HARAMYA UNIVERSITY
FACULTY OF DISTANCE
AND SUMMER EDUCATION

Module for the course of
Constitutional Law II

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PREFACE

Welcome to this course!

This self instructional module is prepared for the study of constitutional law II with the aim of introducing the reader with the cardinal focus of Human Rights as enshrined in the FDRE constitution.

For this cause the module is divided in to four chapters.

The first chapter will introduce the reader with the meaning and basic introductory concepts of Human rights. The second chapter begins with the classification of Human Rights and goes further in analyzing the different classification of Human rights and discussion of their details in the ambit of the constitution. The third chapter is a detailed discussion on democratic and Human Rights provision.

In reading these text try to take a look at the constitutional articles under discussion. Try to answer the questions included in the discussion part.

Enjoy the reading!
CHAPTER ONE

INTRODUCTION

MEANING AND DEFINITION OF HUMAN RIGHTS

At the end of this chapter the student will be able to;

- Know the significance of this Course
- Describe the nature of Human Rights
- Explain the emergence of Human Rights law
- Comprehend the basic features of Human Rights
- Appreciate the relevance of constitutional incorporation of Human Right norms.

1. Introductory remarks on the FDRE constitution and Constitutional law II course

The 1995 constitution of the Federal Democratic Republic of Ethiopia is well praised to have many salient features as compared to the preceding constitutional texts that gone through the history of Ethiopian legal system.

Among others, apart from establishing a federal state structure and arrangement the 1995 constitution is well distinguished by providing a whole inventory of fundamental Human rights and freedoms.
If you go to count on the constitutional provisions that deal with human rights you will observe that as 31 articles are devoted to human right stipulations. This is about one third of the constitution. This exclusive dedication will demonstrate as how the constitution gave attention to the promotion and respect of Human rights.

Thus it becomes imperative to pay attention to this feature of the constitution in the curriculum on top of the significance of studying the subject of human rights.

Therefore, it is for this reason that this course is designed and you will be acquainted with deep theoretical knowledge that will enable you for the smooth application and understanding of Human Rights.

The Importance of Human Rights and Freedoms in the FDRE Constitution of 1995

The 1995 Constitution of the Federal Democratic Republic of Ethiopia devotes 1/3 of its total articles to human rights and freedoms. The fact that this number of articles are devoted to human rights and freedoms indicates how important these rights and freedoms are.

Article 13 is the introduction to fundamental rights and freedoms. It starts by stating that all Federal and State Legislative, Executive and Judicial organs at all levels shall have responsibility and duty to respect and enforce these rights and freedoms. On top of that the interpretation of these rights and freedoms are
not only subject to any ordinary principles of interpretation you studied in your Introduction to Law and Persons course. They shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights declared in 1948, International Covenants on Human Rights declared 1966 in and other international instruments adopted by Ethiopia.

Students! Do not worry about what these international instruments are. You will study them in your future courses. All these show how important these rights and freedoms are.

We can see also, the importance of these rights and freedoms when we look into the procedures we go through to amend the provisions of these rights and freedoms. As per article 105 of the FDRE Constitution provisions of fundamental rights and freedoms can only be amended in the following manner:

a) When the State Councils approve the proposed amendment by a majority vote. i.e. 50+1. then after
b) When the House of Peoples Representatives approves the proposed amendment by a 2/3 majority vote and
c) When the House of the Federation by a 2/3 majority, approves the proposed amendment.

The fifth condition that shows how important these rights and freedoms is, how these rights and freedoms are regulated where state of emergency is declared as per article 93 of the FDRE Constitution. To start with the reasons why and by whom the state of emergency is to be declared are clearly stated. The Council of Ministers of the Federal Government and the Regional State executives alone
have the power to declare state of emergency as per article 93(1) (a) and (b). Of the FDRE Constitution. The reasons For the Council of Minister to declare states of emergency are the following:

a) External invasion;

b) A break down of law and order which endangers the constitutional order and where that break down can not be controlled by the regular law enforcement agencies and personnel;

c) An epidemic occurs.

There are two reasons for the Regional State Executives to declare state of emergency. These are

a) Natural disaster or where

b) Epidemic occurs.

When a state of emergency is declared for reasons stated above by either Council of Ministers or Regional State Executives, it may suspend those basic rights and freedoms as it is stated under article 93(4)(b) of the FDRE Constitution. The following conditions, however, shall be observed.

1) If the state of emergency is declared while the House of Peoples’ Representatives is on session the decree shall be submitted to it within 48 hrs of its declaration and be approved by 2/3 majority vote of members of the House of Peoples’ Representatives. If it is not approved by that amount of vote the state of emergency decree shall be repealed.

2) The state of emergency can be declared while the House of Peoples’ Representative is not in session. If the state of emergency
is declared when the House of Peoples Representatives is not in session the House of Peoples’ Representatives shall be called and the decree shall be submitted to it with in 15 days of its coming to the session.

If the decree is accepted or approved by the House of Peoples’ Representatives it remains in effect to six months. After six months the decree shall continue only if it is approved by 2/3 vote every four months as per article 93(3) of the FDRE Constitution.

On top of this the House of Peoples’ Representatives, shall establish a state of emergency Inquiry Board. This Board consists of seven persons. They are members of the House of Peoples’ Representatives and legal experts chosen and assigned by the House of Peoples’ Representatives.

The board shall have the following powers and responsibilities as per Article 93(6) of the FDRE constitution:

a) Make public with in one month the names of all individuals arrested on account of the state of emergency together with reasons of their arrest;
b) To inspect and follow up that no inhuman measures are taken during the state of emergency;
c) If the House of Peoples’ Representatives finds any case of inhuman treatment it recommends corrective measures to the Prime Minister or the Council of Ministers.
d) If does not simply stop by making recommendations. it has to make sure that the perpetrators of the inhuman acts are prosecuted.
e) Where the house of Peoples’ Representatives request advice on the need to continue the state of emergency, the board submits views to the house of peoples’ representatives.

One point has to be clear. Remember we stated that due to state of emergency political and democratic rights could be suspended by the Council of Ministers. There are, however, rights and freedoms which the Council of Ministers can not suspend. These are:

1) The name of Ethiopian State. The naming of Ethiopian State is known as the Federal Democratic Republic of Ethiopia as per Article 91 of the FDRE constitution. So this can not be suspended.

2) As per Article 18 of the FDRE Constitution everyone has the following rights:
   a) The right to protection against cruel inhuman or degrading treatment or punishment;
   b) The right not to be held in slavery or servitude.
   c) The right not to be forced to perform forced or compulsory labour.

These rights can not be suspended by the council of ministers under state of emergency

3) As per article 25 of the FDRE Constitution all persons, without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status, are equal before the law and are entitled
equal protection of the law. So these equality before the law and equal protection of the law can not be suspended by the Council of Ministers under state of emergency.

4) As per Article 39(1) of FDRE Constitution every nation, nationality and people in Ethiopia has an unconditional right to self-determination, including the right to secession. More over, as per sub article (2) of the same article every nation, nationality and people in Ethiopia has the light to speak, to write and to develop its own language; to express to develop and to promote its culture and to preserve its history. This right can not be suspended by the Council of Ministry under the states of emergency. So all what is stated above clearly shows how important these rights and freedoms are:
2. What are Human Rights?

What distinguish them from Legal rights?

What comes in to your mind when you hear the nouns right, human right, legal right and non-legal right? Is there a substantial difference among them?

Basically, the concept of rights in philosophy of law entails its own meaning. If you refer to any dictionary it defines it as just or legal claim. And what one has a just claim to.

By this definition we can see that rights are defined in terms of legal rights and the rights have to be legitimately justified in order to be supported by a claim. Jurist Nino under his work, the ethics of Human rights, summarizes theories regarding rights in five points.

   1. Rights as the absence of prohibitions
   2. Rights as direct permissions
   3. Rights as correlates of active or passive duties of others
   4. Rights as claim
5. Rights as immunities

Exercise

Give your own description on the above five points

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The above points of Nino are of a great importance in the formulation of definition of Human Rights for it reflects the virtues of rights enshrined in Human right Conception.

Let’s look into additional definition given by McCormick as to what to mean by right, according to him right is interest which “ought to be secured to individuals” Thus he goes further in defining his position in the following way;

“to ascribe to all members of a community C to a treatment T is to presuppose that T is, in all normal circumstances, a good for every member of C, and that T is a good of such importance that it would be wrong to deny it or to withhold it from any member of C”

Now let’s define legal right.
3. What is legal right?

As many authorities in the field of law agree, legal rights are those rights which are recognized by law. That is to say those recognized by the legal institutions.

Therefore the important question will be what Human Right is?

After considering the major distinction between the two the crucial question comes to be what is Human right? To answer we need to take in to consideration the above discussion and some earlier conception and at the same time we need to subscribe to working definition of the noun.

The historical and philosophical foundation of the notion of Human rights is strongly related to the doctrine of natural law and natural rights. For this cause one of influential jurist in the natural law doctrine, John Finns, argues that Human Rights is a contemporary idiom for Natural rights. This definition illustrates the early definition of Human Rights.

The contemporary definition of Human rights as enshrined in the 1993 Vienna convention of Human rights and other international instruments is that Human rights is an entitlement which all Human beings claim by virtue of being born Human.

The conception of Human rights can only be understood by paying attention to Human rights law.
4. Emergence of Human rights laws

What is Human rights law?

Human rights law refers to the set of laws which are put in to use for the promotion and implementation of Human Rights. These laws are in a constant change (development) and organization.

The organization of these laws can be seen in the following way

- In constitutions of countries
- In international conventions and treaties and
- Customary rules - Internationally accepted principles like some provisions in UDHR

Today we have a list of different Human Right instruments which stand with a firm expression of the notion of Human rights. But the base for all these instruments is the United Nations Charter. This due to the fact that United Nation’s establishment with a strong conviction of Human dignity has brought a new thinking in all people.

The social and economic crisis in aftermath of World War II has paved a way to the creation of a system in which the governed and the governors be controlled.
Such pressures have served for the emergence of Human rights law which centered the dignity of mankind.

