

Chapter II

The issue of minorities in Africa: Locating its context and understanding its nature

2.1 The context: The phenomenon of ethnic diversity in Africa

Broadly speaking the issue of minorities in Africa is inseparable from the nature of the heterogeneous ethnic composition of the states in Africa. There are two reasons for this; one general and another very specific to Africa. Generally, although ethnic diversity does not by itself produce minority issues, it is only in the context of such diversity that minority issues may arise.¹ An ethnic group which is a nation-state unto itself, if there was one, cannot produce this phenomenon unless by way of immigration or its subsequent fragmentation.² In other words, the issue of minorities manifest itself only through a process of inter-group, in our case inter-ethnic, interactions and does not exist otherwise.³ Most importantly, the issue of minorities in Africa and its particular characteristics are

¹ As Skurbaty puts it, '[t]he whole discourse on "minorities" is based on the premise that the world is *diverse*, and not only in terms of natural phenomenon, but in terms of peoples ... inhabiting it.' He goes on to identify the factors distinguishing one people from another and states: 'Generally speaking, the peoples or groups differ from each other by their particular language, culture, origin, religion and other specific characteristics.' Zelim Skurbaty *As if peoples mattered: Critical appraisal of 'peoples' and 'minorities' from the international human rights perspective and beyond* (The Hague: Martinus Nijhoff Publishers, 2000) 74.

² As ethnic groups are not static, their boundaries change with time and changes in their environment. One such change could be the fragmentation of an ethnic group when it sub-divides or is abandoned by a portion of it. See Donald Horowitz *Ethnic groups in conflict* (1985) 65 [Hereinafter Horowitz]. Minority issues may also arise in such a uni-cultural nation-state when a particular dimension of ethnicity particularly religion comes to have political saliency.

³ This interaction however must take place within the framework of one political unit, i.e., within a state in the way it is understood today. This is because the problem of minorities is essentially very much related to the rise of the nation-state system. The nation-state system has created the context for interaction among different groups by forcing them to live together under a centralised political authority. Most importantly, as Thornberry has rightly observed, the emphasis of the nation-state system on the 'ideals of national unity, manifested by a centralisation of power, a common language, culture, and religion, fundamental to the identification of the States, tended to express themselves in intolerant attitudes, and repression of those who were perceived as "others",' hence, the emergence of the discourse on minorities. See Patriick Thornberry *International law and the rights of minorities* (Oxford: Clarendon Press, 1991) 1. Sigler similarly locates the emergence of minority issues in the development of modern nationalism according to which a state is the political expression of a culturally distinctive people, a nation, where those who do not belong to the nation – which constitutes the majority in the state – become the minority or minorities. Jay A. Sigler *Minority rights – A comparative analysis* (Westport, Connecticut: Greenwood Press, 1983) 31 and his note 1 at 62.

the products of political and socio-economic processes of the pre-colonial, colonial and post-colonial periods. Particularly important in this regard is the fact that in Africa these issues are entangled with the nature and genesis of the problematics of ethnic diversity and the ways in which it has historically been managed.⁴ It is therefore important to examine the nature of ethnic diversity in Africa.

2.1.1 Of the nature of ethnic diversity

One of the marking features of the state in Africa is its deep ethnic diversity. This is not to say that ethnic diversity is unique to Africa. Indeed, many countries in the world are composed of more than one such group.⁵ But the state in Africa is unique both in the degree and nature of its diversity. Although the number of ethnic groups in Africa is not exactly known, according to some estimates the 54 African countries are home to over 1200 distinct ethnic groups.⁶ Almost all African states thus exhibit rich linguistic, cultural and religious diversity. Many of these states are composed of more ethnic groups than other states in most parts of the world.

Except Somalia and Lesotho, virtually every other African country is composed of more than one ethnic group.⁷ Only about one fifth of African states have a

⁴ It is only from this perspective that one can understand the proposition that ‘in order to secure the rights of minorities [in Africa], the challenge today is to accommodate ethnic diversity, to promote the richness of ethnic groups’ values, to combat political, economic and social exclusion, and to respect the rights of all ethnic groups in development matters.’ Samia Slimane *Recognizing minorities in Africa* (London: Minority Rights Group International, 2003) 1.

⁵ A study of 132 states is reported to have revealed that only twelve of these states were ‘essentially homogeneous from an ethnic point of view’. See Stephen Ryan *Ethnic conflict and international relations* (Aldershot: Dartmouth publishing Company, 1990) xi.

⁶ See Shaheen Mozaffar *Are multi-ethnic societies and deeply divided societies different?* (Paper prepared for presentation at the University of Western Cape, 22 August 2005) 9.

⁷ 99 percent of the population of Lesotho is composed of the Sotho ethnic group. See Chris Dammers and David Sogge ‘Central and Southern Africa’ in *World Directory of Minorities* (London: Minority Rights Group International ed., 1997) 494 [Hereinafter Dammers and Sogge]. Although Somalis constitute one ethnic group, they are divided along clan lines which since 1991 led to the collapse of the Somalia state into inter-clan warfare involving different warlords who have been exercising control over different parts of its territory. For a succinct account of the conflict in Somalia see Richard Cornwell ‘Somalia: Fourteenth time lucky?’ *Occasional Paper 87* (Pretoria: Institute for Security Studies, April 2004)

numerically dominant majority group.⁸ In some of these states, the largest group constitutes only a bare majority. One such example is Niger, where the majority Hausa people form only a little more than half of the total population.⁹ In most cases, the numerically minority groups are often more than half a dozen.¹⁰ In some states, some of these smaller groups have often been at the periphery in the political contest fought between the larger groups. This is true, for example, with respect of the Tuwa communities in Rwanda and Burundi and the Shangaan, Venda and Tonga ethnic groups in Zimbabwe.

There are differences among these states in the nature of the relationship between the majority group and minorities. In Botswana,¹¹ Egypt¹² and Algeria¹³ the majority is generally in effective control of the state and is in an established dominant position. In these states minority groups are often in a vulnerable situation in terms of the protection of their language, religion or culture and even at times political representation. In Zimbabwe there has been a history of rivalry for political power between the majority Shona and the largest minority Ndebele. Other minorities including Shangaan, Venda and Tonga are 'at the political and geographical margins outside the Shona-Ndebele polarity'.¹⁴ Rwanda and Burundi manifest a history of genocide and deep ethnic animosity between the

⁸ Of these many are northern African states such as Egypt, Libya, Tunisia, Algeria and Morocco. Each of which, except Algeria and Morocco where Berbers constitute 21 and 37 per cent respectively, consist of a numerically majority group that accounts for more than 90 percent of their population size. While in Swaziland and Seychelles Swazis and Creole respectively account for more than 90 per cent, in Rwanda and Burundi Hutus constitute about 85 per cent and in Equatorial Guinea the Fang ethnic group make up 80 to 90 per cent. In the others the majority is in the range from a little more than 50 percent as in the case of the Hausa in Niger to about 77 percent in the case of the Shona of Zimbabwe. Botswana is another country with dominant majority, the Tswana, comprising close to 70 percent of the total population.

⁹ See Niger *CIA World Fact Book* 2006.

¹⁰ Such is, for example, the case with respect to Zimbabwe, Botswana and Niger.

¹¹ See Jacqueline S. Solway 'Reaching the limits of universal citizenship: "Minority" struggles in Botswana' in Bruce Berman et al. (eds.) *Ethnicity and democracy in Africa* (Oxford: James Currey; Athens: Ohio University Press, 2004) 129-147. In Botswana such minorities Kalanga, BaKgalagadi and the Basarwa comprising 7 per cent, 5 per cent and 3 per cent respectively experienced various degrees of exclusion in which the Basarwa are the most disadvantaged of all. See Dammers and Sogge, *supra* note 7 474-475.

¹² See Julia Maxted and Abebe Zegeye 'North and central Africa' *World Directory of Minorities* 405-408 [Hereinafter Maxted and Zegeye].

¹³ See below

¹⁴ See Dammers and Sogge, *supra* note 7, 530.

majority Hutu and the dominant minority Tutsi. The Twa, the smallest minority group in these two countries, are generally outside of the Hutu-Tutsi rivalry and constitutes the most marginalized and vulnerable section of society. In these states the majority has not established itself as being in effective control of the state system. As a result, its relationship with the minority is best characterized as having been one of rivalry for control of the state.

The remaining states in Africa are composed of many ethnic groups. One of the characteristic features of the composition of these states is the presence of a large number of different ethnic groups. In these states multiethnicity is essentially a social fact. The groups constituting these states widely vary in terms of their population size. While very few groups account in the range of 20 to 45 per cent, many others contribute far less than ten per cent each. Evidently, in most African states there is no single numerically dominant majority group. They are all inhabited by many different groups, each of which with a size of less than half of the total population. This explains the view that in Africa there is a high degree of ethnic diversity. Similarly, the observation that 'the African states south of the Sahara are more ethnically diverse than those in other regions' accurately reflects this reality.¹⁵

There is however difference across African countries in the level of their ethnic heterogeneity. Thus, some African states are more diverse than others. Nigeria is composed of more than 250 different ethnic groups.¹⁶ Similarly, Sudan,¹⁷ Chad,¹⁸ and Cameroon¹⁹ have each over two hundred ethnic groups. Many other African states are home to many ethnic groups in the range between about a dozen as in the case of South Africa²⁰ to over one hundred as in the case of Tanzania.²¹

¹⁵ Ted Robert Gurr *Minorities at risk: A global view of ethno-political conflicts* (Washington: United States Institute of Peace, 1993) 225 [Hereinafter Gurr].

¹⁶ Maxted and Zegeye, *supra* note 12, 444.

¹⁷ 'Human rights and Indegenous peoples in Africa and Asia' 209

¹⁸ World Directory of Minorities

¹⁹ World Directory of Minorities.

²⁰ The 11 official languages and the San and Koi languages listed in Section 6 of the 1996 Constitution more or less reflect the ethnic make up of South Africa.

The presence of such a large number of ethnic groups is not the only feature of ethnic diversity in Africa. Prior to their incorporation into the state system, the various groups had different historical experiences, political traditions and social structures.²² In terms of the nature of their political and social organizations, one can identify some four patterns of social organizations among the various groups that were lumped together to form existing African states.²³

Thus, for example, the Buganda of Uganda, Ashanti of Ghana, AmaZulu of South Africa, the Bakongo of Angola, historic Ethiopia otherwise known as Abyssinia, to name only a few, had their own pre-colonial states in the form of empires or kingdoms.²⁴ This is also true of the Mossi of Burkina Faso. Groups organized in this way had their own state like political system and at the time of colonialism some of them were in the process of building their own states.²⁵

Others, such as the Ankole and Toro of Uganda, the Hausa and Niger-delta states of what is now Nigeria and the Akan states of Ghana constituted smaller kingdoms and chiefdoms.²⁶ One can also add to this category the Mubundu and

²¹ Rhoda E. Howard *Human Rights in Common Wealth Africa* (New Jersey, Rowman and Littlefield, 1986) 97 [Hereinafter Howard].

²² As Wilson pointed out, '[p]recolonial African societies exhibited great diversity, comprising city states and self-governing villages along side sizable nations with distinctive political structures.' Henry S. Wilson *The imperial experience in Sub-Saharan Africa since 1870* (Minnesota: University of Minnesota Press; Oxford: Oxford University Press, 1977) 24 [Hereinafter Wilson]. Saying that various groups existed prior to colonialism in one sense or another does not amount to upholding the now discredited view that African ethnicities are primordial survivals of archaic primitive cultures. Although many of them may trace their origin to the pre-colonial period, they have taken their current shape from recent experiences of the colonial and the post-colonial period and have never been static but in continuous processes of change.

²³ For further analysis of the nature of these formations and their human rights implications in present day Africa see Nana Kusi Appea Busia, Jr. 'The status of human rights in pre-colonial Africa: Implications for contemporary practices' in Eileen McCarthy-Arnolds et al. (eds.) *Africa, human rights and the global system: The political economy of human rights in a changing world* (Westport, Connecticut and London: Greenwood Press, 1994) 225-250.

²⁴ See O C Okafor *Re-defining legitimate statehood: International law and state fragmentation in Africa* (2002) 23. In pre-colonial Africa, these are the societies that Wilson referred to as communities with imperial structures of varying durability. 97

²⁵ The case of Ashanti of Ghana aptly illustrates this. According to Davidson, 'it (Ashanti of Ghana) was manifestly a national state on its way towards becoming a nation-state with every attribute ascribed to a west European nation-state.' Basil Davidson *The black man's burden: Africa and the curse of the nation-state* (London: James Currey, 1992) 76 [Hereinafter Davidson]. The same is true of the Buganda of Uganda and the Bakongo of Angola.

²⁶ See C.A. Diop *Pre-colonial black Africa* (Westport, Connecticut: Lawrence Hill, 1987) 89-92. In Wilson's terms these were polities with chiefdoms and kingdoms of greater or lesser extent. Wilson, *supra* note 22, 97

Ovimbundu of Angola, Tswana of Botswana, Xhosa and Pedi of South Africa, Ndebele of Zimbabwe and Sotho of Lesotho.²⁷ The socio-political organizations of most groups in this category were centralized and hierarchical. As such, there were political consciousness among individual members and the idea of a state was a phenomenon known to them.

Such groups as the Luos of Kenya, the Oromo of Ethiopia, the Igbo of Nigeria, the Nuer of Sudan, Ebrie of Cote d'Ivoire, the Tallensi of northern Ghana and similar other groups had only a political unit no larger than loose village alliances.²⁸ They had egalitarian social formations where political and social relationships were basically horizontal with vertical joints. In these societies, age grades were very central in the organization of society and as such village elders were at the centre stage of political authority.²⁹

There are also groups that fall outside of Wilson's typology. These are what Busia, Jr. called non-settled nomadic polities or hunters and gatherers with no identifiable political structure.³⁰ In these societies, the idea of a system of government as some form of organized political institution exercising authority on members of society was scarcely known.³¹ They were mostly non-settled communities who lived on the basis of hunting, gathering and cattle herding and leading pre-modern way of life. Good examples of these are the pygmies of central Africa and the San of southern Africa.

The modern African state, thus, incorporates groups with such different and contrasting social structures and political traditions. Indeed, before they were

²⁷ Arguably, these were the groups that Wilson referred to as polities with chiefdoms and kingdoms of greater or lesser extent. Wilson, *supra* note 22, 97

²⁸ See Busia, Jr., *supra* note 23, 232. In Wilson's typology these were stateless societies which were divided into small village units. *Ibid.* Although in this category the groups did not have centralised political authority or state like political organisation, they had ad hoc and decentralised arrangements for exercising political control over group members.

²⁹ See Busia, Jr., *supra* note 23, 232-233.

³⁰ *Ibid.*, 232-232.

