards to minority rights in Africa, there is still much work to be done. Emphasis must be placed on the importance of self-identification, due to a lack of understanding regarding the numerical value of minority or majority populations in Africa. The approach to minority rights in Africa must be different from that in Europe, as Africa has a greater diversity of ethnicities within one state, and this is not unique to just one nation-state on the continent. The discourse on minority rights is crucial, as the future may hold intrastate conflicts resulting from ethnic intolerance. This is made more likely by the multiplicity of ethnicities in Africa, which far surpasses that in Europe. The growing awareness and literacy may also lead to further animosity between ethnic groups if tolerance is not promoted. In Europe, the history of minority rights has been closely tied to the history of religious rights for minorities, as they are a crucial component of minority rights. The recognition of minority rights began with the Treaty of Westphalia, which was a result of the Thirty Years War. Some defeated governments were forced to cede lands and accept religious or minority rights as compensation. The Westphalian precedent continued to influence the minority rights movement, as the Congress of Vienna marked the first time a national minority was acknowledged and accepted. This led to the unification of Poland. The fall of empires such as the Ottoman Empire prompted the League of Nations to establish specific minority rights. After the League of Nations was dissolved and replaced by the United Nations, which took a different approach by advocating for complete protection of human rights, including the rights of minorities, the special minority rights recognized through Minority Treaties did not endure. These historical processes in the evolution of minority rights can still be seen in the ongoing discussions at the United Nations and European Union.

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