The first step in the process of introducing human rights law started in the 1948 when the Universal Declaration of Human right was issued. This declaration was not binding on member states. Even though it lacks a binding force on member states for it was a mere declaration not a treaty, it has reached the level of Customary International law for member states regard the provisions of the declaration as law.

After the issuance of UDHR the United Nation Human Right Commission prepared a draft in order to give effect of a binding nature to the provisions incorporated in UDHR. The submitted draft to the General Assembly of UN the draft was further divided in to two draft documents. Namely, the Civil and Political Rights was one separate document and the Economic Social and cultural Right was a separate document.

This was the result of political ideology difference in the Capitalist and Socialist category. The capitalists give priority to that of political rights and the socialists give priority to Economic rights.

After long period of discussion on the draft documents the UN committee of Human rights ratified the two drafts on 1966.these two documents were declared as international covenant on civil and Political rights and International Covenant on Economic Social and Cultural rights.
These two covenants stipulate the development of human rights law in the International level. You will see in detail about this when you study International Human Rights Law in the coming years. In short, the contribution of International Human Rights law towards domestic human rights law is enormous.

It is to be reminded that the covenants were classified in two such divisions has given to treatment of rights under different category to this effect Human rights were classified as first Generation rights and Second generation rights. The classification of first generation refers to Civil and political right where as the second generation rights refer to Economic social and cultural right.

5. Characteristics of Human Rights

On the general assembly held on Vienna 1993 the Member states of the United Nation reached in to consensus that Human rights are:

- Universal
- Inalienable
- Indivisible
- Interdependepent

By Universal it is to mean that these rights are held equally by every one every where.

Inalienability refers to inherent behavior of human rights. One can’t lose his human rights unless he ceases to be human being.

The indivisibility nature refers to the equality of rights. There is no less important or more important right among rights.
Interdependency refers to the nature of the high relation among rights. The enforcement of one right helps the enforcement of other right similarly the violation of one right leads to the violation of another.

**Activities**

1. State those elements which signify the importance of human rights and freedom in the FDRE Constitution.

2. Who are the members of Inquiry Board that is established during state of emergency?

3. What are reasons to declare state of emergency

4. What are the duties and responsibilities of inquiry board
5. Enumerate those rights which can not be suspended by the council of ministers under state of emergency.

CLASSIFICATION OF HUMAN RIGHTS

At the end of this section the student will be able to know

- Discuss the different category of Human Rights
- Analyze the difference among the category
- List the rights enunciated in the constitution as per the given classification
- To distinguish the difficulty in having watertight classification among the different set of rights

2.1 Category of Human Rights

As we have tried to see in the previous pages the categorization of Human rights based on generation can be seen in the following way.

i) Civil and Political rights
ii) The Economic, Social and Cultural rights
iii) The collective or Solidarity rights.
Let’s see what we mean by these classifications.

### 2.2 CIVIL AND POLITICAL RIGHTS

These rights are usually known as the first generation rights, derived primarily from the reformist theories of the 17th and 18th centuries. The rights serve to protect the individual from the overwhelming machinery of governmental power.

These can be found in Article 2-21 of the Universal Declaration of Human Rights and are set forth in Article 14 to 40 of the constitution of the Federal Democratic Republic of Ethiopia.

These rights restrain the government interfering with some rights that inhere on an individual by nature. Generally, these rights are called negative rights (freedom from) than in the positive (Rights to), that is why they are regarded as the “Negative Rights”. In negative rights the government is not expected to do anything or contribute anything for the right to be enjoyed.

Rather these rights only require that the government refrain from interfering with the enjoyment of these rights.

Unlike the, Second Generation rights (the Economic, Social and Cultural rights,) in the first generation rights, lack of resources is not a serious impediment to the enjoyment of these rights.
2.3 ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The emphasis on economic, social and cultural rights arose in response to the abuse and misuses of capitalist development and its attendant evil, which includes the exploitation of the working class and colonial people. As we seen above the political ideology have contributed in the covenants, basically the Socialist Countries were much in favor of the Economic Rights.

This fact can be best illustrated in the 1924 Constitution of the USSR. According to Josef Stalin of USSR:

“If there is shortage of bread, a shortage of butter and fats, a shortage of textiles and if housing condition are bad, freedom will not carry you very far”

Similarly a Known Justice from the Indian Supreme Court has said about the importance of the Economic, Social and Cultural rights.

“To the large majority of people who are living in almost Sub-human existence in conditions of abject poverty and for whom life is one long, unbroken story of want and destitution, notions of individual freedom and liberation, though representing some of the most cherished values of a free society, would sound as empty words bandied about in the drawing rooms of the rich and well-to-do, and only solution for making these rights meaningful to them was to re-make the material conditions and usher in a new social order where socio-economic justice will inform all
institutions of public life so that the preconditions of fundamental liberties for all may be secured”.

It is said that “necessitous men are not free men”,

What is your opinion in this regard?

The economic, social and cultural rights found their way into the Universal Declaration of Human Rights in 1948, they can be found in Article 22-27 of the Declaration and they also constitute the subject-matter of the Livelihood covenant on Economic, social and Cultural Rights of 1966.

These rights include the right to livelihood, the right to work under just and favorable conditions and protection against unemployment, the right to form and join trade unions, the right to adequate standard of living including food, clothing shelter and leisure, the right to education and the rights to adequate facilities for the protection of physical and mental health and for the enjoyment of social, religions and cultural life.

These rights can be found in Article 41 to 44 of the constitution of the Federal Democratic Republic of Ethiopia. Read the articles

The economic, social and cultural rights are couched more in positive (right to) than negative (freedom from) terms.
N.B

Just as all the first generation rights are not always negative rights, so too are the economic, social and cultural rights also known as that second generation rights, not all rights under these second generation right can be labeled positive. For example, the right to form and join trade unions do not necessarily need or require positive action from government but most of these rights obviously need government intervention in the allocation of resources to ensure their enjoyment-for example the right to education or development.

It must be noted that the economic, social and cultural rights are often included in the national constitutions in such a way as to render them non-justiceable. Article 41 to 44 of the Ethiopia constitution contain a wide list of these rights, but treats them as non-justiceable and subject to available means and resources. In essence, they are positive obligation on the part of the government. It is because of this, that they are viewed as aspirations or goals of government rather than legal rights.

In African Countries, judges have enforced economic, Social and cultural rights through the African Charter on Human Peoples and Rights. Examples of these rights are those of Education- Article 17; best attainable state of physical and mental health Art. 16.

Our country, Ethiopia is a signatory to this charter and Article 13(2) of the Ethiopian Constitution provides that the fundamental rights and freedoms
specified in the constitution shall be interpreted in a manner conforming to the principles of:

i) The Universal Declaration of Human Rights.

ii) International Covenant on Human Rights

iii) International instruments adopted by Ethiopia

2.4 THE COCLLECTIVE /SOLIDARITY RIGHTS/

The collective or solidarity rights, also known as the third generation rights reflected the emergence of Third World nationalism and its demand for global re-distribution of power, wealth and other important values. It includes:

i) The right to political, economic, social and cultural self determination,

ii) The right to economic and social development, and

iii) The right to participate in and benefit from common heritage of mankind i.e. Scientific and technical discoveries, cultural sites and monuments.

These rights are collective in nature. It was first conceptualized by Karel Vasak.

The followings are the general attributes of the third generation rights.

1. The beneficiaries of these rights are collectively perceived either in the sense of humanity as a whole a particularly political community or a distinct section of the population within the state.

2. These rights are not confined to the present generation of persons but extend to the future generation.
3. These rights cannot be adequately protected within the confines of a constitution. Their effective implementation requires international cooperation on the global or regional scale.

2.5 OTHER WAYS OF CLASSIFYING HUMAN RIGHTS

Though it is not popular among academics the other way of classifying Human rights is that as Integrity Rights, due process rights and Freedom of action rights.

To define them, integrity rights are those rights which constitute the integrity of man physically and mentally. The right to life and right to be free from torture can be seen as an example.

Due process rights are those rights which are mainly related in the administration of justice.

The freedom of actions rights refers to those entitlements of freedoms like freedom of Association, freedom of Expression etc.

Look in to the constitution Articles and try to categorize the rights under the above category.

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<tr>
<th>Integrity Rights</th>
<th>Due process Rights</th>
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REVIEW QUESTIONS

Answer you questions in an exhaustive manner

1. How do you differentiate Civil and Political rights from Economic Social and Cultural rights?
2. What kind of difference do you observe among civil rights and Political rights?
3. Which one is appropriate to use in classifying rights, Generation of rights or Category of rights? Explain.
4. Scholars in the field of Human Rights totally agree that Human dignity as a source of Human rights does it has a difference to explain the source of Human rights is the Virtue of being born Human?
5. The Universal Declaration on Human rights recognizes that the inherent dignity and equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world. How do you think this is attainable? And do you see this ideal being incorporate in the Constitution.
UNIT TWO

2. HUMAN RIGHTS UNDER THE FDRE CONSTITUTION

At the end of this Unit the student will be able to

- List the set of Human rights incorporated in the FDRE constitution
- Describe the difference between Human rights and democratic rights
- Discuss the scope of the rights
- Discuss the limitation of each rights
- Analyze the duty of the Government in enforcing the rights

General

In this unit an attempt will be made to discuss on the list of Human rights incorporated in the constitutions.

The most important thing which you should be clear with is that the fact that these and other rights are incorporated in the constitution doesn’t mean the Government gives the right rather by doing so the law recognizes them.

With this point in Mind let’s start our discussion.
2.1 LEGALLY PROTECTABLE HUMAN RIGHTS

In the preceding chapter we have been discussing about Human Rights concept. And as we seen article 14 to 40 of the Constitution protects essentially the civil and political rights of the people. Article 40 to 44 of the constitution on the other hand, is a list of Economic, Social and cultural rights protect able subject to the means and ability of government.

Now the important question comes to be

1) whether rights are protect able only against the state; and
2) The status of International Human Rights covenants ratified by individual countries vis-à-vis the Human Rights provisions in the various constitutions.
3) What obligation does the government has in enforcing the rights

What is your opinion in these three important questions?

The whole essence of fundamental human rights is to provide protection against abuse of political powers.
We therefore assume that the human rights guaranteed by the Ethiopia constitution are rights against the government only. In other word, they are said to be public Law rights not applicable in private dispute.