³¹ As one report on pygmies of central Africa states '[t]he traditional power structure of representative institutions is entirely foreign to pygmy society, as hierarchy is not necessarily a dominant feature of pygmy clans.' IRIN News In-Depth Report *Minorities under siege: Pygmies today in Africa* (April 2006) 12 [Hereinafter IRIN In-Depth].

forcefully brought together under one political entity with the institutionalization of the colonial state, many of these groups have had little contact and knowledge of each other, if any. Lewis cautions us to remember that

[T]he colonial frontiers rarely followed tribal boundaries; and even when they did, grouped together different tribes and language groups with little regard for ethnographic niceties. Each European Colony was thus typically a mosaic of peoples, *many of whom had previously little knowledge of, or contact with those other communities with whom they were now inseparably associated under a common destiny.*³²

As the many secessionist civil wars fought in many African states have shown, the view that the various groups 'were now inseparably associated under common destiny' is factually incorrect. Be that as it may, the point that African states are composed of different communities with little common political history other than their subjection to a common colonial rule remains to be central.

This however does not mean that all groups within the boundaries of existing African states did not have any history shared between them. There are some groups that had knowledge of each other before incorporated into one political system within the colonially inherited boundaries of the existing states. Yet in most cases such groups had a history of rivalry, animosity and conflict. This is particularly true between historically dominant groups and those others subjugated to their rule. An example of this is the Buganda and neighboring societies which together form present day Uganda. The empire building processes of the Buganda has brought some neighboring people under its Kingdom and highly suppressed others.³³ According to Okafor this historic process has had a persistent negative impact on the character of inter-group relations within the post colonial Ugandan state.³⁴

Apart from the difference in their political traditions, the constituent ethnic communities of African states additionally differ in the way of their life style and

³² I M Lewis 'The tribal factor in contemporary Africa' in Colin Legum and John Drysdale (eds.) Africa: Contemporary record 1969-1970 (Exeter: Africa research Limited, 1971) A 13 [Hereinafter Lewis].

³³ Howard, *supra* note 21, 93.

³⁴ Okafor, *supra* note 24, 25.

mode of livelihood. Whereas some are pastoralists, many others are agriculturalists. There are also several hunter-gatherers in many African states. These differences together with the territorial specificity of many groups affect inter-group relations in various ways.

Most of the constituent ethnic communities of African states are territorially concentrated.³⁵ The territory that they inhabit is often considered as 'home land' for members of the group.³⁶ This has contributed to the ethnic dimension that the regional divisions of many African states exhibit. For example, the historical division of Nigeria into the north, east and southwest follows the pattern of settlement of the three big ethnic groups the Haousa-Fulani, Igbo and Yoruba ethnic groups.³⁷ In Malawi too the regional north, central and south divide more or less correspond to ethnic clusters formed around the largest groups.³⁸ In Ethiopia, Kenya, Uganda, Angola, DRC and several other African states, regional administrative boundaries have significant ethnic content. The north-south divide in the Sudan, Chad, Cameroon, Benin, Ghana, and to some degree, in Sere Leone to a large extent reflects ethno-cultural differences. With the outbreak of the unresolved civil war ravaging Ivory Coast, a north-south divide is already in the making.³⁹

It is interesting to further note that these ethno-regional cleavages are often compounded by differences in historical experiences, political participation, levels of socio-economic development, natural resources endowment etc. As a result, while some are in a relatively advanced condition in terms of access to societal

³⁵ This has led Scarit to conclude that 'African minorities are more highly concentrated in single contiguous geographical areas than are minorities in other regions.' Gurr, *supra* note 15, 256.

³⁶ The idea of an ethnic group with a defined territory is partly a result of the colonial system that institutionalised customary land tenure system on the basis of kinship. See John Pottier 'Customary land tenure in sub-Saharan Africa today: Meanings and contexts' in Chris Huggins and Jenny Clover *From the ground up: Land rights, conflict and peace in sub-Saharan Africa* (Pretoria: Institute for Security Studies, 2005) 60.

³⁷ Howard, *supra* note 21, 94.

³⁸ See Dammers and Sogge, *supra* note 496-498.

³⁹ Although religion plays marginal role in the conflict, it has reinforced the north-south divide by giving it a cultural dimension to it. For the dominant Christian south, the north with its predominantly Muslim population constitutes the 'other'. See Youssouf Diallo 'From stability to uncertainty: A recent political History of Côte d'Ivoire' *Working paper 74* (Max Plank Institute for Social Anthropology, 2005) 8.

resources such as education, health care services, employment opportunities, roads etc., and are generally integrated into the state system, others are in relatively poor socio-economic conditions and live at the fringes of the political and economic processes of the state. It is here that economic factors feature as elements of ethnic competition in Africa. This has further accentuated the ethnic cleavages in many African states and served as a breeding ground for agitations and grievances by many groups. The relative impoverished and marginalized socio-economic conditions of the territories inhabited by these groups goes a long way in explaining many of their grievances about equal rights and their resort to rebellion. Contemporary examples of this include the conflict in the Niger Delta area of Nigeria and the unabated crises in the Darfur region of Sudan.

The foregoing discussion makes it clear that the African state is indeed by its origin an artificial geopolitical entity which is more an assemblage of many different peoples welded together under an administrative unity as a result of colonial fiat than being a state with an organically evolved political system. As Okafor put it, 'the new states of Africa, unlike the pre-colonial states of Africa and the contemporary European states, are to a large extent imposed political agglomerations that did not continuously and organically develop from the more suitable dynamic of internal politics.'⁴⁰ Moreover, many of these states incorporated within their boundaries groups at different levels of social development and with many disparities. Several of them have some large groups with a history of their own state system and hence capable of themselves becoming states.⁴¹

Ethnic diversity in Africa has also some dimensions that are of particular importance at the regional level for inter-state relations. Most important in this regard is the existence of one ethnic group in more than one state. It is in Africa more than in any other region of the world that there are many ethnic groups

⁴⁰ Okafor, *supra* note 24, 99.

⁴¹ Colin Legum 'Africa's quest for nationhood and stability' in Black Africa twenty-five years after independence: Lessons for the future (Africa Institute of South Africa, Conference October 1985) 7.

spread over more than one state. 'In the Majority of instances,' observed Brownlie, 'African frontiers divide tribes or language groups.'⁴² According to Reader, these boundaries, drawn up by the colonial powers of Africa,

cut through at least 177 ethnic "culture areas", dividing pre-existing economic and social units and distorting the development of entire regions.⁴³

Brownlie cites as examples the division of the Massai between Kenya and Tanzania and the Ewe between Togo and Ghana.⁴⁴ One can add other examples from various parts of Africa. In the Horn of Africa the Somalis are spread between Ethiopia, Somalia and Kenya. In the Great Lakes Region the Bakongo occupy western part of Republic of Congo and Democratic Republic of Congo as well as northern Angola; the Batwa are spread in Rwanda, DRC and Burundi. In central Africa the Fang of Gabon also occupy Equatorial Guinea and Southern Cameroon. In North Africa the Nubians are equally divided between Egypt and the Sudan. In West Africa, national boundaries cut through many ethnic groups. This is sufficiently illustrated by the fourteen groups that the Nigeria-Cameroon boundary divides and the twenty one others that the boundaries of Burkina Faso cut through.⁴⁵ Similarly, in Southern Africa the San are spread throughout most parts of the region; the Sotho people are present at least in Lesotho and South Africa; the Tswana occupy Botswana and some parts of South Africa.⁴⁶

This illustrates that ethnic diversity in African states is additionally characterised by the presence of overlapping ethnicity. And it has been more a source of suspicion among African states than a basis for close ties and strong neighbourly relations.⁴⁷ Realising the potential danger of this situation Tanzanian President Julius Nyerere long ago warned: 'The boundaries which divide African states are

⁴² Ian Brownlie *African Boundaries: Legal and diplomatic encyclopedia* (London, Berkeley and Los Angeles: C. Hurst and Co. (Publishers) Ltd., and University of California Press, 1979) [Hereinafter Brownlie].

⁴³ John Reader *Africa: A biography of the continent* (1998) 48 [Hereinafter Reader].

⁴⁴ Brownlie, *supra* note 42, 6.

⁴⁵ Reader, *supra* note 43, 569.

⁴⁶ It must be remembered that population movements of different periods have also contributed to the spread of groups. This is particularly true in Central and Southern Africa.

⁴⁷ See Maxted and Zegeye, *supra* note 12, 388.

so nonsensical that without our sense of unity they would be a cause of friction.⁴⁸ Indeed, this is one of the factors that have made the crises in the Great Lakes Region more complicated.⁴⁹ This has also been the basis for the rise of Somali irredentist movements in Kenya and Ethiopia.⁵⁰ The challenge that this gives rise to for African states is how to build all inclusive national identity which involves the creation of different nationalities for members of the same ethnic group, while respecting their ethnic identity. Thus the Ewe are to become Togolese and Ghanians. And the Massai are to become Kenyans and Tanzanians etc.

It has been observed above that the constituent ethnic communities of African states widely vary in their population size. This ranges in number from many millions as in the case of the Hausa, the Buganda or the Ashanti to some thousands as in the case of the Zemi.⁵¹ Many of the states with no majority group are composed of few numerically dominant groups and other many smaller groups in which the larger groups account for the lion's share of the population of the state. In Nigeria the Housa-Fulani, the Yoruba and Igbo account for 29, 20 and 17 per cent of Nigerian population respectively. Similarly, in Ethiopia the Amharas, the Oromos and the Tigreans together form about 2/3rd of the total population. The Fang in Gabon, the Kongo, Sangha, Mboshi, and Teke in the Republic of Congo, and the Baya, Banda and Mandiji in Central African Republic enjoy a numerically dominant position. Such similar demographic trends exist in such other countries as Kenya, Angola, Zambia, Malawi.⁵²

In almost all these states, none of the major groups are in an established dominant political position. Nor is there cohesion among these various groups

⁴⁸ As quoted in Reader, *supra* note 43, 659.

⁴⁹ See generally Abillah H. Omari 'Ethnicity, power, governance in the Great Lakes Region' in S MacLean et al. (eds.) *Crises of Governance in Asia and Africa* (2001) 245-260. Ghana and Togo had problematic relations due to irredentist claims made on both sides. See Malcolm Shaw *Title to territory in Africa* (Oxford: Clarendon Press, 1986) 202 [Hereinafter Shaw, *Title to territory*].

⁵⁰ See Shaw, *Title to territory*, *supra* note 49, 197-201.

⁵¹ J S Wunsch 'Foundations of Centralization: The colonial experience and the African context' in J S Wunsch & D Olowu (eds.) *The failure of the centralized state: Institutions and self-governance in Africa* (1990) 34.

⁵² The data employed here is collected from CIA World Factbook 2005 available at <www.cia.gov/cia/publications/factbook> and the general information available at <http://www.library.uu.nl/wesp/populstat/Africa/algeriag.htm>.

constituting them. A marked lack of cohesion and unity has been a common denominator of these states. Lewis thus emphasized as far back as 1969,

We have to acknowledge at once that the majority of independent African states are still today heterogeneous in their ethnic and linguistic composition, and lack any strong, traditionally grounded state-wide national culture with sufficient evocative power to serve as a secure of framework for national sovereignty and integrity.⁵³

Unfortunately, most African states have since then remained as fragmented, if not more. It is clear from this that the challenge for independent African states has been and is how to achieve nation-building through a democratic means in a way that sufficiently accommodates the demands of ethnic diversity. From a human rights perspective Howard has characterized this problem as involving the issue of

[H]ow to modify ethnic identifications in favor of more national ones while, at the same time, not trampling on the rights of ethnic groups enshrined in the various human rights documents.⁵⁴

The human rights standards that Howard have in mind particularly include the minority rights guarantee under Article 27 of the ICCPR and some of the provisions under the African Charter.⁵⁵ Seen in the light of the discussions above and as will further be examined later, the issue of minorities in Africa is not so much a matter of how to protect smaller communities from domination by and assimilation into the majority. Instead, it is more an issue of how to achieve a common political framework in which the interests of the various constituent groups within the state are amicably accommodated.

2.1.2 Various forms of minority groups in Africa

The foregoing discussion reveals that the various groups constituting the states in Africa exhibit multiple differences. The effect of these differences is that these

⁵³ Lewis, *supra* note 32, A13.

⁵⁴ Howard, *supra* note 21, 92.

⁵⁵ *Ibid* 91.

groups find themselves at various levels of political, economic and social conditions. In the light of this, one can identify that these groups manifest various political as well as socio-economic needs. In many cases these needs define the political or economic demands that these various groups articulate and seek to assert against their states. For reasons of conceptual clarity and clear understanding of the nature and kind of the problems that define the minority question in Africa, the various groups are classified here on the basis of their needs and the claims that they make,⁵⁶ which in most cases underlie many of the crises ravaging many African states.⁵⁷ This analysis is also important to identify the extent to and the manner in which the existing international norms, which are largely minority rights based, address such problems.

The first category consists of ethno-cultural groups. These are groups that have and seek to maintain their own distinct culture which is different from the culture of the dominant population, and/or other ethnic groups in the population. Examples of such groups include the Berbers of Morocco and Algeria, and the Copts of Egypt, and the Wayeyi, Kgalagadi and other non-Tswana groups in Botswana. Often, it is not the nationhood of their state that these groups question. But it is rather its cultural basis and terms of inclusivity and the effect of these on the enjoyment of certain rights and their status as members of society. Most important to groups in this category are therefore issues such as choice of official language and recognition of their cultural identity.

The other category involves groups, which, in Gurr's global classification of ethnic political movements, are referred to as ethnonationalist groups. According to him ethnonationalist groups are relatively large politicized groups of people who are territorially concentrated and exhibit a history of making demands for

⁵⁶ It is not uncommon to classify groups for understanding minority demands. What is different about this classification is that it does not seek to identify rights-claims by the kind of group making it as in the case of Kymlicka but categorises groups on the basis of their needs and the claims they make.

⁵⁷ This analysis is inspired by the classification that Ted Robert Gurr makes in his work on Minorities at risk but since it does not sufficiently capture the nature and situation of groups in Africa, on account of its global orientation, in this study his classification is not wholly adopted either. See Gurr,*supra* note 15.

political autonomy or separate statehood.⁵⁸ This category however does not distinguish between groups seeking territorial autonomy or self-government and secessionist groups. One can therefore further divide ethnonationalist groups into two. The first can be labeled as ethno-regional groups which include ethnic groups that are known for their predisposition to maintain their distinct culture and seek to have territorial autonomy. The Tigrians and Afars of Ethiopia, Yoruba, Hausa-Fulani and the various communities in the Niger delta area of Nigeria, the Zanzibar Island of Tanzania, the Buganda in Uganda and the Ashanti in Ghana, the Zulu in South Africa and the people of South Sudan.

Other groups including the Casamans of Senegal, sections of the Oromos and Somalis of Ethiopia, the Igbos of Nigeria, the Isaq of Somalia, English speaking Cameroon, the Katanga of Zaire and Cabinda in Angola fall within the second category and can be referred to as ethno-national groups. They are different from ethno-regional groups on account of the intensity of their sense of separateness from the dominant population, and/or other ethnic groups in the population, and most importantly on account of their quest, in the past or currently, to achieve independent statehood of their own. The distinction between ethno-regional groups and ethno-national groups is therefore that between autonomy or internal self-government claimants and secessionists.