This view has been supported by a lot of notable jurists; accordingly one jurist contended that;

"it is of undoubted relevance to bear in mind that the provision was designed to protect the individual against the coercion and oppressive exercise of governmental authority and abuse of majority power”

2.2 THE NATURE OF OBLIGATION THAT GOVERNMENT OWES TOWARDS THE LEGALLY PROTECTABLE HUMAN RIGHTS

It is clear the first responsibility towards enforcing Human rights rests on government. This obligation can be seen in the following manner:

- The obligation to respect
- The obligation to protect
- The obligation to fulfill

Under the obligation to respect the government should not negatively interfere or violate the Human rights.

Under the obligation to protect the government should protect human rights violations from other actors and by itself through different mechanisms.

The obligation to fulfill is the positive interference from the government for the full realization of Human rights.
Exercise

Look into the constitutional articles and try to see as whether these obligations are clearly incorporated or not.

2.3 The status of International Human Rights covenants ratified by Ethiopia

As regards the status of International Human Rights covenants ratified by Ethiopia, Ibrahim Idris in his article. “The place of International Human Rights Convention in the 1994 Federal Democratic Republic of Ethiopia (FDRE) constitution” stated that:

“As things stand now, any attempt to find straight answer to questions concerning the internal application and the position of ratified international human rights covenants in the hierarchy of Ethiopia's laws in the light of the FDRE constitution is a challenging task. This could be for at least three reasons. Firstly, the constitution's provisions are too vague to assist in finding direct answer direct answers to the question. Secondly, Federal Ethiopia has yet not enacted legislation on treaty making procedures capable of elaborating the constitution provisions on matters relating to international conventions. Thirdly, the Houses of Federation . . . . whose powers include the adjudication of constitutional issues, has not yet come up with pertinent decisions providing guidance on the interpretation of the provision of the constitution.” In conclusion he said:
“In practical cases, Article 13(3) of the FDRE constitution could be applied to address this controversial issue. As stipulated in the provision, the fundamental rights and freedoms of the FDRE constitution should be interpreted in the light of the Universal Declaration of Human Rights and norms and principles of international human rights conventions adopted by Ethiopia. This confirms the fact that international human rights conventions ratified by Ethiopia occupy higher or at least equal position to the FDR Constitution”.

2.4 FUNDAMENTAL HUMAN RIGHTS

Right to life

Right to life as described by many jurists it is regarded as the mother of all rights which gives birth to the whole set of human rights.

Our constitution recognizes this right and one should be reminded that the right is affirmed by the law but not given by the law.

The scope of the right to life is a bone of contention in the international legal arena. The important questions raised in this regard are; whether the right to life extends to unborn child, does the right to life include the right to die etc. There is no clear answer as to the status of unborn child. When we refer to our legal system it is provided in article 1 of the civil code that the Human person is subject to right and duties from birth to death.

The problem that will arise if the right to life extends to unborn baby is that will abortion amount to violation of the right to life or not?
What is your opinion in this regard?

The fact that penal law outlaws abortion doesn’t imply that it is a protection of the right to life of the unborn baby rather it is the protection of the societal interest.

The right to life as right it results in creation of corresponding duties. As a result the corresponding duty of the right to life is the duty not to kill and the duty to preserve.

The government plays key role in respecting these duties. In the first place by prohibiting killing both by omission or commission and by refraining from killing. The duty to preserve the human life by providing the necessary mechanisms to preserve it can be through health facilities and treatments.

When we take a look at article 15 on top of entitlement if provides the limitation on right to life.

Read article 15

Q. What is this Limitation?
“No person shall be deprived of his life except as punishment for grave crimes defined by law.”

Clearly the result of this limitation happens to be capital punishment for grave crimes.

2.4.1 PERSONAL LIBERTY

Article 17 (1) of the constitution provides that:

“No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law:

Article 17 (2) provides that:

“No person may be subject to arbitrary arrest; and no person may be detained without a charge or conviction against him”

Personal Liberty, according to Lord Denning in Freedom under the Law “is the freedom of every law abiding citizen to think what he will, to say what he will on his lawful occasion without let or hindrance from any person:

To Dicey, “It is the right not to be subjected to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification”

The right to personal liberty is one of the oldest civil rights. It is one of the three rights (i.e. life, property and liberty) proclaimed in Article 39 of the Magna
Carta. Magna Carta is one of the oldest human right text in the English Legal system.
This right exists to ensure that the liberty of the citizen is not curtailed without lawful justifications. It is rights that attach to the individual by virtue of his/her humanity. One influential justice said that

"I suppose it does not involve any strain or require any special knowledge to appreciate that under our present constitution, the Liberty of the citizen is not only guaranteed but given special protection to the extent that any person whose liberty is unlawfully curtailed or interfered with is assured of not only compensation but also public apology from the appropriate authority or person responsible for the breach. Thus it can be seen how high a pedestal the Liberty of the citizen has been placed and how sacrosanct it should be regarded".

Do you think that the right to liberty is an absolute right?

The right to personal liberty is not an absolute right as a person can be deprived of his liberty in accordance with procedure and under circumstances permitted by law. This can be:-

a) In execution of a sentence or order of a court in respect of a criminal offence of which he/she has been found guilty;
b) by reason of his/her failure to comply with the order of a court or in other
to secure the fulfillment of an obligation impose upon him/her by law;
c) For the purpose of bringing a person before a court in execution of the
order of a court or upon reasonable suspicion of his/her having
committed a criminal offence, or to such extent as may be reasonably
necessary to prevent his/her committing a criminal offence.
d) In case of a person who has not attained the age of 18 years, for the
purpose of his/her education and welfare.
e) In the case of persons suffering from infections or contagions disease,
person of unsound mind. Person addicted to drugs or alcohol or vagrants,
for the purpose of their care treatment or the protection of the
community;
f) For the purpose of preventing the unlawful entry of any person in to
Ethiopia or of effecting the expulsion, extradition or other lawful
removable from Ethiopia of any person or the taking of proceedings
relating there to.

The deprivation of personal liberty may be effected by means of an arrest which
may be with or without a warrant (see Article 50, 51,52,53,54 and 55 of the
criminal procedure code). It may be by a Police Officer or in some cases by a
private person.

It is important to note that a person in lawful custody shall not be kept in such
custody for a period longer than the maximum period prescribed by law.

It is also worth to note that by virtue of Article 93 of the constitution a state of
Emergency may be declared, as a result of which some political and democratic
rights contained in the constitution may be suspended to the extent necessary to avert the conditions that necessitated the state of Emergency. This includes the right to liberty.

From your previous study what is State of Emergency?

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2.4.2 THE RIGHT OF ARRESTED OR DETAINED PERSON

Article 19 of the constitution made provisions for the rights of a person arrested. This includes:

1) The right to be informed promptly, in a language he/she understands, of the reason of his/her arrest and of any charge against him/her;

2) The right to remain silent;

3) The right to be taken a court within 48 hours of the arrest;

4) The right of habeas corpus.

5) Right not to be compelled to make confessional statements;

6) Right to be released on bail.

2.4.3 THE RIGHT TO BE INFORMED OF THE FACTS AND GROUNDS OF ARREST IN A LANGUAGE HE/SHE UNDERSTANDS, PROMPTLY

This means that the detained person must be shown the warrant of arrest and same must be read to him/her, where the arrest is by warrant. If the arrest is
without warrant, the detainee must be informed of the facts and grounds of his/her arrest.

2.4.4 THE RIGHT TO REMAIN SILENT

This is a right against self-incrimination. Evidence or facts obtained involuntary from the detainee in contravention of this Article will be inadmissible in a law court.

The right is designed to afford the individual the opportunity of establishing his innocence at the earliest possible time without having to undergo trial. With guidance from a legal practitioner, the detainee may be able to avoid contradictions in his/her statements and at the earliest opportunity exculpate himself.

2.4.5 THE RIGHT OF THE DETAINEE TO BE TAKEN BEFORE A COURT WITHIN 48 HOURS

This right is intended to guard against prolonged incarceration of an accused person and to enable the court to decide whether to order his/her release or not.

2.4.6 THE RIGHT OR HABEAS CORPUS

Habeas corpus can be described as an order of the court directed to him/her who is holding another in unlawful custody requiring him/her to produce the detainee before a court to law with a view to his/her being set free. The person to whom the writ of habeas corpus is directed shall certify the true cause of the
detainee’s detention. Note that by virtue of Article 19 (3) of the constitution to take a detainee to court within 48 hours makes the determination unlawful.

The writ of habeas corpus is of the highest conational importance for by it the liberty of the citizen is protected and is used where there are substantive complaints of abuse of power. Without this power of the courts to grant habeas corpus, the police will unduly curtail the citizen right to personal liberty.

Note that there is overwhelming support for the view that writ of habeas corpus would issue, in a case where a detainee is serving sentence as a result of a conviction handed down by a court without jurisdiction, such sentence is said to be illegal.

Articles 177 to 179 of the Civil Procedure Code make provisions for the procedure to be follow to have a writ of habeas corpus issued.

2.4.7 RIGHT AGAINST SELF INCRIMINATION CONFESSIONAL STATEMENT

A confessional statement is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he/she comminuted that crime. The law of confession is primarily concerned with statement made by accused person in criminal cases to police officers, or law enforcement agents, or to a person in authority, or may be made in court, such as where an accused pleads guilty.
An Involuntary confession obtained by an inducement, threat or promise having reference to the charge against the accused is inadmissible.

The main purpose of the law of confession in the administration of criminal justice is to ensure that the citizen is not convicted on evidence which has been obtained in absolute disregard for the dignity of his person and that is why Article 19(5) expressly prohibits the obtaining of statement under coercion.

**2.4.8 RIGHT TO BE RELEASED ON BAIL**

The right to bail is provided for in Article 19(6) of the constitution. Bail has been defined as a surety, taken by a person duly authorized, for the appearance of an accused person at a certain day and place, to answer and be justified by law.

It can also be described as the undertaking by which an accused person is delivered to his surety, sureties or to himself on self recognizance with an undertaking that the accused will appear in court to stand his trial or that the surety/ sureties will forfeit a sum of money if he fails to do so.

**Article 63(1) of the criminal Procedure code provides that**

“Whosoever has been arrested may be released on bail where the office with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying”.
By virtue of Article 65 of the C.P.C., a court issuing a warrant for the arrest of a person for an offence not punishable by death, rigorous imprisonment for fifteen years or more may by endorsement on the warrant authorize the police to grant bail to the person named on his entering into a required recognizance. The power of the court to grant bail is summed up in Article 66 to Article 75 of the C.P.C. Also the fact that the accused has a constitutional right to his personal liberty coupled with the fact that the accused is presumed innocent until proved guilty, makes the grant of bail to a detained person imperative in order to allow him the full benefit of the presumption of innocence recognized by Article 20(3) of the Constitution. Further, in many countries including Ethiopia, the prisons are overcrowded and are not in good sanitary conditions. The Prison therefore should be for only convicted criminals.

Note that even convicted prisoners have certain rights as stated in Article 21 of the constitutions. These include.

1) Respect to their human dignity, and

2) Right to communicate with and to be visited by, their spouses or partners, close relatives, friends, religious counselors, medical doctors and legal counsel.

State parties to the international covenant on civil and political rights including Ethiopia are enjoined to treat all persons deprived of their liberty with humanity and with respect for their dignity. According to the Human Rights Committee in a certain African case, the application of this rule, as a minimum, cannot be dependent on material resources available in the state concerned. States are therefore obliged to provide detainees and prisoners with services that will satisfy their essential needs – food, clothing medical care etc. This rule must be
applied without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.4.9 RIGHT TO JUSTICE AND FAIR HEARING

Every one in Ethiopia has the right of access to justice. Article 37 of the constitution provides that:

“Every one has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”.

It is now universally accepted that a judge or competent body with judicial power, before arriving at its decision must follow the twin rules of natural justice i.e.

1) *audi alteram partem* - that the other side must be heard; and

2) *nemo judex in causa sua* – that a man shall not be a judge in his own cause.

The rules of natural justice is part of the right of fair hearing which naturally flows to an individual in pursuant to his right of justice.

The right of fair hearing it has been observed began in the earliest human settlement in the Biblical account of history. In R.V. Chancellor of the University of Cambridge, Otesmue J Said:

“Even God himself did not pass sentence upon Adam, before he was called upon to make his defense’, says God” Where art thou? Hast thou not eaten of the tree, where of I commanded thee that thou should not eat?” And the same question was put to Eve also”.
The term fair hearing is not different from the term fair trial. The term fair hearing it has been argued includes fair trial however, since fair trial consists of the whole hearing; there can be no difference between the two. Here, what we are talking about is *fair trial not perfect trial*. Perfect trial is the ideal (what ought to be) but once a judge follows the procedure laid down for such trial and did not violate the principles of natural justice, there is said to be fair hearing.

Another test of fairness in a hearing is the impression of a reasonable man present at the hearing as to whether from his observation justice has been done in the case. It follow therefore that justice must not only be done but must be seen to have been done.

2.4.10 FUNDAMENTALS OF LEGAL STANDARDS OF FAIR HEARING

At an elementary level fair hearing is equated with the twin pillars of natural justice. But in actual fact, the concept of fair hearing includes other legal standards which are fundamental Human rights in the mean time they will be discussed these includes:

1) The right to be informed of charge in a criminal case
2) The right to legal representation
3) The right against self incrimination
4) The presumption of innocence
5) The right to necessary facilities to prepare ones defense
6) Prohibition of secret trial
7) Trial within reasonable time
8) Non-retroactivity of criminal law penalty and abolition on non-statutory crimes.
9) Avoidance of double jeopardy
10) Right to appeal

2.4.11 THE RIGHT TO BE INFORMED OF CHARGE

Student please read Article 20(2)

This article of the constitution obviously ensures that the accused in a criminal case knows of the charge against him in order to enable him to make a defense.

It is an infringement of the rights of persons accused to convict a person of an offence of which he is not charged.

Prompt information about the nature and details of the offence, must be in the language that the accused understands. This is necessary because of the fact that the main aim of language is communication and where an accused does not understand the language used to inform him, he cannot be said, in proper sense, to have been informed of the offence.

The information may be oral, in writing or both. The information must however be sufficient to allow the preparation of a defense. It must indicate both the legal description of the offense (nature) and the alleged facts (“cause) on which it is based.
2.4.12 THE RIGHT TO LEGAL REPRESENTATION

Article 20(5) of the Constitution enables an accused to defend himself in person or by counsel of his choice. It means the accused has a right to conduct his defense as he deems fit. Where the accused is not able to afford a counsel of his choice in a serious criminal charge the trial court must assign counsel to him at state expense.

The need to have a counsel defend one in a criminal prosecution, it has been said, stem from a number of factors:

1) the accused may be incapable of adequately making his own defense because of ignorance, illiteracy, feeble – mindedness, anxiety or fear; or

2) Just for the simple logic that the doctor who has a sickness may not be the best healer of himself.

Who do you describe the Second reason?

According to one Jurist emphasizing on the right to counsel he said that

“What is hearing worth to an accused person, who does not understand the language of the court, who does not know the rules of procedure, and who therefore cannot property present his case? The right to counsel is thus at the
very root of, and is the necessary foundation for a fair hearing. The ordinary layman even the educated intelligent layman is not skilled in the science of law and he therefore needs the aid and advice of counsel. It is because of this need that in capital offences, attracting death penalty, the accused is not left undefended”

2.4.13 THE RIGHT AGAINST SELF INCRIMINATION

Article 20(3) of the constitution protects one against self incrimination. Since the accused is not to be compelled to give evidence of his trial, it follows that evidence got by coercion or compulsion on his person is inadmissible.

How do you define the right against self incrimination?

The exercise of the right not to give evidence does not call for adverse comments or consideratons from other the judge or the prosecution because this right in Article 20 (3) of the constitution arises from the presumption of innocence. And if the accused imagines that he has noting to say in his defense, he should be left because he is presumed innocent until proved guilty beyond reasonable doubt.
2.4.14 THE PRESUMPTION OR INNOCENCE

By virtue of Article 20(3) of the constitution and accused is presumed innocent until he is proved guilty. The implication of this is that the onus of proving the guilt of the accused is on the prosecution. The standard of proof is beyond reasonable doubt.

In the common law countries on the standard of proof in criminal cases has been said:

“ It need not reach certainty but must carry a high degree of probability . . . proof beyond reasonable doubt does not mean proof beyond the shadow of doubt ...If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with a sentence – of – course it is possible but not in the least probable, the case is proved beyond reasonable doubt but nothing short of this will suffice”.

In essence, standard of proof in criminal cases is the mean between mere likelihood and absolute certainty.

N.B

Please not that while proof in criminal cases is beyond reasonable doubt, proof in civil cases is based on the preponderance of Evidence.
2.4.15 THE RIGHT TO NECESSARY FACILITIES TO PREPARE DEFENCE

Article 20 (4) of the Constitution gives an accused the right to full access to any evidence presented against. Him, to examine witnesses testifying against him, to adduce or to have evidence produced in his/her defense, and to obtain the attendance of and examination of witnesses on his/her behalf before the court.

It follows therefore that the accused must be given adequate time to prepare his defense by giving him time to examine or secure the attendance of witnesses in court or to consult counsel.

The essence of this provision is to ensure that the accused is not taken by surprise in the presentation of his defense and that he has prepared adequately.

Note that this right includes the right to access to documents and other evidence which the accused require to prepare defense.

2.4.16 PROHIBITION OF SECRET TRIAL

Article 20(1) of the constitution provides that an accused person has the right to public trial.
This provision ensures that the trial judge himself, while trying a case will be on trial.
The citizen is therefore safeguarded from the risk of being convicted unduly in a secret trial where the executive arm of government employ hide and seek measure to manipulate or coerce the court into convicting innocent persons.

A trial cannot be said to be in public, if the doors of the court (which is a public place) are closed to members of the public. The essence of public trial is to ensure that the court is accessible to the public.

Note that a trial to which the public has no access is a nullity except in cases held in close session only with a view to protecting the right to privacy of the parties concerned, public morals and national security.

Thus a court may exclude from its proceedings persons other than the parties or their legal practitioners in the interest of defense, public safety, public order, public morality, the welfare of persons who have not attained the age of 18, the protection of private live of the parties or to such extent as the court may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice.

**2.4.17 TRIAL WITHIN REASONABLE TIME**

Article 20(1) of the constitution provides that trial by a court of (Law must be within a reasonable time. The constitution did not define reasonable time; this would therefore be dependent on the circumstances of each case.

It is argued that the three purposes of trial being held within reasonable time are,
1) To protect the accused against prolonged imprisonment;
2) To neutralize the anxiety and public suspicion which leaving a case handing on the neck of the accused may engender;
3) To prevent the disappearance of the means of proving innocence or guilt as a result of loss of evidence and the dulling away of memory.

2.4.18 THE RULE AGAINST MAKING RETROACTIVE DEEDS INTO CRIME

Article 22(1) of the constitution forbids the punishment of a person for an act or omission that did not, at the time it was done, constitute an offence. It ensures that right and obligations remain what they are at the time of the act or commission and not what they become after the time of the trial or conviction.

This section is made up of two arms, namely:

a) The first arm ensures that persons are not punished for acts which were altogether lawful at the time they were done thereby incorporating the principle of statutory interpretation that unless there be clear words to the contrary, statutes do not apply to a past but to a future set of circumstances

b) The second arm of the provision forbids the imposition of a heavier punishment for what at the time it was done, attract a lighter punishment.

2.4.19 THE RULE AGAINST DOUBLE JEOPARADY

Article 23 of the constitution governs this rule. The rule is a codification of the common Law rules of *autre fois acquit and autre fois convict* by which a person
shall not be tried again for an offence for which he had been tried and either acquitted or convicted. Such a person shall also not be tried there after for substantially the same offence for which he has been previously tried.

Note, this principle does not prevent the institution of civil proceedings based on the same facts. The court that earlier tried the accused must be a court of competent jurisdiction because the plea will not succeed if the trial court had no jurisdiction. Also not that articulated can be ordered by a superior court if the first judgment is set aside.