There are also groups whose interest is more in the control of political power or gaining a fair share of the same than territorial autonomy or protection of cultural identity. These are mostly groups at the centre of political competition. Distribution of political power is the main centre of political contention. It involves issues including political discrimination, real political representation and participation. Seen in this light, the term ethno-political groups best describes the nature of these groups. Such groups are also known in Gurr's typology as communal contenders.⁵⁹ Arguably, most ethnic groups in many African states including Nigeria, Ghana, Uganda, Ethiopia, Congo, Zambia, Cote d'Ivoire,

⁵⁸ Gurr, *supra* note 15, 18.

⁵⁹ Communal contenders are defined as culturally distinct groups that aspire to exercise a share of state power. Gurr 18.

Malawi, Kenya, Rwanda, Burundi, Mauritius, Zimbabwe, South Africa, Liberia, Sera Leone and Angola are mainly ethno-political.⁶⁰

Finally, there are those groups who, in recent works of the African Commission on Human and Peoples' Rights (ACHPR), are referred to as indigenous groups.⁶¹ These are groups who have largely remained unintegrated to the existing state system in the states they now live in. One distinguishing feature of indigenous groups is the distinctness of their culture from other groups in society.⁶² Moreover, most of them live in peripheral and forest lands leading a pre-modern way of life based on hunting and gathering and herding, which also constitutes part of their cultural heritage and hence have special attachment to their territories. In Africa, they are mostly divided between more than two states as a result of the colonial partition of Africa. Like most ethno-cultural groups, their situation raises a typical problem of the majority-minority problem to which international norms on the protection and rights of minorities address themselves. Most importantly however, theirs raise the issue of how to achieve their political, economic and social integration while at the same time respecting their choices and way of life.

It must however be noted that there is no water tight distinction between these various categories. Many groups exhibit the characteristics of at least two categories. Thus indigenous groups in Africa almost all the time share the characteristic features of ethno-cultural groups. Thus the San in Botswana like the other non-Tswana groups such as the Wayeyi seek the recognition and protection of their cultural identity including their language. Yet, they differ from these other non-Tswana groups in important other aspects.

⁶⁰ This is consistent with the finding in Gurr's study that most groups in Sub-Saharan Africa are communal contenders and account for about 80 percent of the world's communal contenders. 22, 255.

⁶¹ See generally ACHPR *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* (Kanifing, the Gambia: Unique Graphics, 2005) [Hereinafter ACHPR Report].

⁶² Gurr 20.

2.2 Towards defining minority issues in Africa

It seems that there is a consensus among many scholars that ethnic conflicts in Africa take the form of struggle for control of state power and economic resources. Although this is a common feature of many ethnic conflicts in Africa, it by no means explains all ethnic conflicts in Africa. It is argued here that there is no merit in lumping ethnic conflicts in Africa under one common denominator. Such an approach fails to account for the diversity of the circumstances and causes that lead to ethnic conflicts in Africa. Tensions involving minorities and group conflicts have widely different causes and therefore they take different forms. This section therefore examines the different forms that ethnic tensions and hence minority issues in Africa take by dividing them into some major categories. These categories define the essence of the main minority issues in Africa.

2.2.1 The struggle for share of political power

In many African states, at least some, if not all, of the constituent communities had little knowledge of or contact with those other communities now living together with them within the same political system. The constituent communities of many African states did not share common historical experience as part of a common political society.⁶³ Their different historical experiences, political traditions and levels of social development raise formidable challenges for mutual co-existence as part of one political community. As one author maintains

⁶³ According to Crawford they were ‘entirely arbitrary colonial creations, without historic antecedents or sanction ... Their shared historic memory is limited to the common experience of a single colonial rule and the collective struggle to secure independence.’ Crawford Young *The politics of cultural pluralism* (Madison: University of Wisconsin Press, 1976) 93. One can however note that it is a misnomer to call the experience of the Tutsis and Hutus of Rwanda under Belgian colonial rule a ‘common’ experience. The two had different experiences under Belgian rule the former as beneficiary and the latter as victim. It was not any different for the different peoples in Uganda, Kenya, Sudan or any of the other African colonies. What is common is not exactly their experience, but rather their being ruled under one colonial power.

For Ibos to co-exist in the same modern state system with the semi-feudal Hausa nation creates an objective situation of political tensions within the modern state. For any group like say the Acholis and Bagandas to come under the same sovereign state creates a problem not just because an entity like the Bagandas with a history of centralised authoritarian state structure living side by side with the Acholis from stateless, egalitarian historical background have different implications to wards the assertion of the right to self-determination.⁶⁴

At the same time, the agglomeration of such distinct and unequal groups within the same political unit under the colonial state system led to increased interactions between them. This brought ethnic self-consciousness into the fore and set the stage for rivalry.⁶⁵ The result was 'more pronounced cleavages between groups which have given rise to lasting patterns of tension in the post colonial times.'⁶⁶ One of the dominant features of the political scene of Africa during the post independence period has therefore been the rivalry of the constituent units of society for control of the reign of government.⁶⁷

The structure of government introduced by the colonial state was not employed to harness integration and common political vision in the different African territories on which it was imposed.⁶⁸ It did not have any historical or social foundations in those territories. It has been more culturally alien to the different

⁶⁴ Nana K.A. Busia Jr. 'The right to self-determination, the state and the quest for democracy in Africa: An explanatory analysis' *Proceedings of the 4th Annual Conference of African Society of International and Comparative Law* (1992) 24.

⁶⁵ As G Seilassie argued this is partly because the 'juxtaposition of two or more ethnic groups in the same political environment often results in each group attempting to disaffirm the other politically.' Alemante G. Selassie 'Ethnic identity and constitutional design for Africa' 29 (1) *Stanford Journal of International Law* (Fall 1992-1993) 9.

⁶⁶ Donald Rothchild 'Reconfiguring state-ethnic relations in Africa: Liberalisation and the search for new routines of interaction' in Peter Lewis (ed.) *Africa: Dilemmas of Development and Change* (Boulder: Westview Press, 1998) 215 [Hereinafter Rothchild].

⁶⁷ Exceptions to this include most importantly Botswana and Tanzania. On Botswana see Reader 665. For Tanzania the use of Swahili as a common language and the particularly small size of all of the 125 ethnic groups made ethnic mobilisation for control of state power unworkable. See Howard 97.

⁶⁸ See Arnold Rivkin *Nation-building in Africa: Problems and prospects* (New Jersey: Rutgers University Press, 1969) (arguing that in examining nation-building in Africa, the starting point has to be the achievement of independence, for only with limited exception did the out going European colonial powers consciously set about building nations in their former African territories) 1 [Hereinafter Rivkin]; See also Davidson, *supra* note 184-185.

peoples under its jurisdiction than most states in other regions of the world.⁶⁹ Furthermore, by its nature, it was a highly centralised and authoritarian administrative machinery that brought almost all political and military power as well as economic resources and modern social goods under at its disposal.⁷⁰ In its operations, the colonial powers used it for their grand design of divide and rule by awarding as incentives jobs, land and administrative positions to members of those groups through whom they controlled the masses.⁷¹

Moreover, as its main purpose was advancing the economic goals of colonial powers, it was run in a way that resulted in the uneven distribution of modernising goods. As a result, peoples living in areas that served as centres of economic activity and administration 'were exposed to greater administrative intensity, more commercial activity, and more active missionary and education presence'⁷² than peoples in peripheral areas. Such is the case, for example, with respect to the coastal areas of West Africa, the mining lands of southern Africa and DRC as well as the coastal areas and farm lands of East Africa. This resulted in unequal access to economic sources and modern social goods among the various constituent groups of African states. The effect of this has been the intensification of rivalry and 'tension between ethno-regions that were advantaged by close contact with western education, infrastructural improvement, and agricultural and industrial development and those in the hinterland that remained neglected.'⁷³

⁶⁹ See Peter Ekeh 'Colonialism and the two publics in Africa: A theoretical statement' 17(1) *Comparative Studies in Society and History* (1975) 91-112; Also M Mamdani *Citizen and subject: Contemporary Africa and the legacy of late colonialism* (James Currey Publishers, 1996).

⁷⁰ Jerom Wilson 'Ethnic groups and the right to self-determination' 11 *Connecticut Journal of International Law* (1996) 441 (stating that during the colonial period, colonial powers had exclusive controls over the political and economic resources of their colonies) [Hereinafter Jerom Wilson] .

⁷¹ In Rwanda and Burundi Tutsis, in Angola Mubundus, in Uganda southerners particularly Bugandas benefited from the operations of the colonial state. They were also involved in the administrative apparatus of the colonial state.

⁷² David Welsh 'Ethnicity in Sub-Saharan Africa' 72 *International Affairs* (1996) 479.

⁷³ Rothchild, *supra* note 66, 215.

The legacy of this for the independent states has been that for most members of society, for whom the main form of social and political organisation was membership to their ethnic group, the state system represented nothing more than a source not only of huge political power able to dispense patronage and favour but also economic prosperity as the main provider of jobs and allocator of modern social goods such as education and infrastructure. Thus, as Lewis rightly observed, '[i]t (the state) is overwhelmingly viewed as an arena in which men of opposing tribes compete for power and advantage in what seems some times almost a Hobbesian war of all against all.'⁷⁴ The independent states, therefore not only lacked national integration as well as autonomy (impartiality), and, hence, legitimacy but also were seen as instrument of domination and economic prosperity.⁷⁵ It should not come as a surprise when, during the post independence period 'control of the state has become a vital political goal for ethnic groups, both dominant and subordinate, because it provides unobstructed access to jobs, scholarships, land, education, credit facilities and other highly coveted privileges.'⁷⁶

As a result, in the run-up to independence and subsequently politics has been contested among the different political movements that mainly mobilised their support from members of particular ethnic groups.⁷⁷ Such has been the case, for example, in Nigeria,⁷⁸ Angola,⁷⁹ DRC (former Zaire),⁸⁰ Kenya,⁸¹ Uganda,⁸²

⁷⁴ Lewis, *supra* note 32, A 14.

⁷⁵ It is argued by some that in order for the state to have firm roots and transcend societal divisions, the state must have organic foundation in the society and most importantly hegemony and legitimacy that enables it to mediate societal conflicts and impose solutions acceptable by all as legitimately binding. The African state did not have this essential attribute. See Achei Mafeje 'State and civil society in independence Africa' in Henerich Boll (ed.) *Networking with a view to promoting peace: Conflict in the Horn of Africa* (1999) 67.

⁷⁶ Assis V. Malaquias 'The political economy of Angola's ethnic conflict' in S MacLean et al. (eds) *The crises of governance in Asia and Africa* (2001) 215 [Hereinafter Malaquias].

⁷⁷ Said Adejumobi similarly noted that '[i]n most countries in Africa, the majority of nationalist movements and resultant political parties were ethnically defined, drawing their support base from the fragmented ethnic social structures of the colonial era.' 'Citizenship, rights, the problem of conflicts and civil wars in Africa' 23 *HRQ* (2001) 159.

⁷⁸ See Reader, *supra* note 43, 660-665.

⁷⁹ See the case study below.

⁸⁰ According to Heraclides the political parties which emerged only a few years before DRC's independence from Belgium colonial rule 'were all ethnically or regionally based, including those with a

Zambia,⁸³ Ghana,⁸⁴ Sierra Leone,⁸⁵ Sudan,⁸⁶ Chad,⁸⁷ Rwanda,⁸⁸ Burundi,⁸⁹ etc. The nature of the competition has been a zero-sum game, with each group seeking to dominate the political environment. Thus, in the case of Rwanda and Burundi, it led to the rise of one group into political dominance, to the exclusion of the contending group leaving the countries in cyclic genocidal conflict.⁹⁰ The disagreement between the highly federalist group in Katanga, Conakat and Patrice Lumumba's radical and pro-unionist movement culminated in the birth of independence Congo into a crisis that led to international intervention.⁹¹ In others such as Kenya and Zambia, it resulted in the emergence of unstable coalitions.⁹² In Ghana and Uganda the struggle took the shape of a rivalry between traditional centripetal forces and modern nationalist centrifugal forces.⁹³

national appeal such as Patrice Lumumba's Mouvement National Congolais (MNC). Alexis Heraclides *Self-determination of minorities in international politics* (Portland, Oregon: Frank Cass, 1991) 58 [Hereinafter Heraclides].

⁸¹ See the case study on Kenya James Scarrit 'Communal conflict and contention for power in Africa south of the Sahara' in Gurr 270-277; also Githu Muigai 'Jomo Kenyatta and the rise of the ethno-nationalist state in Kenya' in Bruce Berman et al. (eds.) *Ethnicity and democracy in Africa* (Oxford: James Currey and Athens: Ohio University Press, 2004) 200-217.

⁸² See Pamela Mbabazi 'Ethnicities in crises of governance in Africa: The case of Uganda in the Great Lakes Region' in S MacLean et al. (eds) *The crises of governance in Asia and Africa* (2001) 227-244.

⁸³ See generally Daniel N. Posner *Institutions and ethnic politics in Africa* (New York: Cambridge University Press, 2005); also the case study on Zambia by Scarrit in Gurr 264-2790.

⁸⁴ According to Howard, before independence, the Ashanti-based National Liberation Movement was the chief opponent of the Kwame Nkrumah's Convention Peoples party. Howard, *supra* note 21, 92-93.

⁸⁵ See Snadra Rein 'Sierra Leone: Between the prison houses of nationalism and transnationalism' in Malinda S. Smith (ed.) *Globalizing Africa* (Asmara: Africa World Press, Inc., 2003) 131.

⁸⁶ See Rivkin, *supra* note 68, 35-37.

⁸⁷ Decalo, S 'Chad: The roots of centre periphery strife' 79 *African Affairs* (1980).

⁸⁸ See Reader, *supra* note 43, 665-672.

⁸⁹ Although it did not have a political party framework as in the case of Rwanda, the rivalry for political power took an ethnic dimension pitting Hutus against Tutsis. See René Lemarchand 'Burundi in comparative perspective: Dimensions of ethnic strife' in John McGarry and Brendan O'Leary (eds.) *The politics of ethnic conflict* 151-171.

⁹⁰ See Reader 665-672. In Rwanda the decolonization era saw the emergence of ethnic based political parties: the PARMEHUTU (Rwandan Democratic Party/Party for the Movement of Hutu emancipation and UNAR (Rwandese National Union), representing Hutus and Tutsis respectively. The emergence of Hutus to power on account of their numerical strength was accompanied by a conflict that led to the huge Tutsi exodus to neighboring states. In Burundi, the minority Tutsi ethnic group has managed to rise into dominance. Yet, much of the post independence political history of Burundi has been a history of conflict, genocidal killings and coups. See Lemarchand as above.

⁹¹ Heraclides, *supra* note 80, 60-62.

⁹² See Gurr, *supra* note 15, 264-277.

⁹³ On the struggle between traditionalists and modernizers particularly in Ghana see Davidson, *supra* note 32-36.

As the following paragraphs illustrate, in the case of Angola, the struggle of the various political forces led to a civil war fought over a period of almost three decades. The same is true of Nigeria.⁹⁴

Angola as a case study

Angola is composed of more than half a dozen ethnic groups. The major ones, which together account for more than two-thirds of Angolan population, are however three in number. The largest of these, the Ovimbundu, accounts for about 37 per cent of the total population of Angola. The second largest group the Mbundu represents about 25 per cent of Angolan population, followed by the Bakongo which constitutes about 15 per cent. Before the advent of Portuguese colonialism, these groups seemed to have had little contact or hatred of one another.⁹⁵ Each had their own political existence as kingdoms of various strengths.⁹⁶ As the discussion below reveals, as the bone of contention has mainly been the control of political power, the contending groups in Angola are better characterised as ethno-political groups.

The National Front for the Liberation of Angola (FNLA), which evolved from Union of Angola Peoples (UPA) in 1962, was responsible for launching the independence struggle in Angola.⁹⁷ The Popular Movement for the Liberation of Angola (MPLA), formed in 1954, and later National Union for the Total Independence of Angola (UNITA), a movement formed in 1963 by Jonas Savimbi out of FNLA, joined the liberation struggle. Despite the nationalist label that these movements have taken, each movement has drawn its support among the three main ethnic groups. 'Thus,' one author concluded, 'FNLA, MPLA and UNITA

⁹⁴ See, for example, Reader 660-665; Howard 94-95; Okafor, *supra* note 24, 99.

⁹⁵ See Pitsch (1995b) Ovimbundu of Angola a case from University of Maryland's Minorities at risk project <<http://www.bsos.umd.edu/cidcm/mar/angovim.htm>>

⁹⁶ The kingdom of Kongo to whose people the Bakongo formed a part had a dominant and well organised political system. The Ovimbundu and Mbundu had once constituted the kingdoms of Ndongo together with other smaller entities and Bialundo respectively, which were smaller powers than the Kongo. See David Birminham, *Trade and conflict in Angola: The Mbundu and their neighbours under the influence of the Portuguese* (1483-1790) (Oxford: Clarendon Press, 1966) 3-20

⁹⁷ See Bakongo Chronology at <<http://www.cidcm.umd.edu/inscr/mar/data/angbakonchro.htm>> accessed on 3 August 2006.

represented almost exclusively the Bakongo, Kimbundu and Ovimbundu ethnic groups respectively.⁹⁸

When UNITA came out as a formidable force in the course of the struggle for independence, it rose and has since remained to become the main rival of the MPLA, which rivalry has since marginalised the FNLA.⁹⁹ By the time Portugal withdrew from Angola in 1975 with no legitimate entity emerging to inherit the control of state power, the liberation movements were set to fight for political power that was up for grabs by using control of territory and population, roughly along ethnic lines.¹⁰⁰ With its geographic proximity to the capital and close association with the departing colonial power, which together gave competitive edge to its external support, MPLA managed to gain control of Luanda and immediately declared itself as the governing entity of Angola. It was soon recognised by the Organisation of African Unity (OAU), the continental political body, although UNITA was in control of large part of the territory of Angola and fighting against MPLA.

With the promulgation of the independence Constitution of Angola in November 1975, a single party government was established under the MPLA.¹⁰¹ Yet, in the presence of UNITA as a contending political and military force, this exclusionary political system led to the birth of Angola simultaneously into independence and fratricidal civil war. As Ann Pitch puts it, 'since independence the struggle had been a civil war with each of the three main ethnic groups (the Bakongo less than the Ovimbundu and Mbundu) in competition for power.' Thus, while mobilising the support of Kimbundus,¹⁰² in a bid to politically marginalise Ovimbundus

⁹⁸ Malaquias, *supra* note 76, 208.

⁹⁹ Keven H. Ellsworth Racial and ethnic relations in the modern world system: A comparative analysis of Portuguese influence in Angola and Brazil paper prepared for the 1999 International studies association conference (1999, in file with author) 25.

¹⁰⁰ Malaquias, *supra* note 76, 219.

¹⁰¹ Following the constitutional practice of many African states, the Constitution further declared that 'The Republic of Angola shall be a unitary and indivisible State whose inviolable and inalienable territory shall be defined by the present geographical limits of Angola and any attempt at separatism or dismembering of its territory shall be vigorously combated.' Article 4 1975 Angolan Constitution.

¹⁰² Malaquias, *supra* note 76, 209.

MPLA had excluded the Ovimbundu elite from power, who as a result joined UNITA en masse.¹⁰³ Until it ended in 2002 with the death of Jonas Savimbi, the war dynamically sustained itself first as a proxy war between the US and the Soviet Union¹⁰⁴ and later with revenue that the parties amassed from oil and diamonds.¹⁰⁵

Although the war has now come to an end, the success of the transition to sustainable political stability largely depends upon the degree to which a commonly agreed upon inclusive political arrangements in which all groups are fairly represented and equitably share political power is established.¹⁰⁶ Together with this, it is imperative to particularly ensure that previously marginalized sections of society such as the members of the Ovimbundu ethnic group are sufficiently represented in the political processes and special provision is made for the years of socio-economic marginalisation and impoverishment of the region and others affected by the war.¹⁰⁷ This would redress the political discrimination to which they have been subject throughout the post colonial period and for which reason they gave their support to UNITA.¹⁰⁸

¹⁰³ Antoine Rozès ‘Angolan deadlock, Chronicle of a war with no solution’ 10 *African Security Review* (2001) available at <www.issafrica.org/Pubs/ASR/10No3/Rozes.html> [Hereinafter Rozès].

¹⁰⁴ See Laurence Juma ‘Africa, its conflicts and its traditions: Debating a suitable role for traditions in African peace initiatives’ 13 *Michigan State Journal of International Law* (2005) 447-448; Malaquias, *supra* note 76, 209.

¹⁰⁵ See Rozès, *supra* note 103.

¹⁰⁶ If one accepts Malaquias’ contention that the civil war can be attributed primarily to the unwillingness and/or inability of the MPLA and UNITA to find mutually acceptable mechanisms to share power and wealth’, then its resolution necessarily requires the institutionalisation of such mechanisms. See Malaquias, *supra* note 76, 208.

¹⁰⁷ Although Angola may not be going back to war, there is risk for conflict. According to one observer: ‘Issues that took Angola to the war ...and fuelled it for all those years have not been resolved, things like land, regional disparity, massive poverty.’ See *Angola: Unresolved issues pose risk to new democracy* available at <http://www.irinnews.org/report.asp?ReportID=55698&SelectRegion=Southern_Africa> accessed on 25 Sept. 2006.

¹⁰⁸ Political discrimination is used here in the sense Ted Robert Gurr conceptualized it to mean ‘that groups’ members are or have been systematically limited in their enjoyment of political rights or access to political positions by comparison with other groups in their society.’ According to Gurr the fact that some token or ‘tame’ members of the group are in visible political positions does not necessarily exclude the reality of the political exclusion of the group. Gurr, *supra* note 15, 46.

From a legal point of view, the problem of the rivalry of various groups, which in some cases lead to conflicts and even civil war, raises a number of crucial questions. First and for most, it raises the question of what is the nature of minority issues in Africa and whether the common understanding of the concept minorities as developed under international law can sufficiently reflect the African reality?¹⁰⁹ Other questions include in what ways do minority specific norms and other norms of international law seek to address tensions and conflicts arising from demands of groups for share of political power, if at all they do? What kind of policy approaches and legal methods or institutions are appropriate to realise the potential of these norms for addressing such tensions? Do constitutional/political theory and the constitutional practice of states offer any guidance in this regard? What role do African institutions such as the African Commission on Human and Peoples' Rights can play?

2.2.2 The quest for self-determination

Although the demand of various groups to have a share of in the control and exercise of state power is an overriding feature of minority issues in Africa, it is by no means the only issue. Not any less important in this regard is the quest of different sections of society in many African states for regional autonomy, self-government and even secession from the existing state. That significant numbers of conflicts that took place in Africa have been ethno-regional or ethno-national clearly demonstrates this. As one study has revealed, out of 46 internal armed conflicts that took place in Africa during 1946-2001, ethno-regional or ethno-national conflicts account for 33 percent.¹¹⁰

¹⁰⁹ The observation that Asbjorn Eide makes partly captures this dilemma: 'The word "minority" can some times be misleading in itself. Outside Europe, and *particularly in Africa*, countries are often composed of a large number of groups, none of which make up a majority.' *Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, religious and Linguistic Minorities* UN Doc. EC/CN.4/Sub.2/AC.5/2001/2 para. 12 (emphasis added).

¹¹⁰ Armed Conflict 1946-2001 39(5) *Journal of Peace Research* (2002).

Since African states attained juridical statehood in the 1960s, ethno-regional or ethno-national conflicts or movements have dominated the political scene of at least one African state. The most famous and already historical attempts at secession in Africa are that of Katanga (1960-1963) and Biafra (1967-1970). Ever since Angola gained its independence in 1975, Cabinda has been attempting to secede from it (having fought earlier, since 1965, for independence from Portugal). The different regions of Ethiopia have since the 1970s fought against the different governments of that country more for regional autonomy than secession.¹¹¹ The same is true of the Southern Sudan conflict that began in 1956. Since 1983, the Movement of the Democratic Forces of the Casamance have been fighting for the independence of Casamance from Senegal.¹¹² In 1999, a bloody attempt to sever the Caprivi Strip from Namibia took place.¹¹³ During the years 1997-2000, the secessionist Anjouan People's Movement that controlled the Island of Anjouan of Comoros defied the rule of the government of Comoros over the island. In Mali the Azawad Peoples' Movement and the Islamic Arab Front of Azawad opened fighting for Tuareg separatism during 1990-1994. Similarly in Niger Tuareg secessionism emerged as a violent ethno-national movement in 1990 and continued until 1997.

In contemporary Africa as well, the demands for regional autonomy and/or issues of self-determination have been at the centre of political/constitutional debates and conflicts in many African states. One of the thorny issues in the debate on constitutional making process in South Africa has been the nature of the

¹¹¹ See Assefa Fiseha *Federalism and the accommodation of ethnicity in Ethiopia* (2006) 60-79.

¹¹² See Bruno Sonko 'The Casamance conflict: A forgotten civil war?' CODESRIA Bulletin, Nos 3&4 (2004) 30-33.

¹¹³ The secessionist movement for Caprivi has been advocated by the United Democratic Party (UDP) that was founded in 1985 as an attempt to revive the Caprivi African National Union (CANU) which was merged with South West African People's Organization in 1964. UDP was recently declared illegal on account of its secessionist agenda. See further IRIN news *Namibia: Caprivi Political party declared illegal* <http://www.irinnews.org/report.asp?ReportID=55509&SelectRegion=Southern_Africa&SelectCountry=NAMIBIA> accessed on 2006/10/16.

structure of the state and regional autonomy or self-government.¹¹⁴ In Ethiopia, despite the constitutional guarantee for the right of the constituent ethno-linguistic communities to self-determination including secession, the Oromo Liberation Front, since it left the transitional government in 1992, has been advocating for the secession of Oromia from Ethiopia.¹¹⁵ One of the reasons for the failure of the constitutional review process in Kenya has been disagreement between different actors over, among other things, issues of regional autonomy.¹¹⁶ In Cameroon, the English speaking people have for a long time been agitating for the right to self-determination.¹¹⁷

Ethno-national or regional conflicts in Africa have been different in their duration, scope and consequences. While some of them have been short lived, minor in scope and less defensible, others have been serious, long in duration and with some historical and legal basis. Some of the most destructive conflicts Africa has witnessed in the post independence period are also the ones involving demands for secession or separate statehood. The first such conflict took place in Congo (Leopoldville what is today Kinshasa) in 1960 due to the disagreement between separatist movements in the province of Katanga and unitarists.¹¹⁸ Next was the Biafran civil war of Nigeria. Of the various secessionist conflicts in Africa, this was unmatched by the level of its human casualties. In this war, regarded by

¹¹⁴ See Bertus de Villiers 'A constitutional scenario for regional government in south Africa: The debate continues' 18 *SA Public Law* (1993) 86-101.

¹¹⁵ OLF was established in 1974 and made its political program public in 1976. It declared as its major aim self-determination for the Oromo people, their liberation from oppression and exploitation, and the establishment of the Peoples' Democratic Republic of Oromia. See Paulos Chanie 'The rise of politicized ethnicity among the Oromo of Ethiopia' in M A Mohamed Salih and John Markakis (eds.) *Ethnicity and the state in eastern Africa* (Uppsala: Nordiska Afrikainstitutet, 1998) 101. According to recent reports OLF has abandoned its secessionist agenda in favor of a demand for more rights for Oromo people in Ethiopia. See BBC news 'Ethiopian officers "join rebels"' available at <<http://news.bbc.co.uk/1/hi/world/africa/5350394.stm>>

¹¹⁶ On the review process see generally Lawrence Juma 'Ethnic politics and the constitutional review process in Kenya' 9 *Tulsa Journal of Comparative and International Law* (2002) 471.

¹¹⁷ Interestingly enough a case was instituted before the High Court of Nigeria demanding Nigeria to espouse the cause of English Cameroon for self-determination and to present a case on behalf of the people of southern Cameroon before ICJ. See 'case note' 46(2) *Journal of African Law* (2002) 246-258.

¹¹⁸ See René Lemarchand 'The limits of self-determination: The case of the Katanga secession' 56(2) *American Political Science Review* (1962) 404-416. One important feature of the events that took place in the Congo following its independence was the active interference of external powers particularly its former colonial power Belgium.

some as genocide, between 600,000 and 1,000,000 persons are said to have died from the fighting, starvation or disease.¹¹⁹ The war of independence of Eritrea, one of the longest wars in Africa, was fought over a period of more than three decades.¹²⁰ Similarly the conflict between the separatist movement in the Cabinda region of Angola and the MPLA government of Angola has been going on for more than three decades now.¹²¹ Immediately before the first democratic elections in April 1994, South Africa witnessed its violent ethnic conflict involving the supporters of ANC and IFP leading to the death of approximately 15, 000 people in South Africa.¹²² The demand of the IFP for self-determination of the Zulu people has been one of the triggering political factors in the conflict.¹²³

Historical factors play major role in some of the cases. Indeed, where the claims have their roots to colonial rule, they are invariably ethno-national and have as their aim secession. For some like English speaking Cameroon, Eritrea, and the Isaq of Somalia the fact that they were under a different colonial administration from other parts of the state to which they have been incorporated has been one of the factors inspiring their demand for self-determination.¹²⁴ The struggle of

¹¹⁹ L . Kuper ‘Genocide and mass killings: Illusion and reality’ in B.J Ramacharan (ed.) *The right to life in International Law* (Martinus Nijhoff Publishers, Dordrecht, 1985) 117, 118.