2.4.20 THE RIGHT TO APPEAL

Article 20(6) of the constitution empowers any one convicted of a crime to appeal against his conviction and sentence. This is to enable a higher court review the proceeding. The right of appeal is aimed of ensuring at least two levels of judicial scrutiny in respect of criminal cases. The right is available to all convicted persons and does not depend on the severity of the offence or on the sentence pronounced in the first instance.

2.4.21 RIGHT TO PRIVACY

Article 26 of the constitution guarantees the privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communication.

The right to privacy has two distinct aspects:
1) The protection of the seclusion of the individual, i.e. the right not to have unwarranted disclosure of the intimate details of one’s life – That is the right to be left alone;

2) The protection of the autonomy of the individual. That is the right to make certain decisions (e.g. lifestyles) on one’s own.

2.4.21.1 PROTECTION AGAINST UNWARRANTED DISCLOSURE

Most human beings naturally want to keep the most intimate details of their lives to themselves and would suffer great pain if these were disclosed without their permission. One lawyer has put it this way:

“Every human being has his idiosyncrasies and habits, which are common to all. Some have habits, which are peculiar and personal to them. Many people will go to bed in pyjamas or night dress; some will go to bed completely nude. Many will either sleep alone or hug another human being of the opposite sex; some will only accommodate another human being of the same sex (homosexual and Lesbians). Some adults have been know to suffer insomnia unless they hug giant teddy bear. Some husbands have complained that their wives regularly wet the bed at night. Some wives have also made the same complaint. Some priests are know to have regular mistresses in their homes while some prophets maintain a room full of various lines of fetishes and idols which they regularly worship before going to their churches to prophesy. These are but a few examples of peculiar human habits. Should all these be subjected to public glare? This is where the issue of privacy arises.”
Dear student could you please read once again the above statement and write down you your reaction in the context of our culture?

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Give some examples as a violation to right to privacy?

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To listen on someone’s telephone conversation is a violation of his privacy and it becomes even more serious where the conversation is made public for public consumption.

2.4.21.2 THE AUTONOMY OF THE INDIVIDUAL

The right to privacy also includes the right to make certain decisions for oneself such as the issue whether to use contraceptives.

Do you think the right to privacy includes the right to abortion?

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The right of privacy is not absolute. Article 26(3) provides for exceptions the right can be circumscribed in the interest of defense, public safety, public order, public morality, public health or for the protection of the rights and freedoms of others.

2.4.22 FREEDOM OF RELIGION, BELIEF AND OPINION

By virtue of Article 27 every person shall be entitled to freedom of religion, belief and opinion. This freedom includes one’s freedom even to change one’s religion or belief whether by worship, teaching practice or observance.

The freedom has three aspects:

1) Freedom of religion
2) Freedom of belief (i.e. conscience); and
3) Freedom of opinion (i.e. thought, whether secular or religions)

The freedom of religion and opinion is central to the idea of liberty.

The freedom of religion, belief and opinion is not absolute. It is limited by article 27 (5) of the constitution where necessary to protect public safety, peace, health, education, public morality or the fundamental right and freedoms of others, and to ensure the independence of the state from religion.

Consider the following real case which has happened in Nigeria

In Nigeria, some adherents of the seventh Day Adventist church challenged an election held on December 12, 1959 a Saturday—their rest day.
Their requests for the election to be moved to Friday were refused by the authorities. They therefore contended that this was a denial of their freedom of religion.

What do you think does this constitute Violation to the freedom of religion if the case was in Ethiopia?

The Nigerian Court disagreed. Commenting on this case H. Chand said:

“The question here was whether there was violation of their freedom of religion or not. The argument of the respondent was that fixing any other day would have, if the argument is accepted, equally infringed the right of some other people as some do have Sunday as their religious day. The Muslims like wise may say that Friday is their religious day. Thus some idol worshipers may point out other week days as their religious days. If the argument is pushed to its logic extreme, no day can be fixed for an election. In the situation, it is difficult to see how the freedom of religion was infringed”.
Review questions

1. What is the main difference between human rights and democratic rights?
2. If we say human rights are interdependent show the interdependency of democratic rights and human rights?
3. To who does the obligation to ensure non violation of these rights goes?
4. What are the grounds to limit rights?
5. What are the criminal law rights in the constitution?
6. discuss the right against self incrimination?
UNIT THREE

DEMOCRATIC RIGHTS

At the end of this unit you will be able to

- Understand the nature of democratic rights
- Distinguish the list of democratic rights in the FDRE constitution
- Describe the scope and content of these rights
- Discuss the importance of these rights

Democratic Rights

Introduction

Students! You have studied what basic rights and freedoms are. You have studied the importance of these rights and freedoms in the FDRE Constitution. Now in this chapter you will study democratic rights. We don’t define what democratic rights are. We rather try to enumerate those rights which are referred to as democratic rights. By the end of this chapter, therefore, you can define what democratic rights are.

Section 1

Right of thought, opinion and expression (Art 29)

Objective
At the end of this section you will know the importance of right of thought, opinion and expression, to obtain information. What freedom of press is and its limitations.

One of the democratic rights is the right to thought, opinion and expression. The right to thought does not simply include our mind. Had this alone been the issue, the law would not have taken much pain to protect this right. This right includes the right to acquire knowledge and information. The right to acquire knowledge and information domestically and internationally. The method of securing knowledge and information could be oral, written or in print, in the form of art or through any media of choice.

Freedom of press and other mass media and freedom of artistic creativity is guaranteed by the FDRE Constitution. Therefore, any form of censorship is forbidden. Accordingly any press which may support or oppose the government is not subject to censorship. The author is responsible for his act.

The other right is the right to access to information of public interest. Accordingly if a certain government employee or public servant has information of public interest and is requested to furnish that information for public interest that government employee or public servant can not refuse to furnish that information.

Activities

1. Ali is a journalist. He goes to the Ministry of Education and seeks information on the education policy of the country. The Ministry’s
Public Relation Officer, Ato Abebe, refuses to give that information to Ali because Ali is always critical on the policy of the government. If Ali brings action against the Ministry of Education in a court where you are a judge, how would you rule? Why?

2. Mohammed starts to write a history of Somali people. The Federal Public Prosecutor seized the material before it is published giving the following reason: “It is against the honour of those people who united Ethiopia” Mohammed brings action against the public prosecutor in a court where you are a judge. How would you rule? Why?
Section 2
Limitation on freedom of thought, opinion and expression

In our previous discussion we said that any form of censorship is forbidden. This, however, doesn’t mean that no limitation is made on press. Legal limitations can be laid down in order to protect the well being of the youth, honour and reputation of individuals. Moreover any kind of propaganda for war and expression of opinion intended to injure human dignity is prohibited as per article 29(6) of the FDRE Constitution. If, therefore, a person violates these provisions, he/she shall be held liable under criminal or civil law.

Activity

1. Eskinder is a journalist. He hires two pretty girls and takes their photograph nude and put it on the front page of a magazine. Moreover, he hires another two young boys and takes the two young girls’ and boys’ photos while making group sex.

The public prosecutor brings action against Eskinder for violating freedom of press. Eskinder protests the action alleging that action is un lawful limitation on freedom of press. Who do you think is right? why?
2. Mohammed is an employee of X Company. Ali is the manager. Mohammed writes on a certain newspaper accusing the manager for taking money from the company illegally. Following the accusation, auditors made auditing and found Ali clean. Ali brings action against Mohammed under defamation. Mohammed protested the action for it is against freedom of expressing one’s opinion. Who do you think is right? Why?

**Note** When you solve this case please use provisions of the Civil Code under the Non-contractual liability Art 2044 Art 2049 and 2109.

**Section 3**
**The Right of Assembly, Demonstration and Petition**

**Objective**
**When you finish this section you will know how one can assemble, demonstrate and petition. What are the limitations.**

In any democratic constitution the right of assembly, demonstration and petition are included and well established. Therefore, in the FDRE Constitution as per Article 30(1) every one has the right to assemble and to demonstrate together with others peaceably and unarmed. So one limitation is the fact that one cannot assemble or demonstrate armed. These rights are therefore, not absolute.

We may say, two limitations could also be made on these rights. The first one is procedural limitation while the second one is substantive limitation. The law
may require certain procedures to be observed when the demonstration or assembly is to be held under open air. For instance the vicinity of the demonstration should be communicated to the concerned authorities ahead of time. The reason could be the following:

Undertaking demonstration where high electric lines are installed, where dameas are built, mosques, churches and hospitals etc. are situate are not allowed.

The second limitation which is referred to as substantive limitation is made to protect the well-being of the youth or the honour and reputation of individuals. The limitation as well is made on any propaganda for war and any public expression of opinions intended to injure human dignity according to article 30(2) of the FDRE Constitution.

The right that goes along the right to demonstrate is the right to assembly. Citizen those who have similar political, economic, cultural or other interest can establish associations. These associations could be political parties, professional associations etc. This freedom is not with out limit. Organizations formed in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited as per article 31 of the FDRE Constitution. If the association is a political party it has to be registering with the Election Board established as per article 102 of the FDRE Constitution. If the association is county wide or concerned with Federal issues and is not political party it has to be registered with Ministry of Justices. If the association is not a political party and is situate in Regional State it has to be registered with Regional State Justice Bureau.
Activities

1. Write two installations other than those mentioned above where demonstration can not be held.

2. Do you need to secure permission from a concerned authority or you should give notice to the concerned authority to hold demonstration? Why?

3. If you are the concerned authority with demonstration and a political party is to hold demonstration what proper measures would you take? Who do you request for explanation?

4. Illustrate those instruments which are not allowed to be possessed in a demonstration or assembly.

1. a)

b)

2.

https://chilot.me
Section 4
Freedom of Movement

Objective:

After finishing this section you will understand what freedom of movement means. Why this freedom is important. To whom this freedom is applicable.

People are free to move from place to place and reside at a place of their choice. So as per article 32 of the FDRE Constitution any Ethiopian has the right to liberty of movement and freedom to choose his residence. This right is as well enjoyed by foreign national provided that he/she is lawfully in Ethiopia. Both
the Ethiopian as well as foreign national can exercise this rights with in the national territory.