¹²⁰ See J Klabbers and R. Lefeber ‘Africa: Lost Between self-determination and *uti possidetis*’ in C Brölmann, R Lefeber & M Zieck (eds.) *Peoples and minorities in International law* (Dordrecht: Martinus Nijhoff Publishers, 1993) 70-74;

¹²¹ It was with the establishment of the Movement for the Liberation of the Enclave of Cabinda (MLEC) in 1960 that the movement for the secession of Cabinda from Angola began. Since 1963 MLEC merged with another movement to form the Front for the Liberation of the Enclave of Cabinda (FLEC). The claim for independence is based on legal and historical grounds as well as a sense of distinct cultural and ethnic identity warranting self-determination. See further João Gomes Porto ‘Cabinda, notes on a soon-to-be-forgotten war’ *Occasional Paper 77* (Pretoria: Institute for Security Studies, August 2003).

¹²² See Jerom Wilson ‘Ethnic groups and the right to self-determination’ 11 *Connecticut Journal of International Law* (1996) 442.

¹²³ For a detailed discussion on this see *Ibid*, 442-456; Shula Marks “‘The dog that did not bark, or why Natal did not take off’: Ethnicity and democracy in South Africa – KwaZulu-Natal’ in Bruce Berman et al. (eds.) *Ethnicity and democracy in Africa* (Oxford: James Currey; Athens: Ohio University Press, 2004) 183-199.

¹²⁴ English speaking Cameroon was part of the former British administered UN Trust Territory whereas the former Republic of Cameroon was the former French administered UN Trust Territory. They were united to form the Federal Republic of Cameroon on the basis of a UN sponsored referendum. The federal union of the two was however subsequently abrogated in 1972 giving rise to a secessionist sentiment in English speaking Cameroon. (See generally P Konings ‘The Anglophone problem in Cameroon’ *The Journal of Modern African Studies* (2000)). Similarly, Eritrea, a former colony of Italy which was administered as a UN Trust Territory by British, formed a federation with Ethiopia under a UN

southern Sudan for self-determination traces its root back to regional discrepancies in British colonial administration and beyond.¹²⁵ For some of the ethno-national movements, the basis of the claim for self-determination was the belief that their region could qualify for post colonial independent statehood.¹²⁶ In most cases, a combination of a sense of separateness, resulting from separate colonial history, as well as post-independence patterns of discrimination add further support for their demand of self-determination.¹²⁷

Colonial history also plays a role in African ethno-regional/national movements at a different level. This is the case where colonial rule has converged with rules of international law as international law validates colonially defined entities. It was on the basis of colonial administration rather than the self-determination of pre-colonial states and peoples that the decolonisation process under the UN was designed and implemented. This can be contrasted with Wilsonian self-determination, which assigned the right to self-determination to peoples and nations of eastern and southern Europe on the basis of a common cultural

sponsored referendum in 1952. The anomalous relationship that resulted from the federation subsequently brought about the abrogation of the federal union by Emperor Hailesilassie I in 1962 leading to the beginning of the Eritrean liberation struggle (See Heraclides, *supra* note 80, 177-195 ; The northern secessionist territory of Somalia, which declared itself in 1991 to be the Republic of Somaliland, was a British colony and hence had separate history from the south which was under Italian colonial rule. See J Klabbers and R. Lefebvre 'Africa: Lost Between self-determination and *uti possidetis*' in C Brölmann, R Leteber & M Zieck (eds.) *Peoples and minorities in International law* (Dordrecht: Martinus Nijhoff Publishers, 1993) 65-70.

¹²⁵ See Angela M. Lloyd 'The Southern Sudan: A compelling case for secession' 32 *Columbia Journal of Transnational Law* (1994) 439-451.

¹²⁶ Rebels from the Movement of the Democratic Forces of Casamance have argued, albeit with less convincing authoritative foundation, that historical differences in colonial administration justified their claim for separate independence from Senegal. The secession of Katanga from Congo in 1960-1963 partly relied on the argument that the province had been for the most part administered by Belgium separately from the rest of the colony. See René Lemarchand 'The limits of self-determination: The case of the Katanga secession' 56(2) *American Political Science Review* (1962) 404-416; One of the legal basis used to support the claim of secession by Eritrea from Ethiopia has been the fact that Eritrea was a colony ruled for 50 years by Italy. See Klabbers and Lefebvre 70-71.

¹²⁷ Indeed according to Scarrit, in Africa 'demands for autonomy are much more the product of colonial policies of divide-and-rule and post independence conflicts than of group characteristics.' Gurr, *supra* note 15, 261. Sense of cultural distinctness is however equally, if not more, crucial in some of the demands for self-determination. This is for example true in the case of South Sudan with its African and mostly Christian and animist peoples and Zulus in South Africa with their sense of historical heroism and cultural distinctness and some of the ethnic movements that were active in Ethiopia.

tradition, language, territory and shared history as people.¹²⁸ What determined the 'self' of decolonising self-determination was not peoplehood in the Wilsonian sense. It was rather the administrative territories of the various colonial powers, which were almost invariably inhabited by a multitude of such groups.¹²⁹

According to Mutua:

International law only seemed to contemplate the right of the territorial unit as a whole to choose to become free as one entity or to associate with another state; the birth of many new states from one territorial unit, based on pre-colonial political identities, seems to be out of the question.¹³⁰

Political self-determination was therefore guaranteed to and sovereign statehood was achieved in Africa by territorial units that were defined by colonial powers. The result was the emergence of independent African states which incorporated within their territories many 'selves' which 'have never had the time nor the opportunity to integrate into one "self" which would become the nation.'¹³¹

¹²⁸ On the distinction between Wilsonian self-determination and decolonizing self-determination see Joshua Castellino 'Order and justice: National minorities and the right to secession' 6 *International Journal on Minority and Group Rights* (1999) 389-415. Davidson makes a very interesting comparison between the redefinition of the map of Europe that took place after World War I on the basis of Wilsonian self-determination and the map of Africa that resulted from decolonization. (See Basil Davidson *The black man's burden: Africa and the curse of the nation-state* (London: James Currey, 1992) 187-188). According to Davidson '[t]he new states of central and Eastern Europe were often in some sense old states as well, states shaped and inspired by preimperialist and native histories of their own. That might not be true of all of them. But all of them could discover, in their cultures, the notion of a state like identity, even those who, like the Slovaks or the Albanians, had lived for centuries under a more or less dismissive foreign rule.' *Ibid* 188.

¹²⁹ As Mojekwu rightly contended this 'denied African peoples that "freedom to choose" and the "right" to take into their own hands the responsibility of shaping their own political, economic, and cultural destinies.' Christopher C. Mojekwu 'Self-determination: The African perspective' in Yonah Alexander and Robert A. Friedlander (eds.) *Self-determination: National, regional and global dimensions* (Boulder, Co.: Westview Press, 1980) 228. Indeed, it is a misnomer to characterise decolonisation as an exercise of self-determination by colonial peoples. This is not just because decolonisation foreclosed the possibility of exercising self-determination on the basis of pre-colonial social formations and hence on the basis of peoplehood in the Wilsonian sense. Most importantly, it is rather because it was not the peoples constituting the independent African states who determined, in the real sense of the term, their political organisation. That was rather determined for them. As Davidson pointed out 'the leading nationalists found themselves obliged by imperialist policies, fashioned in London and Paris, "to seek independence within the existing power unit" of their colony, rather than in any more rational or historically logical territorial unit'. Davidson 183. Hence Mutua has succinctly stated that 'the right to self-determination was exercised not by the victims of colonisation but by their victimisers'. Makau Wa Mutua 'Why redraw the map of Africa: A moral and legal inquiry' 16 *Michigan Journal of International Law* (1995) 1117.

¹³⁰ Mutua, *supra*, 1141.

¹³¹ Mojekwu, *supra*, 234.

The presence of such multiple groups with distinct identities and histories together with the lack of nationhood in African states provides fertile ground for the birth of ethno-regional/national movements.¹³² This is because such state of affair tends to consolidate ethnic and regional cleavages which may lead to social fractures and violence. This may in the end force one of the groups, which often happens to be real or imagined victim of oppression, to opt for secession. The case of the Igbo of Nigeria in the Biafra war is a good example of this.¹³³

As we also noted earlier one of the features of ethnic diversity in many African states is the presence of a few large groups, rather than one numerically dominant or a multitude of small ones.¹³⁴ This often increases the level of competition for political control leading some groups to opt out of the system. It was partly as a result or for fear of the dominance of the African National Congress, whose leadership was associated with the rival Xosa ethnic group, that Inkatha Freedom Party have propagated for self-determination of the kingdom of Zulu from South Africa.¹³⁵ In Ethiopia as well it was, among other things, as a result of its disagreement over power sharing with the dominant Ethiopian Peoples Revolutionary Democratic Front (EPRDF) that the Oromo Liberation Front left the transitional government in 1992 and have since then been demanding for the secession of Oromia from Ethiopia, although it has been reported that it has recently abandoned its quest for secession.

History plays a role in some African ethno-regional/national claims in other ways, most importantly on the basis of pre-colonial socio-political history of some

¹³² *Ibid*, 235.

¹³³ For a detailed discussion on the attempted secession of Biafra see generally Raphael Chjioke Njoku 'An endless cycle of secessionism – Intellectuals and separatist movements in Nigeria' in Bruno Coppieters and Michel Huysseune (eds.) *Secession, history and the social sciences* (VUB, Brussels University Press, 2002) 249-274.

¹³⁴ See above. Tanzania can be regarded as a state with a multitude of small groups with no single group command any real numerical dominance. See Howard 97.

¹³⁵ 'Conflict was facilitated,' according to Wilson, 'by the fact that, while Inkatha was an exclusively Zulu party, the ANC was predominantly Xhosa – Xhosas were overrepresented by a factor of 2.2 in the ANC leadership, while Zulus were underrepresented by a factor of over five.' Jerom Wilson 450.

groups. For such groups like Zulus of South Africa¹³⁶ and Buganda of Uganda¹³⁷, a pre-colonial history of independent peoplehood together with their sense of separate identity fuels their demand, with a threat of secession, for privileged status by way of self-government. The secessionist movement in the Cabinda region of Angola has also its origin in the pre-colonial history of Cabinda. Historically however the most important ground for the movement has been the separate administration of Cabinda from Angola by Portuguese. According to the Front for the Liberation of the Enclave of Cabinda (FLEC), Cabinda was administered as 'protectorate' by Portuguese on the basis of the Treaty of Simulabuco, which obliged Portugal to maintain the integrity of Cabinda. The independent movement of Cabinda started in 1956 – almost two decades before Angola gained its independence – when Cabinda was incorporated into Angola under Portuguese rule in violation of the terms of the treaty.¹³⁸

Apart from historical factors, colonial or otherwise, and ethnic factors, prevailing and continuing regional economic disparities explain some of the ethno-regional/national claims. In other words, one of the factors leading to such claims is economic discrimination which involves the systematic exclusion of members of a group from access to desirable economic goods, conditions, or positions which are to a large extent monopolized by other groups in society.¹³⁹ According to Horowitz, it is the 'relative group' position combined with the 'relative regional position' that determines the conditions for secessionist movements.¹⁴⁰ This view suggests that secessionist movements are triggered or exacerbated by the

¹³⁶ See Jerom Wilson 442-456; and Shula Marks *The Dog that did not bark* 185-191.

¹³⁷ See generally Joe Oloka-Onyango 'The question of Buganda in Ugandan contemporary politics' 15(2) *Journal of Contemporary African Studies* 173-179; Cathrine Johannesen *Kingship in Uganda: The role of the Buganda Kingdom in Ugandan politics* CMI Working Papers 8 (Bergen: CHR. Michelsen Institute, 2006)

¹³⁸ See João Gomes Porto Cabinda: Notes on a soon-to-be-forgotten war ISS Occasional Paper 77, August 2003; also Minorities at risk 'Cabinda of Angola' www.cidcm.umd.edu/inscr/mar/data/angcabin.htm last accessed on Sept 17, 2006.

¹³⁹ Gurr, *supra* note 15, 43. One of the manifestation of this particularly in Africa is the existence of substantial material deprivation (inequality) affecting the group or groups in question. This is a result of the uneven distribution of economic goods by colonial powers and the indifference of the post-colonial state to rectify this situation.

¹⁴⁰ Horowitz, *supra* note 235.

regional dynamics of different groups in relation to the state, and that, among other things, poor groups in underdeveloped regions are the most prone to secessionist movements. The southern Sudan case and the movement of various communities in the Niger delta of Nigeria, particularly the Ogoni sufficiently illustrate this point.

As to the case of southern Sudan, Heraclides identifies the manifold basis of Southern distinctness and hence claim for self-determination. The two factors that Heraclides finds to be of particular importance were ‘the very existence of the Northern Sudanese as the “outgroup” and *the extent of underdevelopment and disadvantage in comparison to the south.*’¹⁴¹ The economic disparity between the north and south traces its origin back to British colonial administration.¹⁴² This disparity was allowed to continue by the various governments of Sudan after its independence in 1956. As Heraclides put it: ‘When the Sudan became independent there was no genuine attempt to redress the striking imbalance between North and South and the extreme inequality and under-representation suffered by Southerners.’¹⁴³

Since recent years, various groups in the Niger Delta area of Nigeria have begun ethno-regional movements. One such movement that has attracted wide international attention is the Movement for the Survival of the Ogoni People (MOSOP). The Ogoni, located in the Oil-rich Niger Delta region of Nigeria, are a minority community of about 550,000 in a country with a population size of more than 120 million composed of 250 different ethnic groups.¹⁴⁴ The MOSOP was established in 1990 to run the struggle of the Ogoni people for self-determination,

¹⁴¹ Heraclides, *supra* note 80, 110(emphasis added); see also Horowitz, *supra* note 239.

¹⁴² See Hannum 309-311.

¹⁴³ Heraclides, *supra* note 80, 111. The inequality between the north and south was so palpable that the union between the two was, to say the least, anomalous from the very start. This was eloquently put by two southern leaders quoted by Horowitz: ‘the administration, the army, the police, the judiciary and trade in the south [are] all in Arab hands; Arabic is the official language as well as the medium of instruction; Friday is the day of rest, etc. Could domination be better expressed?’ *supra* note 239.

¹⁴⁴ Chinedu Reginald Ezetah ‘International law of self-determination and the Ogoni question: Mirroring Africa’s post-colonial dilemma 19 Loyola of Los Angeles International and Comparative Law (1997) 814.

economic and social empowerment, environmental protection, control and use of fair portion of resources from Ogoniland and adequate and direct representation as of right in all Nigerian national institutions.¹⁴⁵ The issues that have led to the genesis of the movement include 'political marginalisation, economic backwardness, the seizure of their (Ogoni's) natural resources, oil based environmental pollution and cultural disintegration.'¹⁴⁶

So far only two of the major ethno-national/regional conflicts have found a successful end. The first of these, the independent struggle of Eritrea, ended successfully with the proclamation of its independence from Ethiopia in 1993. Although, its sustainability is yet to be seen, the southern Sudan conflict has also finally been brought to an end with the signing of a peace agreement between SPLM/A and the Khartoum government leading to the formation of a federal system that guarantees self-government to southern Sudan.¹⁴⁷ Although the Isaq of Somalia proclaimed Somaliland as Independent state in 1991, it until this day, in spite of having many of the attributes of a sovereign state, has not gained international recognition affirming its statehood.¹⁴⁸

There are very important legal questions that the forgoing discussion invites. These include do minority ethnic groups, such as the Ogoni, in Africa constitute the 'self' of the right to self-determination? What solutions, if any, does the international law of self-determination offer to address conflicts arising from the demands of minorities for self-determination? Does international law recognise circumstances under which inhabitants of a section of a territory of a state, who do not have common ethnic identity, may qualify to be a people (as the claim of

¹⁴⁵ These are issues articulated in the Ogoni Bill of Rights that was submitted to the Military Government of General Ibrahim Babangida in 1990. *Ibid*, 817-819.