This right to freedom of movement includes the right to leave Ethiopia at any time and return to his country. This right is not absolute. The right of movement, however, can only be limited in accordance with law. For instance where a person is found guilty and sentenced by a court of law he shall be imprisoned and limitation is put on his right of movement. Where he/she is caught while committing criminal offence and the offender can not be released through bail his/her right to movement can be limited before h/she is sentenced by a court of law. Where a person is bailed by another and the bailed individual is preparing to abscond the one who bailed him/her can restrain the movement of that person. Please read provisions of the civil code related with restraint of movement.(Article 2040-2043)

Activities

1. Ali wants to leave the country to raise fund for a political party he organized. The political party is registered with Election Board but it is opposition party. The Emigration and Emigrants’ Authority refused to issue him a passport? Ali came and he requested you to advise him. How would you advise him?

2. Assume Ali successeded and left Ethiopia to USA. He collected money transferred it to his political party account in the Commercial Bank of Ethiopia. When he arrived at Bole International Air port he is denied access to leave the air port.
If you were his legal advisor how would you advise him?

1. __________________________________________________________

2. __________________________________________________________
Section 5
Rights of Nationality

Objective

This section enables you to understand how nationality citizenship is acquired and lost in Ethiopia. This right includes the right not to loss nationality unless in accordance with law and voluntary.

As per article 6 of the FDRE Constitution any person of either sex shall be an Ethiopia national where both or either parents are Ethiopian. This means where ever a child is born, if his both parents or one of them is Ethiopian, he/she is an Ethiopian.

Following this, difference exists between the previous and contemporary nationality laws. Previously a child could be an Ethiopian when either both or the father is an Ethiopian. According to the contemporary nationality law, however, if the mother alone is an Ethiopian, the child shall acquire an Ethiopian nationality. If the father is an Ethiopian the child is an Ethiopian. If both are Ethiopian the child is an Ethiopian This is based on the equality of person before the law without any discrimination on grounds of sex as per article 2 of the FDRE Constitution.

Once a person becomes Ethiopian as stated above no one can take it away from him/her. Consequently marriage of an Ethiopian national of either sex to a
foreign rational shall not annual his/her Ethiopian nationality. He/she only is with a right to change his/her Ethiopian nationality as per article 33(3).

Ethiopian nationality entitles a person with certain rights and responsibilities. Some of these rights are the right to elect and be elected, the right to own property etc. Some kind of works are mainly reserved to Ethiopians.

When the interest of Ethiopian who resides abroad is at stack Ethiopian Government has an obligation to protect and stand guard to these interest. So when an Ethiopian right is violated by a foreign government Ethiopian has the right to request for the interference of Ethiopian government. While the Ethiopian government is protecting the interest of Ethiopian the Ethiopian has to be faithful to and obey the law of the county.

Activities

1. Abdi lives in Saudi Arabia. His father is an Ethiopian and his mother is Egyptian. Ali wants to start business in Ethiopia. The Investment Commission required him to secure work permit before he, is issued investment certificate. He protests and says he has a right to secure investment certificate without work permit. Would he be successful? If yes why? If not why not?

2. Sara married to Alex who is British citizen. Would Sara lose her Ethiopian nationality? If yes, why? If no, why not?
3. If Sara gave birth to Abdul, what would be the nationality of Abdul?

1. 

2. 

3. 

Section 6
Marital, Personal and Family Rights

Objective
When you finish this section, you will understand what are the condition to conclude marriage, the rights each spouse in a marriage and divorce and forms of marriage.
To conclude marriage and found family is the right of every Ethiopian. Concerning this no distinction is made based on race, nation and nationality or religion. To conclude marriage a person has to attain marriageable age. A marriage age varies from Regional State to Regional State. For instance, in family law of Amhara Regional State the marriage age is 18 for both sex while it is 19 for female and 21 for male in the Tigray Regional State family law.

While entering marriage both parties have equal rights. In the administration of the family both have equal rights as well. If they could not continue in the marriage they are not bound to live together. They can divorce. They also have equal rights at the time of divorce. The interest of children is given priority at the time of divorce.

Marriage could be concluded according to religion, custom Religious and customary marriage are recognized in the FDRE Constitution. The specific is given in each state regional family law.

Dispute could arise relating to the marriage or divorce. If both parties agree to settle such dispute in accordance with religious or customary laws this is allowed by the Constitution under article 34(5).

Activities

1. Kadija is from Oromo and Abdi is from Somali. They love each other and agree to marry. They approached an Officer of Civil Status who refused to accept them as wife and husband. They
bring action against the refusal. Will they be successful? If yes, why? If not, why not?

2. Assume they succeeded and concluded marriage. Abdi proposed to be the head of the family. Kadija refused this proposal and suggested common administration of the family. Who is right? why?
Section 7
Rights of Women

Objective

This section will help you to understand the constitution does not make discrimination an sex, the fact that women should be protected from harmful practice and assisted to over come the effect of that.

One of the basic principles of the constitution is equality before the law. No discrimination is made between women and men concerning this right. This same principle is repeated under article 35(1) of the FDRE Constitution. Therefore, women shall have equal rights with men in the enjoyment of rights and protection provided by the Constitution.

Women were suffering from the harmful practices and traditions or customs. For instance, if a family has one son and one daughter and that family can afford to teach only one child priority was given to the boy. To remedy such kind of legacy and taking into account the inequality and discrimination suffered by women, they are entitled to be offered assistance through affirmative measures, as it is provided under article 35(3) of the FDRE Constitution.

The purpose of such measures is also stated in the Constitution. It is to provide special attention to women so as to enable them compete and participate on the basis of equality with men in political, social and economic life as well as in
public and private institutions. Some examples of affirmative measures are to admit female students to higher institution with lesser points than male students. On job competition if a man and a woman score equal points priority shall be given to the woman.

Previously women were and are still suffering from harmful practices and customs. For instance women were suffering from gentile mutilation. The FDRE Constitution prohibits these and others as follows:

**The state shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to woman are prohibited. (Art 35(4)].**

Conclusion of marriage may be followed by birth of a child. The FDRE Constitution under article 35(5) guarantees women with the right to maternity leave with full pay. The duration of maternity leave shall be determined by law. It depends on the nature of the work, the health of the mother and the well-being of the child and family. For instance the maternal leave for governmental female employees is 3 months one month before giving birth and 2 months after giving birth.

Women should have a say on when to give birth to a child and how many. To that effect and prevent harm arising from pregnancy and child birth women have the right of access to family planning, education, information and capacity as per article 35(9) of the FDRE Constitution.
Women should be employed and win their bread. To that effect women shall have a right to equality in employment. For the work they done they shall be paid equal to that payment made to men doing the same work. If they have to compete for promotion they shall be given equal opportunity with men. Previously it was only men who were entitled to transfer pension. But now a days women have equal right to transfer pension entitlements as per article 35(8) of the FDRE Constitution.

Previously due to the then existing laws, cultures and attitudes women were not having a right to acquire, administer control use and transfer property. Now things have changed and women are conferred by the FDRE Constitution the right to acquire, administer, control, use and transfer property. Especially they have equal rights with men with respect to use, transfer, administration and control of land. They also have equal right of inheritance of property.

Activities

1. Write down three harmful practices than the one mentioned here in above.
2. Write down two affirmative measures other than those mentioned here in above.
1. a) -----------------------------------------------------------------------------------------------
   b) ---------------------------------------------------------------------------------------------
   c) ---------------------------------------------------------------------------------------------
Section 8
Right of Children Article 36

Objective

In this section you will study what are those different rights enjoyed by children under the FDRE Constitution when the right to life of a child begins. Those bad practices done on children and their remedies.

Every child has the right to

(a) Life;
(b) A name and nationality;
(c) Know and be cared for by his or her parents or legal guardians.
(d) Not to be subject to exploitative practice, neither to be required or permitted to perform work which may be hazardous or harmful to his or her education, health or well-being.
(e) Be free of corporeal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.

The right to life and not to be subject to corporeal punishment or cruel and inhumane treatment are rights which are protected for every one. And as you
studied in PARTI the right to life is not an absolute right, for some one is accused of serious criminal offence such first degree murder or armed robbery and found guilty he/she can be deprived of his/her life. This is not true or applicable for a child. For, if a child is found committing serious crime he/she may not be sentenced to death.

The other important point worth mentioning is life of a child resumes while he/she is in his mother’s womb. The right to life also starts from that moment. In some countries this right is neither absolute. For instance in USA there are two views concerning this point: one opinion is the “pro-life” one. This theory supports the right to life while the child is in his mother’s womb. It fights abortion for it is depriving the child the right to life. The other view is the “pro-choice” view. This view argues that it is up to the woman to decide on the continuity or discontinuity of the life of the child for she is the one who bears, gives birth and brings up the child. The womb is her body. She is the one who decides on her body. This view supports abortion.

A child has right to have a name by which he/she is identified. The first name of a child is chosen by his/her family. Failure to have name may have negative impact on the future life of the child for it may cause identity crisis on the child.

A child also has a right to know his/her family or guardian. This has a great influence on the future life of the child. On top of that a child has a right to be cared by his/her parents or legal guardians. This is important for at least for two reasons: one is of all mammals it is only human being that is not able to take care of itself forth with i.e. immediately after its birth. The second reason is the
fact that it is human being that needs longer period to grow and mature than any other mammals.

In the era of industrial revolution children who didn’t attain 10 were forced to work for 16-18 hours per day. This has not yet stopped. Still children are forced to work for cheap payment. Children are forced to bear arms heavier than themselves. Both in urban and Rural areas children are made to work and if lucky learn school. Some family count on them to win its read.

It is to protect children from such kind of evils that the FDRE Constitution under Art. 36(1) forbids exploitation of children and force them to perform work which may be hazardous or harmful to his/her education, health or well-being. This, however, doesn’t mean children should not work absolutely. It means the work that is to be performed and not to be performed should be identified. For this, as per article 36(2) all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.

Children can be classified in to different categories according to their age. Those who are from 15-18 ages can be referred to as juvenile. The juvenile grow physically than mentally. They are vulnerable to different evil things. The government and the society, therefore, have obligations to look after them. For this reason when they commit a criminal offence they are admitted not to ordinary prisons. Rather they are admitted to corrective or rehabilitative institutions. And if they become wards of the state they shall be kept separately
from adults. They shall be as well kept separately from adults when they are placed in public or private orphanages.

Children could be classified as children born out of wed lock and those born in wed lock. The law doesn’t make any difference between these two children. That is the reason why the FDRE Constitution declares that children born out wed lock shall have the same rights as children born of wed lock for instance they have equal succession right.

Finally the state has obligation to accord especial protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare and education as per article 36(5). of the FDRE Constitution.

**Activities**

1. Ali is born out of wed lock. Biologically Mohammed is the father of Ali. When Mohammed died Ali claimed inheritance from Mohammed’s property. His claim is rejected by first instance court. If Ali appealed to a court where you are a judge how would you rule? Why?

2. Bekele brought kebede from rural area promising to teach him. Bekele however, put Kebede in a big farm and receives the money on behalf of Kebede from the employer. Had you been a public prosecutor, how would you handle this salutation? and why?

3. Do you support abortion or you do not? And why?
Section 9
Right of Access of Justice Article 37

Objective

The students will understand that no discrimination is made among individuals, artificial persons even state in obtaining justice. Different adjudicating systems are recognized by the constitution.
A wrong could be done by an individual or a group, an association or state on another individual group, or state. Those against whom a wrong is done should not take the law into their hands. For instance, if some one takes away your property you can take back your property using proportionate force forth with. This is permissible by the law. If, however, you have not returned it back immediately, what you have to do is to take the matter to a court. Let us add another example. Assume you lend some one some money. Let us further assume the borrower fails to pay back the agreed amount on the agreed day. If the borrower guarantees his debts with security it is lawful to keep that security until the borrower pays back the money he borrows. If the borrower does not secured his debt, you do not size a property in his/her possession. What you have to do is you take the matter to a court.

This is your constitutional right for it is stated under articles 37(9) that every one has the right to bring a justifiable matter to, and obtain a decision or judgments by a court of law or any other competent body with judicial power, for instance the Labour Relation Board which hears Labour disputes.

Once you bring the dispute to a court of law a judge can not refuse to give decision or judgment giving reason such as the law does not regulate this matter or any other reason. This is an offence in a Criminal Code of FDRE under denying justice. The dispute can be brought not only to a court. It can also be brought to other competent body with judicial power. For instance tax appeal committee, arbitration and Labour Relation Board.
It is not only individuals who seek justice. As it is written under article 37(2) it may also be brought by

(a) Any association representing the collective or individual interests of its members. For instance Trade Unions can represent members in Labour disputes before the competent body when so requested or delegated as per article 115(1) of proclamation 377/2003
(b) Any group or person who is a member of or represents a group with similar interests. For instance partners in a partnership.

Activities

1. Enumerate other three competent bodies with judicial power other than those mentioned here in above.
2. Enumerate other two Associations those can bring action representing their members other than those mentioned here in above.

1. a)  
b)  
c)  
2. a)  
b)  
Section 10
The Right to Vote and to be Elected Art.38
Objective

This section deals with the right to vote and the right to be elected. The basic requirements to exercise those rights. Different ways of establishing governments and which one is adopted by FDRE Constitution.

There are two ways of participating in administration of the country or public affairs. These are directly or through representation. For instance in USA, Americans directly elect their president. In Britain, however, the prime minister is not directly elected by the people. Parties compete for parliament and the party that wins the majority seat in the parliament appoints the prime minister and establishes the administration. In case of USA the Americans directly take part in organizing the administration while in Great Britain the British people practice that right through representation.

Ethiopia seems adopted that of administration through representation. The prime minister of FDRE is not elected directly by the people unlike the USA. A party that wins the majority in the House of Peoples Representatives (parliament) appoints the Prime Minister and the Prime Minister organizes the administration. So we can say two things: one the vote to elect the representatives is directly done by each Ethiopian and those who are directly elected by representing the people establish the administration.
While directly electing the representatives at any level of the government or representing the voters and establishing the administration no discrimination is made based on, nationality, sex, language, religion, political or other opinion or other status. Certain requirements have to be observed to elect or to be elected however. To vote for instance the attainment of 18 years is required as per article 38(1) (b) of the FDRE Constitution. In our election law To be elected one has to attain at least 24 years of age as per article . The elections shall be by universal and equal suffrage and shall be held by secret ballot. The purpose is to guarantee the free expression of the will of the electors.

Students! Do you remember what we have discussed under chapter 2 section 3. Ethiopians have the right to assembly, demonstration and petition. Moreover, as it is stated under article 38(2) Ethiopians have the right to be a member of political organization, labour union, trade organization, or employers’ or professional association. The only requirement, to be a member of these organizations or associations is to meet the special and general requirements stipulated by such organization or association.

Now a days in Ethiopia political parties could be organized regionally or country wide. EPRDF is a political organization organized country wide. If you want to be a member of EPRDF first you have to be a member in one of its member organization organized regionally. For instant you have to be a member of TPLF. So one of the requirements to be a member of EPRDF is to be a member of one its member organization. If a political organization is a regional one you have to be a member of the nation, nationality or people that organized that political party. For instance you have to be Somali to be a member of one of the Somali political parties organized in Somali peoples
National Regional State. To be a member a trade union you have to fulfill certain requirements. For instance willing to contribute money monthly could be one of the requirements. The same is true for other associations. If you want to be a member of teachers’ association on top of being teacher you are required to pay certain amount of contribution in money form every month.

Once you are a member of any political party or association fulfilling the requirements you have the right to be elected to a position of responsibility. For instance you have the right to be a trade union leader or a chairperson to certain political party, if you can prove your capability. The election to position of responsibility within any of the organizations or association shall be conducted in a free and democratic manner.

Now days in Ethiopia we have civic organizations other than political parties and associations. These civic organizations significantly affect the public interest. Examples for civic organizations are none governmental organizations. Such as Ethiopian Women Lawyers’ Association (EWLA), inter African Group and others. If some one needs to be a member of these civic organizations he/she has to fulfill the requirements. Once he/she observes the requirements he/she can be elected to position of responsibility through election conducted freely and in democratic manner as per article 38(4) of the FDRE constitution.

**Activities**

1. Can Ethiopians living abroad vote to elect their representative in the House of Peoples’ Representatives.
2. Abebe was born in Somali Peoples’ National Regional State. He speaks fluent Somali language. Can he be a member of one of the Somali political parties? If yes, why? If no, why?

1. 

2. 

Section 11
Rights of Nations, Nationalities and Peoples (Article 39)
Objective

Students! In this section you will study what Nations are, why it is essential to recognize the self determination of Nations, Nationalities and Peoples’ you also know what conditions have to be fulfilled to secede and establish a government.

This is a group right. It differs from individual right for mainly its claim bases on ethnic identity. So it is the right of collective self determination, which is the claim of a group of people to choose the form of government under which they will live.
To exercise this right is not some thing new only to Ethiopia. This question has been raised in Yugoslavia and has been ended in creation of different and separate states. It also has been raised in Canada and was settled either by referendum under taken by all Canadians or by the ruling of the Canadian supreme court. It is not yet resolved in India, Srilanka and China (Tibet)

In Ethiopia Nations Nationalities and Peoples fought for their right for decades. Finally after the victory scored by the EPRDF and take over of the state, representatives of Ethiopian Nations, Nationalities and People came together and wrote the FDRE Constitution in 1995. In that Constitution according to article 39(1) every Nation, Nationality and People has an unconditional right to self-determination. AND this right includes the right to secession.

This right also includes the right to speak, to write and to develop ones own language. Each Nations, Nationalities and People has the right to develop and to promote its culture and the right to preserve its history. Each Nations, Nationalities and People has the right to self governing which includes the right to establish institutions of government i.e. Legislative, executive and judiciary in the territory that it inhabits. This right also includes the right to equitable representation in State and Federal government.

So self determination mainly relates and includes the right to secession, the right to utilize and develop one’s own language and culture, and the right to establish self governing institutions. To exercise the right to secession, however, the fulfillment of the following conditions is required
1. The demand for secession has to be approved by a 2/3 majority of the members of the Legislative Council of the Nation, Nationality or People concerned. For instance if Somali people demand to secede from Ethiopia that request has to be approved by 2/3 majority of the members of the Legislative Council of Somali people.

2. The Council may or may not approve the demand. If the demand is approved, i.e. the Council decides in favor of secession, the Federal Government organizes a referendum that takes place within three years from the time it receives the Council’s decision in favor of secession.

3. The demand for secession has to be supported by a majority vote, i.e. 50+1, in the referendum.

4. Up on the fulfillment of these requirements the Federal Government transfers its powers to the council of the Nation, Nationality or People who has voted to secede.

It is not only the Federal Political power is transferred to the Council. Assets are divided in a manner prescribed by law between the Federal government and the Council of Nation, Nationality or People that decided in favor of secession.

The inevitable question that arises is what is Nation, Nationality or People?

Joseph Stalin defines nations as historically evolved, stable community of language, territory, economic life, and psychological make-up manifested in a community of culture. Another writer used the term “National” to connote
groups that share a sense of group solidarity based on language, lineage, ethnicity, culture, and /or religion and a sense of political community rooted in their group identity. (Henry J. Steiner, International Human Rights in context p.1251)

FDRE Constitution defines Nation, Nationality or people as a group of people who have or share a large measure of a common culture, or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make up, and who in habit an identifiable, predominantly contiguous territory. (Article 39(5))

Activities

1. The first requirement to exercise the right to secede is win 2/3 vote of the members of the Legislative Council of the Nation, Nationality or People that demands the secession. How is that demand going to be presented to the Council? Who does, representing the Nation, Nationality or People, present the demand?
2. The second step is to organize a referendum, where the Council votes in favor of secession. Who are the participants in the referendum? All Ethiopians or the Nation, Nationality or People that demands secession?

3. Where the Council Votes in 2/3 majority in favor of secession and 50+1 vote is secured in the referendum, the Federal Government transfers its powers to the Council. Give three examples for the powers that are transferred from the Federal Government to the Council.

1. 

2. 

3. 

4. State two differences between definition given by Joseph Stalin and the writer here in above for a Nation?

1. 

2. 

3. 

4. 

5. State three similarities between Nation definition given by Joseph Stalin and FDRE

1. 
2. 
3. 