¹⁴⁶ Ben Naanen *Effective non-violent struggle in the Niger Delta* paper available at <http://www.sephis.org/pdf/ogonipeople.pdf#search=%22the%20quest%20for%20the%20self-determination%20of%20the%20Ogoni%22> as accessed on Sept 18, 2006 at 6. For details see 6-9.

¹⁴⁷ See J Peter Pham *Journey with a new map? Thoughts on the Sudan Agreement and stability in Africa* available at <<http://www.inthenationalinterest.com/Articles/Vol3Issue24/Vol3Issue24Pham.html>> last accessed 2006/10/16.

¹⁴⁸ For an earlier assessment of this issue see Hussein Adam 'Formation and recognition of new states: Somaliland in contrast to Eritrea' 29 *African Review of Political Economy* (1994) 21-38.

the people of South Sudan illustrates)? Are existing norms of international law on the protection and the rights of minorities sufficient to address issues of this nature? How does constitutional theory and the constitutional practice of states, particularly those in Africa, respond to the problem? What role do human rights norms under the African system play to help African regional institutions, such as the Peace and Security Council of the AU and the African Commission and the African Court on Human and Peoples Rights, in the resolution of conflicts arising from demands for autonomy, self-government or secession?

2.2.3 Minorities and the threat of assimilation and exclusion: The struggle for recognition of cultural identity and equal citizenship

One of the issues of minorities in Africa that squarely fits in the conventional minority rights paradigm is the problem of non-recognition of minority identities and in some cases denial of their citizenship. In several African states there are some groups whose cultural identity has not been recognised or whose cultural identity is otherwise exposed to ruin due to the imposition of the dominant culture or its systematic nationalization by the state. In some others there are those who are denied of their citizenship on account of their ethnic identity or origin. These groups are of two types. The first consist of most of the groups who are mobilised to form ethno-cultural movements demanding for the recognition of their cultural identity and their equal inclusion into the society. The others have been groups whose demand was the recognition of their citizenship and the protection of their equal citizenship. The former are exposed to institutional discrimination and threat of assimilation, while the later are deprived of the very fact of being nationals of the state. Yet, both involve issues about recognition. This part therefore examines the nature of the problem and some of the cases.

The predisposition of many of the post-independence African leaders to unite and even subdue the constituent ethno-cultural groups into a centralised and

integrated society has led these states to pursue a policy of homogenisation that accords constitutional recognition and protection to the dominant culture to the exclusion of all others. The dominant culture has been used to create a semblance of national integration by way of a common language, national identity and in some cases even religion. There are several African countries in which the culture of a dominant group has been employed to define the identity of the state. In some extreme cases, the nationalisation of the dominant culture took the form of total exclusion of other cultures from the public sphere.

The cultures of other groups are often treated as nuisance, and some times even as obstacle that must be overcome. It has always been sought to weaken and ultimately eliminate the institutions in which the non-dominant cultures are imbedded. The minority cultures, having been left unrecognised and subject to repression, have been exposed to erosion and ruin. This not only threatens the subjugation and assimilation of the members of such groups into the dominant culture but also endangers the very existence of such groups as peoples.

In its endeavour to institutionalise the dominant culture, the state employs different tactics of limiting the cultures of other groups. One can categorise these approaches as taking a variation of any of two: a coercive one consisting of restriction or abolition of a group's language, impositions upon its traditional practise and ways of life, the persecution of cultural leaders, clergy members and attacks on academics and intellectuals and an assimilationsit one involving a systematic process of nationalising the dominant culture to the exclusion of others. More often than not, this has led to the emergence of ethno-cultural movements that demand the equal recognition and protection of their languages and cultural practices.

A good example of a country that has employed a coercive approach to institutionalise the dominant culture is Algeria. The question of the identity of Algeria has been one of the most contentious issues in the post independence

politics of Algeria. Although Algeria is multicultural and 27 per cent of its population is composed of the Amazigh, throughout its post-independence existence, Algeria has been attempting to institutionalise Arabisation and assert itself as a purely Arab state. As a result, Arabic was constituted as the only language of Algeria. Linguistic and cultural expressions of the Amazigh were forbidden and the practice of Amazigh nationalism labelled as 'Berberism' has been outlawed.¹⁴⁹ The institutionalisation of Arabisation has reached its climax in 1998 when the government passed a comprehensive law that required the use of Arabic language in all spheres of public life.¹⁵⁰ The nationalisation of Arab identity has therefore been not only coercive but it also took 'a systematic, even Machiavellian, instilling of nationalist ideology through the mass media, the educational system, administrative regulations and so forth,'¹⁵¹ exclusively on the basis of the cultural attributes of the dominant Arab majority. The fierce resistance put by the Amazigh has often been received with violence leading to the death of several people and the arrest and injury of many.¹⁵² The Amazigh movement for recognition has finally born a result when in October 2002, the Algerian Constitution was amended to recognise Tamazight, the Amazigh language, as a national language. This was preceded by the suspension of the general application of the Arabic Language Decree of 1998 following the recommendation by the UN Human Rights Committee demanding the urgent review of the law.¹⁵³

¹⁴⁹ 'From 1980 to 1988, an estimated 300 activists for Amazigh were imprisoned for "Berberism".' See *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* (Kanifing, the Gambia: Unique Graphics, 2005) 43 [Hereinafter ACHPR Report].

¹⁵⁰ See UNHRC, *Concluding observations of the Human Rights Committee on the Second Periodic Report of Algeria* UN Doc. CCPR/C/79/ADD.95 (August 1998) para. 15 [Herein after UNHRC on Algeria].

¹⁵¹ Benedict Anderson *Imagined Communities: Reflections on the origin and spread of nationalism* (London and New York: Verso revised ed., 1991) 113-114 [Hereinafter Anderson].

¹⁵² For example in 1980 the violent suppression of the protest of the Imazinghe against the banning of a lecture on ancient Kabyle poetry at Tizi-Ouzou University caused led to the death of more than 30 people and the arrest and injury of several hundreds. Maxted and Zegeye, *supra* note 394.

¹⁵³ UNHRC on Algeria para 15.

The Amazigh in Morocco are also subject to similar threats and challenges as their counterparts in Algeria.¹⁵⁴ Some of the restrictions that Morocco has imposed on the Amazigh are as aggressive and manifestly contrary to human rights norms as the ones in Algeria. This is illustrated by the prohibition of the registration of Children who are given Amazigh names as well as the outlawing of the use of Tamazight in courts. Amazigh are not also allowed to give Amazigh names to their organizations and companies nor to write in Tifingh. Tamazight is not as yet officially recognised nor is it taught at any level of the education system.

The identity of the state has also been a point of contention between dominant groups in control of the state machinery and other smaller groups in many other African states. The most typical ones include countries composed of Arab and African origin population groups such as Sudan, Chad¹⁵⁵ and Mauritania.¹⁵⁶ Much of the post-independence political history of these countries reflects the struggle between the attempts of various governments to impose the dominant Arab culture and Arabic language on African population groups and the resistance of the latter.¹⁵⁷ Indeed, this is one of the many factors which have led to the civil war in the Sudan.¹⁵⁸ Arguably, the approach employed by governments in these states was not any different from that of Algeria.

Other African states have employed a variation of the Machiavellian approach. In these countries, institutional pressure has been put on certain groups to force them into abandoning their traditional practices and ways of life. One illustration of this is the attempt of Tanzanian authorities to destroy the cultural identity of the

¹⁵⁴ See ACHPR Report 42-43.

¹⁵⁵ See generally S Decalo 'Chad: The roots of centre periphery strife' 79 *African Affairs* (1980)

¹⁵⁶ The title of the news item 'Mauritania – Neither Arab nor African' from the Nordic Africa Institute succinctly captures the nature of the problem the characterizes much of the post independence politics of Mauritania. See Gariba Diallo 'Mauritania – Neither Arab nor African' available at <<http://www.nai.uu.se/newsfromnia/arkiv/2000/diallo.html>> last accessed 2006/05/15.

¹⁵⁷ According to Horowitz for these Afro-Arab states the persistent question has been: Is the state to be Arab or African? And the derivative of which Who would rule it, Arabs or Africans? 189.

¹⁵⁸ For a discussion on the cultural basis of the civil war in the Sudan see Hannum 313-316.

Massai ethnic group, giving it a choice between 'abandoning the ancestral customs or exclusion from public life.'¹⁵⁹

The culture and identity of some groups is inseparably linked with their home environment. For such groups, their livelihood, medicinal practices, and cultural activities depend entirely on the land they inhabit and the forest they live in. In Africa this is typically true for Pygmies in central and southern Africa and pastoralist groups such as the Massai in east Africa. 'Beyond its role as purveyor of goods and resources,' revealed IRIN's in-depth report on Pygmies in Africa, 'the forest is also a social, cultural and spiritual space that plays an essential role in pygmy cultures and identities.'¹⁶⁰ To day as a result of the development of national parks and conservation areas as well as large scale infrastructure projects and company concessions such as opening of roads into forests, commercial hunting, mining, logging, dam constructions and oil explorations, pygmies are losing their home environment and with it their livelihoods and identity. Similarly, in east Africa, land alienation has led to the destruction of the cultural heritages and sacred sites of the Massai. A good example of this is Endoinyio Oolmoruka in Tanzania, where every generation of the Massai community from both Kenya and Tanzania visited and performed their spiritual rites.¹⁶¹

The assimilationist approach is reminiscent of Benidict Anderson's idea of official nationalism.¹⁶² This is a process by which a state institutionalises the culture of the dominant group as a national culture by way of 'stretching the short, tight, skin of the nation over the gigantic body of the empire.'¹⁶³ The state adopts the language of the dominant group as its official language or national language. The media, the education system and all other public activities reproduce the

¹⁵⁹ Fatsah, *The African Charter on Human and peoples' rights: A comprehensive agenda for human dignity and sustainable democracy in Africa* (2005) 225-226.

¹⁶⁰ IRIN In-Depth *Minorities under siege: Pygmies today in Africa* (April 2006) 8 at www.IRINnews.org. (Hereinafter IRIN In-Depth).

¹⁶¹ See ACHPR Report 41.

¹⁶² See Anderson, *supra* note particularly 83-112.

¹⁶³ *Ibid*, 86.

dominant culture and are conducted in the language of the dominant group. No space is left for expression of other cultures and those who are not members of the dominant culture have no choice but to assimilate into the dominant culture.¹⁶⁴ This has been the case, for example, in such countries as Ethiopia,¹⁶⁵ Malawi,¹⁶⁶ and Botswana.¹⁶⁷

Ethiopia, which existed as an independent African state since the time of the Axumite empire as far back as 500 B.C., took its current territorial and demographic shape towards the end of the 19th century by incorporating different communities of the south and the east.¹⁶⁸ The incorporation of peoples of different cultures into the Ethiopian empire and the process of centralisation of power led to a process that was very much like official nationalism. It involved, to use the words of Anderson, the 'welding of two opposing political orders, one

¹⁶⁴ This happens to be the case even when an effective and seemingly 'neutral' individual rights is accorded to all citizens. Such a system favours the dominant group and minorities are as a result marginalised as a result of 'the drawing of internal boundaries; the language of schools, courts and government services; the choice of public holidays; and the division of legislative power between central and local governments.' See Will Kymlicka *Multicultural citizenship: A liberal theory of minority rights* (1995) 51.

¹⁶⁵ See Christopher Clapham 'Ethnicity and the national question in Ethiopia' in P Woodward and M Forsyth (eds.) *Conflict and peace in the Horn of Africa: Federalism and its alternatives* (Aldershot: Dartmouth Publishing Co. Ltd, 1994) 27-40.

¹⁶⁶ See generally Deborah Kaspin 'Tribes, regions and Nationalism in democratic Malawi' in Ian Shapiro and Will Kymlicka (eds.) *Ethnicity and group rights* (New York and London: New York University Press, 1997) 464-503.

¹⁶⁷ See generally Jacqueline S Solway 'Reaching the limits of universal citizenship: "Minority" struggles in Botswana' in Bruce Berman et al. (eds.) *Ethnicity and democracy in Africa* (2004) 129-147.

¹⁶⁸ There is little agreement among scholars on the interpretation of the process of state formation that took place at the end of the 19th century and beginning of 20th century. One can therefore generally identify two opposing viewpoints on this. The first is the view of those who argue that the formation of the Ethiopian state was essentially colonial in nature. This is particularly a view held among the proponents (Ethiopian intellectuals and a large number of foreign scholars) of self-determination for the various ethnic groups. See for instance Asefa Jaleta *Oromia and Ethiopia: The state formation and ethno-national conflict* (Boulder and London: Lynne Rienner, 1993); Fasil Nahum *Constitution for a nation of nations: The Ethiopian Prospect* (Lawrenceville, NJ: Red Sea Press, Inc., 1997) 13; B.K Holcomb and S Ibsa *The Invention of Ethiopia: The making of a dependent colonial state in northeast Africa* (Lawrenceville, NJ: Red Sea Press, 1990). This is not shared by all intellectuals from the non-dominant ethnic groups. See for instance Merera Gudina *Ethiopia: Competing ethnic nationalism and the quest for democracy* (1960-2000) (2003) 100-105. The second is the view that is expressed in the conventional historiography on Ethiopia. See for example Bahiru Zewde who characterizes the process as 'internal expansion' and incorporation. *A history of Modern Ethiopia 1855-1974* (London, Athens and Addis Ababa: James Currey, Ohio University and Addis Ababa University Press, 1991) 60-80. To have a better understanding of the process by which Ethiopia has come to take its current shape, it may be helpful to compare the process of empire building by Ethiopian kings such as Minelik II with comparable empire building processes in many parts of Africa that were interrupted by the advent of colonialism into Africa. See Okafor, supra note 24, 21-26.

ancient (historic Ethiopia), one quite new (modern Ethiopia).¹⁶⁹ The expected outcome of this was essentially the assimilation of modern Ethiopia with its newly incorporated heterogeneous population of the south and east into 'historic Ethiopia'.¹⁷⁰ For the newly incorporated peoples, this was meant conversion into Ethiopian Orthodox Christianity, taking Christian names, being conversant in Amharic language and embracing the culture of historic Ethiopia.¹⁷¹ This led to the emergence of ethno-national movements who after many years of civil war succeeded to establish an ethnically based federal constitutional system.

Malawi is another African state that has sought to institutionalise the culture of the dominant group as its national culture. Although Malawi consisted of more than a dozen ethnic groups, its post-independence nation-building process under the one party rule of President Hastings Banda has been directed to 'the promotion of one ethnicity – the Chewa – as the national mainstream, and one region – the centre – as Malawi's heartland.'¹⁷² As part of this process, Chechewa, the Chewa language, was made a national language. To ensure its dissemination and standardisation, Chechewa received particular governmental support.¹⁷³ The education system, the bureaucracy, the media and literature were all put for the promotion of Chechewa. This went 'hand in hand with the

¹⁶⁹ Anderson, *supra* note 86 (The text in the parenthesis is added by author).

¹⁷⁰ The origin of the modern Ethiopian state was what was known as historic Ethiopia. According to Adhana Haile Adhana 'The historic Ethiopian state normally known as Abyssinia had the Tigray (speaking Tigrigna, the Christian Agew (speaking Agewigna) and the Amhara (speaking Amharic) as its core and as components of its nationhood, although the Tigray and the Amhara were preponderant ... *The uniting or core culture consisted of common history and Christianity, not Amharic or the Amhara core culture.*' (emphasis mine). Contrary to this others such as Christopher Clapham and Assefa Feseha characterise historic Ethiopia's core culture as essentially being the Amhara culture (Clapham, *supra* 294, 28-31; Feseha *Federalism and the accommodation of diversity in Ethiopia* (2006) 54-58). This, however, seems to be giving too much credit to the role of Amhara and too little to the Tigre in the making of modern Ethiopia. Adhana's view therefore seems to be more accurate. The only thing left out in Adhan's analysis is the prominence that Amharic has come to acquire and its utility in the process of nation-building under Haile Silassie I and subsequently under the military regime. But this was something of a recent development, hence Amharic was less an attribute of the core culture than say orthodox Christianity. Thus although non-Amharic speaker as in the case of Emperor Yohannes IV, could rise to the throne, it was not so possible for a non-orthodox Christian as the case of Lige Eyasu from modern Ethiopian history aptly demonstrates.

¹⁷¹ See Assefa Fiseha *Federalism and the accommodation of diversity in Ethiopia* (2006) 56.

¹⁷² Kaspin, *supra* note 470.

¹⁷³ See Pascal Kishindo 'The impact of a national language on minority languages: The case of Malawi' 12(2) *Journal of Contemporary African Studies* (1994) 138.

promotion of Chewa culture as the cornerstone of nationhood and the source of its political iconography.¹⁷⁴ Naturally this has precipitated the cultural, linguistic and socio-economic marginalisation of other groups inspiring resentment among the non-Chewa towards the Chewa.

The post-independence constitutional and political order of Botswana was established on the premise of what Richard Werbner called the One-nation Consensus.¹⁷⁵ This was an assimilationist and exclusive policy that was directed at the official nationalisation of the Tswana nation with no regard to the cultures and languages of the various groups. Having been established on the premise that 'we are all Tswana', this policy 'left virtually no space in the public sphere for the country's many non-Tswana cultures, unless recast in a Tswana image.'¹⁷⁶ This was legally entrenched in the choice of official and national languages, the creation of the House of Chiefs and the drawing of district boundaries through the independence Constitution of Botswana, the Chieftainship Act as well as the Tribal Territories Act. Thus, Sections 77, 78 and 79 of the Constitution guarantee automatic membership to the House of Chiefs, one of the Houses of Parliament, only to the eight Setswana speaking paramount chiefs.¹⁷⁷ Similarly, Section 2 of the Chieftainship Act recognised as the 'principal tribes' only the eight Setswana speaking groups to the exclusion of others. This was taken to its logical conclusion under the Tribal Territories Act, which divided the country mainly in terms of the eight principal tribes, which means that only the Setswana speaking groups have constitutionally sanctioned territorial boundaries (districts) and hence access to land. The recently introduced amendments to the Constitution and the laws, contrary to their promise, did not fully rectify the discrimination suffered by non-Tswana speaking groups.¹⁷⁸

¹⁷⁴ Kaspin, *supra* note 483.

¹⁷⁵ Richard Werbner 'Introduction: Challenging minorities, difference and tribal citizenship in Botswana' 28(4) *Journal of Southern African Studies* (2002) 676.

¹⁷⁶ *Ibid*, 676.

¹⁷⁷ See for details the case report *Kamanakao and others V. Attorney-General and Another* (2002) *African Human Rights Law Reports* (BwHC 2001) 35-58.

¹⁷⁸ For more see *Violations of linguistic and cultural rights of minority groups in Botswana* statement of Lydia Ramahobo to the UN Working Group on Minorities (March 1, 2004) available at <

The various cases discussed above mainly deal with situations in which the existence and identity of non-dominant ethnic groups have been denied public expression either through forced imposition of the dominant culture and the concomitant repression of other cultures or through official nationalisation of the dominant culture. In some other African states, it is by way of excluding members of certain groups from citizenship that recognition is denied. This is mainly a very recent phenomenon very much related to the process of democratisation and the increasing role that citizens have come to play in elections and in the overall political process.¹⁷⁹ The difference here is that the denial of recognition affects not just the cultural identity and public participation of the groups but the very fact of their membership to the political community. As a result, its consequence is the total removal of excluded groups from all spheres of public life.

Given the nature of the ethnic composition of many African states, employing ethnic origin requirements for citizenship may lead to exclusion and marginalisation of members of certain groups and can indeed be explosive. It can lead to extreme alienation among groups that are excluded. If the situation continues and the groups are subject to xenophobic attacks, alienation of their property and threat of expulsion, resort to violence is often unavoidable. Some of the conflicts erupted in the continent since the 1990s are products of the attempts of some governments to institutionalise exclusive citizenship laws.¹⁸⁰ One can have a better appreciation of the nature of this problem and its consequences through a brief examination of the recent conflicts in Côte d'Ivoire and Democratic Republic of Congo (DRC).

<http://www.unhcr.ch/minorities/statements10/MCB3a.doc>> last accessed on 2006/09/27; also IRIN News 'Botswana: Minority ethnic groups feel new bill still discriminates'

¹⁷⁹ See Beth Elise Whitaker 'Citizens and foreigners: Democratisation and the politics of exclusion in Africa' 48(1) *African Studies Review* (2005) 109-126.

¹⁸⁰ For literature that seeks to explain the conflicts and civil wars in various African states see Said Adejumbi 'Citizenship, rights, and the problem of conflicts and civil wars in Africa' 23 *Human Rights Quarterly* (2001) 148-149; Georges Nzongola-Ntalaja 'Citizenship, political violence and democratisation in Africa' 10 *Global Governance* (2004) 403-409.

Since 2002, Côte d'Ivoire has been in a civil war divided between rebel controlled north and government controlled south. This north-south divide is a reflection of the central problem that has led to this civil war. The problem revolves around issues of identity and citizenship and is very much related to the recently introduced political and legal discourse that distinguishes between 'Ivorite' or 'pure Ivorian' and 'circumstantial or mixed' Ivorians.

This discourse is partly a result of the power struggle that emerged after the death of former president Houphouët particularly between Konan Bédié, a Boule who was then heading the National Assembly, and Alassane Outtara, a northerner of Dyule origin who was at the time a prime minister. Although Bédié won the struggle to become president, the support that Outtara mobilised particularly from the north under his party RDR and the competitiveness that he showed in the power struggle was seen by some as a threat to the dominance that the south, particularly Akan, so far enjoyed. It was within this context that intellectuals and university researchers, mostly from the Akan, began to propagate the idea of Ivorité.¹⁸¹ 'Ivorité,' according to one commentator, 'is a version of an "Akan philosophy" of nationality based on the conviction that southern ethnic groups are "true" Ivorians, whereas "the northerners are "Ivorian by Chance".'¹⁸² The ethnic groups in the north, most of which are Muslims, have affinity with groups in neighbouring Burkina Faso and Mali.

Soon, the Ivorité discourse has crept into the political realm. Konan Bédié institutionalised this philosophy by introducing it into the electoral law stipulating that presidential candidates must be born in Côte d'Ivoire to parents who were themselves born in the country. As a result during the 1995 presidential election, Outtara, whose mother is said to have come from Burkina Faso, was disqualified from running for presidency. In the summer of 2000, a new constitution was

¹⁸¹ Youssouf Diallo *From stability to Uncertainty: a recent political history of Côte d'Ivoire* Occasional Paper (Max Plank Institute for Social Anthropology, 2005) 9.

¹⁸² *Ibid.*

drafted and ratified under the military president Guei.¹⁸³ This constitution included clauses 'that underscored national divisions between the North and South, Christian and Mouslim...'¹⁸⁴ Thus, under this constitution, in order to run for presidency, both parents of the candidate must be born in Côte d'Ivoire. As a result, Ouattara was once again barred from contesting elections in the 2000 presidential and legislative elections. This led his party RDR to boycott the elections. Subsequently, When RDR supporters held protest demonstrations following the demand by Ouattara for rerun of the presidential election, Gbagbo who was sworn in as president maintained that new election was not warranted as Ouattara did not possess the citizenship qualification to run for presidency and crushed the protest including by the use of lethal force which caused the death of some 300 persons.¹⁸⁵

But the effect of the distinction that the ivorite philosophy creates between 'pure' and 'mixed' Ivorians is not limited to the exclusion of Ouattara and Ivorians of foreign or mixed origin from running for presidency. It has also led to fear of disenfranchisement of certain section of Ivorians particularly those in the north.¹⁸⁶ This is because of the national identification program that Bédié introduced in 1998 as part of the *Ivrité* policy, which Gbagbo also took up, has resulted in the arbitrary withdrawal of the IDs of some people, particularly those from the north, without replacement.¹⁸⁷ The danger has been that those whose IDs were withdrawn cannot own land, would have no other civic rights and may be expelled from the country.

¹⁸³ Guei came to power after overthrowing Bédié by a bloodless military coup in 1999.

¹⁸⁴ US Department of State 'Background Note: Côte d'Ivoire' (November 2001) <<http://www.state.gov/r/pa/ei/bgn/284pf.htm>>

¹⁸⁵ According to human rights groups, many northerners and Muslims were the target of security forces during the upheavals. See *IRIN Webspecial on Cote d'Ivoire Crisis* Available at <http://www.irinnews.org/webspecials/ci_crisis/cotecrisis3.asp>

¹⁸⁶ As one author put it 'The Ivorian requirement that one's pedigree of Ivorite be "validated" by village elders disproportionately excludes ethnic Dioullas.' Julia Harrington 'Voiding human rights: Citizenship and discrimination in Africa' in *Justice Initiative* (a publication of Open Society Initiative February 2005) 26.

¹⁸⁷ It was reported that 'Muslim leaders complained that their community was the main target of suspicion. In may 2000, the Higher Council of Imams complained that security forces had been abusively withdrawing ID cards from Muslims and destroying them.' See *IRIN Webspecial on Cote d'Ivoire Crisis* Available at <http://www.irinnews.org/webspecials/ci_crisis/cotecrisis3.asp>

When in September 2002 the protest of some 800 soldiers against their impending retrenchment from the army easily evolved into a rebellion, the issue of citizenship rights formed the major component of the rebellion. In October 2002, the rebels declared the existence of the Mouvement Patriotique de Côte d'Ivoire (MPCI) and were in full control of the northern half of the country. The controversial elections which excluded Ouattara and the citizenship question affecting many in the north have been articulated by the rebel group as the underlying causes for the rebellion. The spokesperson of MPCI Guilane Soro is quoted as having described the rebel group as a mix of exiled soldiers and former students who were furious at the Ivorian government's treatment of northern Ivorians and want a united Ivory Coast that lives in harmony and includes everyone.¹⁸⁸ As Lansana Gberie and Prosper Addo has summarised it, 'the instability in Côte d'Ivoire is anchored on the controversial nationality question that disenfranchises 26 per cent of the Ivorian population.'¹⁸⁹

The DRC conflict is an excellent illustration of the grave consequences of the institutionalisation of the distinction between people of authentic citizenship and those with questionable citizenship. An estimated four million people have perished in this conflict, making it the world's most lethal conflict since World War II.¹⁹⁰ The origin of this conflict relates to the attempt of Congolese authorities to strip the citizenship rights of the minority Tutsi Zairians called the Banyamulunge in an effort to mobilise support from members of local ethnic groups who felt that the Banyamulunge dispossessed of their land and other resources.

When the boundaries of DRC were drawn as Congo Free State of King Leopold II during the infamous Berlin Conference on the colonial partition of Africa in 1884-1885, it included the Kivu area where ethnic Tutsis, called Banyamulunge,

¹⁸⁸ See Lansana Gberie and Prosper Addo *Challenges of Peace implementation in Côte d'Ivoire* Monograph No. 105 (Pretoria: Institute for Security Studies, 2004) 17.

¹⁸⁹ *Ibid*, 20.

¹⁹⁰ See Simon Robinson and Vivienne Walt 'The deadliest war in the world' *Time Magazine* (June 5, 2006) 31.

had already settled. In 1960 when DRC became independent, not only the Banyamulunge but also people of Rwanda and Burundi origin who lived in the Congo for more than 10 years were allowed to vote and eligible for political offices, albeit no law had established their citizenship as Congolese.¹⁹¹ In 1972, Mobutu conferred Congolese citizenship by a presidential decree as of 30 June 1960 to all people from Rwanda and Burundi who had established their residence in Kivu before 1 January 1950 and lived in Congo since then.¹⁹²

This changed with the promulgation of the Zairian Citizenship Act of 1981. According to this law, a citizen is defined as some one who is a descendant of an ethnic group found in the country within its borders as of 1 August 1985. Although this did not exclude the Congolese citizenship of Banyamulunge, it opened a public discussion questioning their authenticity as Congolese citizens. Members of local ethnic groups in the Kivu area, who felt threatened by the economic prosperity of the Banyarwanda (Ethnic Hutus of particularly Rwandan origin) in North Kivu and the Banyamulunge in South Kivu,¹⁹³ 'insisted that there were no permanent settlements of Kinyarwanda speaking people west of the great lakes.'¹⁹⁴ This discourse continued into the 1990s until it attracted the actions of authorities supporting it.

Following the pressure for democratization in the 1990s, Mobutu sought to mobilise the support of the Congolese population and cling to power by playing on their hate of people of Rwanda origin. Congolese authorities encouraged and actively supported local ethnic groups to attack the Banyarwanda in North Kivu.

¹⁹¹ See Georges Nzongola-Ntalaja 'The politics of citizenship in the DRC' paper from annual international conference on 'States, borders and nations: Negotiating citizenship in Africa (May 19-24, 2004) 4 available at < www.undp.org/oslocentre/docs04/ThepoliticsofcitizenshipintheDRC.pdf > (last accessed on September 28, 2006).

¹⁹² *Ibid*, 5. The difference here is that the issue of citizenship of people of Rwanda and Burundi origin is addressed by reference to a particular territory, the Province of Kivu.

¹⁹³ For an examination of the economic roots of the conflict see Koen Vlasseroot and Chris Huggins 'Land, migration and conflict in eastern DRC' in Chris Huggins and Jenny Clover (eds.) *From the ground up: Land rights, conflict and peace in Sub-Saharan Africa* (Pretoria: Institute for Security Studies, 2005) 115-194.