2. 
3. 
4. 

5. 
6.
Section 12
The Right to Property (Art.40)

Objective

Students! Upon completing this section you will know what constitutes property, the classification of property under the FDRE constitution, the nature of land and natural resources.

In the FDRE Constitution properties are classified into private and public property. Private property is defined under Art.40(2) as any tangible or intangible product which has value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specially empowered by law to own property in common.

From what is stated above we can understand the following:

a) Private property is further classified into two: these are tangible and intangible. Examples for tangible are gold, silver and other things innumerable (Elements of Roman Law p.111). Those things consisting in a right, for example an inheritance, usufruct, use, obligations howsoever contracted are intangible ones (Elements of Roman Law p111)
b) This tangible or intangible private property should have value and has to be the product of labor, creativity, enterprises or capital.

c) The private property can be owned by an individual citizen, associations (Articles 404-482 of the Civil Code of Ethiopia, 1960) or by communities where they are empowered to own property in common for instance a condominium.

Land is not privately owned in Ethiopian. Land is, as per article 40(3) of FDRE Constitution, a common property of the Nations, Nationalities and Peoples of Ethiopia. Hence it is not subject to sale or to other means of exchange for instance barter. It is not only land that is common property. All natural resources are also common properties and similar to the land, the right of ownership is vested in the state and in the peoples of Ethiopia.

Three categories of people are mentioned in the relation they have to the land. These are Ethiopian peasants and pastoralists and private investors. According to article 40(4) Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. Three elements are important here. One is Ethiopian peasants obtain land freely, without payment. The second one is the fact that they have possessor's right which goes along the principle that land is common property. This, however, does not mean they can be evicted from their possession any time. They have constitutional right not to be evicted from their possession.
The other category is Ethiopian pastoralists. Similar to that of Ethiopian peasants they obtain land freely without payment for grazing and cultivation. Like Ethiopian peasants they are also protected against eviction and displacement from their own land as per Article 40(5) of the FDRE Constitution.

Unlike the Ethiopian peasants and pastoralists private investors have the right to use the land on the bases of payment arrangements established by law. Here two things are important. One no discrimination is made between Ethiopian and foreign investors. Both have the right to use the land upon payment. The second point is the type of payment. The payment is a payment made based on the lease agreement made between the government and individual investor as per proclamation number issued by each Regional State and Federal government.

We understood now land is not private property. This, however, does not mean an immovable attached to the land or improvement brought to the land is not private property. For instance a person can build a house on a piece of land he possesses using his capital or labor. As per Article 40(7) he/she shall have the full right to the immovable property he/she builds and to the permanent improvements he/she brings about on the land by his labor or capital. This right is not only limited to own the building and improvements brought to the land. It includes:

- a) The right to alienate,
- b) The right to bequeath,
- c) The right to remove where the right of use of the land expires
- d) The right to transfer his/her title
e) The right to claim compensation where the government expropriates
the building or improvement for public purposes.

From the last point what we can understand is the fact that where private
property is expropriated by the government for public purposes, the government
shall pay compensation. According to article 40(8) of FDRE Constitution the
said compensation has to be paid in advance and the compensation should be
proportionate to the value of the property expropriated.

Activities

1. State three examples for movable and immovable property
   1. 
   2. 
   3. 

2. State three tangible property other than those given in the note
   1. 
   2. 
   3. 

3. Farmers, Pastoralists obtain land freely. What about urban poor? Don’t
   you think they should have access to land freely?

   
   

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Section 13
Economic, Social and Cultural Rights (Article 41)

Objective

Dear Students!

When you complete this section you will be able to know the importance of including provisions dealing with economic, social and cultural rights. You also will know what efforts are citizen to realize the economic, social and cultural needs of individuals and the society. Finally you will know why the government is obliged to protect historical and cultural heritage.

Students! Before we discuss what is in FDRE Constitution concerning these rights let us see some observation in Hennery J. Steiner’s International Human Rights in Context.

3. Every night almost 800 million people in developing world go to sleep hungry (p.240). This number is more than the combined population of Europe and North America.

4. … nearly a billion people a six of humanity are functionally illiterate… two thirds of them are women.
5. … of the 4.4 billion people in developing countries, nearly three-fifths lack basic sanitation, almost a third have no access to clean water, a quarter do not have adequate housing, a fifth have no access to modern health service, a fifth of children do not attend school … (p.239)

These pieces of information show us how important economic, social and cultural rights are. So it is obvious why FDRE Constitution is dealing with these rights. It is the concern of FDRE Constitution to see Ethiopians are free from poverty, hunger and other social problems.

To that effect every Ethiopian national has the right to equal access to publicly funded social services. Hospitals, public clinics, public schools are some examples for publicly funded social services.

The state has obligation to cover the running and other costs of these services. Hence as per article 41(4) of the FDRE Constitution the state has the obligation to allocate ever increasing resources to provide to the public health, education and other social services.

In our society we have those who are in a disadvantageous position. These are physically and mentally disabled ones, the aged ones and children who are left without parents or guardians. The state, with in available means, has an obligation to allocate resources to rehabilitate these people.

More over the state has obligations;
1. To write policies which aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programmes and public work projects. For instance, the state has to have investment policies which attracts foreign investors and encourages Ethiopian ones. It has to build infrastructures such as telephone lines, roads, erect electric lines, etc.

2. To take all measures necessary to increase opportunities for citizens to find gainful employment. These measures could be similar as those mentioned under number one. Ethiopians are not only having the right to find gainful employment. Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory. So every citizen is free to exercise any activity which he/she deems proper in that which concerns his calling. Hence every Ethiopian has the right to choose his/her means of livelihood, occupation and profession as per article 41(2) of the FDRE Constitution. The only restrictions which such freedom admits of are those which are imposed by the respect for the rights of others, morality and the law.

For instance a minor can not engage in trade even he/she is emancipated as per article 13 of the Commercial Code of Ethiopia, 1960. This is a restriction imposed by the law.

The other restriction imposed by the law is related with the rights of others. Accordingly one can not cause nuisance or damage to his neighbors. For instance he/she shall not cause smoke, soot, unpleasant smells, noise or
vibrations. Otherwise every Ethiopian has the right to pursue his/her means of livelihood, occupation and profession as per article 41(2) of the FDRE Constitution.

They have the right to enjoy the fruits from their occupation and their profession. To that end they have to take their products to a market. Among those who take their products to the market are Ethiopian farmers and pastoralists who have the right to receive fair prices for their products. The purposes of assisting Ethiopian farmers to obtain fair price are two bring improvement in their conditions of life and enable them to obtain an equitable share of the national wealth proportionate to their contribution to that end the state has an obligation to take this into account while formulating economic, social and development policies as per article 41(8)

3. Finally the State has the responsibility to protect and preserve historical and cultural legacies, and to contribute to the proportion of the arts and sports.

Activities

1. What activities are undertaken by your Regional State to alleviate poverty?
   1._______________________________________________________________
      ______________________________________________________________
      ______________________________________________________________
   2._______________________________________________________________
      ______________________________________________________________
      ______________________________________________________________
2. State two reasons why it is important to preserve historical cultural legacies.

1. 
2. 

3. Write two measures you think are important to assist formers to have access to the market

1. 
2. 

Section 14

Rights of Labour (Article 42)

Objective
Dear Students!

Upon completing this section you will be capable of understanding which section of the society is has the right to establish association and the reasons why they establish the association.

You will also understand what collective bargain is, what conditions are required to go to strike.

As per article 31 of the FDRE Constitution every person has the right to freedom of association for any cause or purpose. This has been discussed in section discrimination is made. For instance workers can organize in association. Similarly employers can organize employers association. It includes formation of political parties as well.

Article 42, however, makes distinction. It articulate the right of freedom of association of factory and service workers, farmers, far laborers other rural workers and government employees.

All government employees, however, are not allowed to form association, Government employees can form association where one, their work compatibility allows or makes it necessary and two, where they are below a certain level of responsibility.

Let us illustrate this by example. Teachers are both private and public employees. They can form an association. And they have associations at each school or university level and at a national level. No distinction is made, i.e. an
ordinary teacher or a director or a university president have the right to join the
association.

This is not, however true for other government employees. Police and the
defense army are government employees. They, however, can not form
association because their work nature does not make it compatible to form
association. The other restriction is that for the government employees to form
association they have to be below a certain level of responsibility. For instance
ministers and commissioners are government employees. They, however, can
not form association.

The purpose of forming the association is as well very clear. To improve their
conditions of employment and economic well-being. In other words they are
not meant to achieve political objectives. These associations improve their
members conditions of employment and economic well-being through
bargaining collectively with their employees or other organizations that affect
their interests.

Collective bargaining as per article 124(2) of proclamation No. 377/2003 means
a negotiation made between employers and workers organizations or other
representatives concerning conditions of work.

Categories of persons referred to here in above have the right to express their
grievances and it can be done through strike. To initiate strike, however, certain
conditions have to be observed. These conditions are given under article 158 of
proclamation 377/2003. They are:
1. Giving 10 days advance notice to the other concerning party indicating its reasons.

2. The association and workers should make all efforts to solve and settle their labor dispute through conciliation.

3. The strike should be supported by a majority of the worker concerned in a meeting in which at least $\frac{2}{3}$rd of the members of the trade union were present.

4. Taking measures to ensure the observance by workers of safety regulations and accidental prevention procedures in the Factory or Service sector.

Most of the problems that may lead to strike, it seems, are taken care of by the law and collective bargain. For instance the FDRE Constitution States that workers have the right to reasonable limitations of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public days as well as healthy and safe work environment.

Hence according to article 61 of proclamation 377/2003 normal hours of work shall not exceed eight hours a day or forty-eight hours a week. And every worker is entitled to a weekly rest period consisting of not less than twenty-four non-interrupted hours of each period of seven days. (Article 69 of pro. 337/2003).

A worker also has an annual leave. Any agreement by a worker to waive in any manner his right to annual leave shall be null and void. No only that. It is prohibited to pay wages in live of the annual leave as per article 76 of pro.
337/2003. Finally the public holidays are paid public holidays. In which a worker’s hourly wages is multiplied by two for each hour of work where a worker is called on duty on public holidays. (Art.75 pro.337/2003).