¹⁹⁴ Nzongola-Ntalaja, *supra* note 191, 6.

As a result, thousands were dead and those who survived fled across the border into Rwanda.¹⁹⁵ Mobutu's local authorities then directed their attack against the Banyamulunge by a series of measures. First, to satisfy the demand of local ethnic groups, the government prohibited the Banyamulunge from owning land and houses by a law passed in 1995. Subsequently, the authorities incited the local ethnic groups to expel the Banyamulunge from the land leading to a conflict in which many ethnic Tutsis died.¹⁹⁶ Finally, when in October 1996 the authorities in Kivu announced that the Banyamulunge had to leave Zaire within a week or 'be hunted down as rebels',¹⁹⁷ the Banyamulunge took up arms against Mobutu with the help of Rwanda and later Uganda, giving the conflict an international dimension. It was on the basis of this rebellion that Laurent Kabila organised his Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL) to oust Mobutu from power and become president in May 1997.¹⁹⁸

Kabila did not fare any better than DRC's former rulers in terms of democratic governance. It did not take him time to fall into authoritarianism concentrating all powers into his own hands, ethicising the appointment of personnel and curtailing individual and group rights.¹⁹⁹ Kabila also started to not only to exclude Banyamulunge from power but also to incite to kill them against expectations that he would guarantee their security and citizenship rights. This led the Banyamulunge once again to rebel against Kabila, who came to power with the support of their previous rebellion. As a result, since August 3, 1998 DRC was once again in another civil war that attracted the involvement of almost all of the neighbouring states on both sides of the conflict.

¹⁹⁵ See Willie Breytenbach, Dalisto Chilemba, Thomas A Brown and Charlotte Plantive 'Conflicts in the Congo: From Kivu to Kabila' 8(5) *African Security Review* (1999).

¹⁹⁶ Houssein Solomon 'Some reflections on the crisis in Zaire' ISS Papers 15 (Institute for Security Studies, Halfway House, February 1997) 2.

¹⁹⁷ As above.

¹⁹⁸ As above.

¹⁹⁹ See Andr, Mbata B Mangu 'The conflict in the Democratic Republic of Congo and the protection of rights under the African Charter' 3(2) *African Human Rights Law Journal* (2003) 239-240.

2.2.4 Centre-periphery conflict: The indigenous peoples' rights question

One other kind of minority issue in Africa involves tension between a dominant centre operating through the state and a peripheral group. This is the case of groups that are labelled in recent legal rhetoric as indigenous peoples in Africa. The tension we are referring to here is that which arises when the main stream society – either through the state for development purposes or otherwise for expansion of agricultural land for a neighbouring farming community – seeks to exploit a particular land and its resources to which indigenous peoples have attachment for their livelihood and ways of life. To have a good understanding of the nature of this problem, examination will here be made of the characteristics of the groups and the circumstances under which the activities of the dominant group through the state encroach upon their existential interests.

Indigenous groups in Africa have to a large extent lived unintegrated into the state system that came into being at the departure of colonial powers. They often inhabit forest lands and other peripheral areas. These are territories to which the institutions and operations of the state have often had very little presence.²⁰⁰ It is on the basis of their traditional social, cultural and economic systems that they support themselves. For example for pygmies of central Africa, apart from the main source of livelihood, hunting and gathering, trading activities among themselves or with neighbouring peoples are conducted through bartering rather

²⁰⁰ Since the colonial period, indigenous communities have come into contact with state only where the state required their land for some development projects either on account of its location, fertility or its rich resources. Whenever that has happened, indigenous peoples ended up being removed from their land. During British colonial rule in Kenya, the Massai were dispossessed of their grazing grounds in the Central Rift Valley, being as a result pushed to the periphery. After independence, little attempt has been made to reinstate the Massai back to their land.

than financial exchange. Thus they traded various items, '[p]ots may be traded for tools, traditional medicine for plastic utensils, and animal hides for clothing.'²⁰¹

One of the characteristic features of indigenous peoples in Africa is their strong sense of attachment to their ancestral land. Not only their livelihood, but the culture, belief and medicine of many indigenous groups is attached to the land they inherited from their ancestors. One can illustrate this by looking at the pygmies in the central African region. Pygmies in central Africa sustain themselves through a symbiotic relationship with the forest which is the source of all their basic needs. The forest provides for their livelihood. It is also their home and their spiritual centre where they carry out their religious rituals and practices. It is also a source of their medicine.²⁰² In the African context²⁰³ the most important feature that sets indigenous groups in terms of attachment to land apart from other groups, such as farming communities, who also depend on land resources for their livelihood, is this pre-modern way of life that they lead on the basis of the resources that their ancestral land possessed.²⁰⁴

Related to their attachment to land is therefore the strong sense of attachment that they have to their traditional way of life. They have a pre-modern way of life based on hunting and gathering as well as pastoralism or agro-pastoralism. Once again pygmies of central Africa can be good examples. These are groups who live in dense tropical rainforest in central Africa. Their livelihood is generally

²⁰¹ IRIN In-Depth 11.

²⁰² IRIN In-Depth, supra note ,

²⁰³ In its original understanding, 'the term indigenous peoples,' according to José Bengoa, 'had been attributed to the first nations existing there prior to transatlantic colonization.' And hence the term recognizes that these peoples had, prior to colonization and domination by European settlement, a history of independent political systems. In the African context, the communities regarded as indigenous peoples did not have any history of having autonomous political organization nor can they be regarded, unless in very exceptional cases, as original inhabitants of a particular country. See *Report on the second workshop on multiculturalism in Africa* UN Doc. E/CN.4/Sub.2/AC.5/2001/3 para. 48.

²⁰⁴ This is what distinguishes the San of Botswana from other non-Tswana groups in Botswana such as the Wayeyi. It is also this distinct way of life that makes their marginalization, exclusion and discrimination also different from that of the Wayeyi. Whereas the San are economically, politically and culturally marginalized and discriminated against, the Wayeyi suffer mainly cultural discrimination and secondarily political discrimination. In terms of their way of life the Wayeyi are not distinct from the dominant Tswana people but the San are.

based on hunting and gathering of forest resources. It should be emphasised that hunting and gathering or generally the tropical forest is not just a source of livelihood. Rather it also forms part of their culture and what they are as people. Essential aspects of their cultures and traditional religious practices are closely linked with the forest in general and hunting and gathering in particular. It is clear from this that the forest has a fundamental importance for their collective existence and cultural survival as distinct peoples.

In Africa, there are two types of communities that truly possess these characteristics. These are hunters and gatherers and pastoralists as well as agro-pastoralists. Examples of groups that fall in the first category include the pygmy of central African region,²⁰⁵ the San of southern Africa,²⁰⁶ the Hadzabe of Tanzania,²⁰⁷ and the Ogiek of Kenya.²⁰⁸ Others such as the Massai,²⁰⁹ Pokot,²¹⁰ Barbaig,²¹¹ Borena,²¹² Afar,²¹³ of eastern and Horn of Africa, the Touarge²¹⁴ in

²⁰⁵ Pygmies live in the rainforest of the central African region stretching from Cameroon and Gabon in the west, Central African Republic and Democratic Republic of Congo in the centre to Rwanda and Burundi in the east. According to Survival International, the total number of pygmies in various African countries has been estimated at around 250,000. They have different names in different countries and speak different languages. See IRIN In-Depth 7; ACHPR/EWGIA Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities (Kanifing, the Gambia: Unique Graphics, 2005) 15-16.

²⁰⁶ The San of Southern Africa are spread in most countries of southern Africa such as Botswana, Namibia, South Africa, Zimbabwe, Angola and Zambia. Their population is estimated to be around 107,071. See ACHPR Report 16-17.

²⁰⁷ The Hadzabe are hunter-gatherer community who inhabit the Lake Eyasi Basin area of northern Tanzania. Their population is in the range of 1,200 to 1,500. See ACHPR Report 15.

²⁰⁸ The Ogiek (or Okiek) occupy the eastern side of Mau Escarpment in the Rift Valley Province of Kenya. Their estimated number is approximately in the range of 15,000 to 20,000. See ACHPR Report 15.

²⁰⁹ The Massai occupy parts of southern Kenya and stretch into northern Tanzania. They are different from other groups in these countries by their distinct way of life and the particular sense of attachment that they have to their culture and ancestral land. See ACHPR/EWGIA Report 17-18.

²¹⁰ The Pokot people live in north-western Kenya and south-eastern Uganda. ACHPR Report 17.

²¹¹ The Barabaig are pastoralists who live in the Hanang District of northern Tanzania. ACHPR Report 17.

²¹² Borenas are pastoralist communities who live in the boarder areas between Ethiopia and Kenya.

²¹³ The people of Afar live in Ethiopia, parts of Eritrea and Djibouti. See Ali Said 'Afar ethnicity in Ethiopian politics' in Mohamed Salih and John Markakis (eds.) *Ethnicity and the state in eastern Africa* (1998) 108-115.

²¹⁴ The Tuareg are part of the Amazigh people (generally known as 'Berbers') of North Africa. They mainly live in southern Algeria, northern Mali and Niger, with smaller numbers in Libya, Burkina Faso and Mauritania. Their estimated number is in the range from 300,000 to 3 million. ACHPR Report 18.

West and north Africa and Mbororo²¹⁵ of west and central Africa and Berbers²¹⁶ of in north Africa are examples of pastoralist or agro-pastoralist indigenous peoples of Africa.²¹⁷

Because these communities live in a virtually parallel state, disengaged from the political and economic life of a nation, they have remained at the fringes of the political, economic, social and cultural processes of the states into which they were incorporated.²¹⁸ There has been little state presence in the territories that they inhabit. As a result, most of the areas that they occupied are impoverished and with poor infrastructure. There is poor access to health services and appropriate education systems. As a result, 'they operate within their own cultural enclaves, ignoring modern state institutions and lacking the necessary human or other resources to enable their people to participate in the political or political life of a modern complex society.'²¹⁹ 'Consequently, with minimal economic weight or influence, they are effectively excluded from economic life.'²²⁰ The general perception so far held among the general public is that these communities were 'backward' or 'primitive'. All these have made these communities vulnerable to be easily neglected and even victimised by the dominant development paradigms pursued by the mainstream society through the state.

²¹⁵ The Mabororo are part of one of the largest ethnic groups in west Africa the Fulanis and are found in Niger, Burkina Faso, Nigeria, Senegal, Mali, Benin, Cameroon, Chad and Central African Republic. ACHPR Report 18.

²¹⁶ The Berbers of north Africa are mainly settled farmers. They are the original inhabitants of the whole of north Africa and the Sahel and live mainly in Morocco, Algeria and Tunisia and in small numbers in Libya and Egypt. ACHPR Report 18-19. It is however, very difficult however to classify them as African indigenous groups other than on account of their aboriginality to the region of north Africa. Since aboriginality is not central to the definition of indigeness in Africa, given the nature of their political mobilization they are better treated as ethno-cultural minorities.

²¹⁷ The ACHPR Report identifies the Ogoni people in Nigeria as belonging to this category (see at 18). It is however very questionable that the Ogoni people possess the essential characteristic features that set indigenous peoples apart from the rest of the population of the state in which they live. Their way of life is not substantially different from other groups in the Niger Delta and arguably even from mainstream ethnic groups in Nigeria. In the light of this, if at all there is a criterion by which they can be regarded as indigenous, it can only be that of self-identification.

²¹⁸ This is partly explained by their pre-modern way of life and partly it was a result of the failure of the colonial state to include them into the state system. See Busia, Jr., *supra* note 23, 239.

²¹⁹ *Ibid.*

²²⁰ IRIN In-Depth 11.

In most cases, being the least represented and politically mobilised sections of society, they have virtually no voice. As one report revealed as regards the pygmies for example, they 'do not benefit from any form of political representation and also lack institutions able to directly defend their rights.'²²¹ As a result, they have no participation nor do they have any one to speak on their behalf in the decision making processes even on matters directly affecting them.

This overall marginal status of indigenous communities in Africa has meant the virtual absence of having regard to their interests in the formulation and implementation of national policies by the state. There are some policy areas that have brought about consequences that endanger the very survival of indigenous communities as peoples. The most important in this regard are land and development which are in many ways interrelated as far as indigenous peoples are concerned.

One of the common elements of the land tenure system of various African states is the failure to give the required legal recognition to indigenous peoples' title to the land they inhabited.²²² The formal law land tenure system which was mainly inherited from the colonial state 'vested ultimate ownership of land on the state, with an emphasis on individual titling.'²²³ This is the main land tenure system which essentially operates on identification, title deeds and registration of land ownership. It always takes precedence over customary system, if that is recognised. This system essentially recognises and gives protection to private land holding. As a result, it does not vest legal entitlement to indigenous peoples over the land they inhabited.²²⁴

²²¹ IRIN In-Depth 12.

²²² It must be emphasised here that there are differences among African states in the nature of their land tenure systems.

²²³ John Nelson 'Sub-Saharan Africa' in Marcus Colchester (ed.) *A survey of indigenous land tenure* (A Report for the Land Tenure Service of the Food and Agriculture Organisation, 2001) 53 available at www.forestpeoples.org.

²²⁴ See IRIN In-Depth 9.

Despite the efforts of post independent African governments, the application of the formal law land tenure system is often very limited confined to urban areas. As a result, in practice customary land tenure has remained to be the common form of land holding system in rural areas and ‘for most or all of African indigenous peoples it has been the dominant system used to assert rights to land.’²²⁵ Although indigenous peoples have been using their land on the basis of this system, they get the least amount of protection whenever competing claims arise. Irrespective of the legal status of customary holding, they suffer double disadvantages. First, because they often do not make the kind of investments in land generally recognised at the centre, they often run the danger of being unrecognised tenants on their ancestral lands. This happens particularly because it is often assumed that land that is being used by pastoralists and hunter-gatherers is *terra nullis*. Such land can be earmarked for development purposes mostly with little regard to the interests of the affected indigenous groups. Second, even if customary land holding is recognised since indigenous groups’ use of land particularly hunting and gathering is not often considered a legitimate use of land or livelihood system, their claim to the land they use often get very little legal weight.²²⁶ ‘The irony of this situation is that,’ observes Nelson, ‘under all African customary systems, it is well understood that occupancy is generally the key to “ownership” and land is allocated by those claiming prior occupancy through lineages and clans.’²²⁷ When the mainstream society embarks upon using the land occupied by indigenous groups either through the state for development activities or by a neighbouring farming community for expansion of farm land, the result is often the eviction of indigenous groups with neither prior consultations nor proper compensations. Although it is often seen as involving a problem of resolving conflicting interests, the underlying issue is one of according legal recognition and protection to indigenous groups and their distinct way of life as peoples with their own rich culture. Not any less important is the need to

²²⁵ Nelson, *supra* note 223, 52.

²²⁶ *Ibid*, 54 ; IRIN In-Depth 9.

²²⁷ Nelson, *supra* note 223, 57.

politically and economically empower them so that they can effectively participate in the political and economic processes of the state.