SHORT SUMMARY ON HUMAN RIGHTS

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MOGADISHU - SOMALIA

SHORT SUMMARY HUMAN RIGHTS

Section One: The Notion of Human Rights

Human rights are commonly understood as being those rights that are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human rights are inherent entitlements that come to every person as a consequence of being human. Treaties and other sources of law generally serve to protect formally the rights of individuals and groups against actions or abandonment of actions by Governments that interfere with the enjoyment of their human rights.

The following are some of the most important characteristics of human rights:

- Human rights are founded on respect for the dignity and worth of each person;
- Human rights are universal, meaning that they are applied equally and without discrimination to all people;
- Human rights are inalienable, in that no one can have his or her human rights taken away other than in specific situations. for example, the right to liberty can be restricted if a person is found guilty of a crime by a court of law;
- Human rights are indivisible, interrelated and interdependent, for the reason that it is insufficient to respect some human rights and not others.

Section Two: Categories of Human Rights

Under International Human Rights Law, there are two main categories of human rights: (1) civil and political rights, (2) economic, social, and cultural rights. It has been typically understood that individuals and certain groups are bearers of human rights, while the state is the prime organ that can protect and/or violate human rights. The ICCPR and ICESR conventions are authentic source of the above-mentioned categories. It is also worth noting that Somalia is state party to ICCPR and ICESR conventions since 1990.Moreover, Chapter two of the Provisional Federal Constitution covered most of these rights if not all which obliges national state institutions to uphold and protect them.

- Civil and political rights uphold the sanctity of the individual before the law and guarantee his or her ability to participate freely in civil, economic, and political society. Civil rights include such rights as the right to life, liberty, and personal security; the right to equality before the law; the right of protection from arbitrary arrest; the right to the due process of law; the right to a fair trial; and the right to religious freedom and worship. When protected, civil rights guarantee one's 'personhood' and freedom from state-sanctioned interference or violence. Political rights include such rights as the right to speech and expression; the rights to assembly and association; and the right to vote and political participation. Political rights thus guarantee individual rights to involvement in public affairs and the affairs of state.
- Social and economic, and cultural rights include such rights as the right to a family; the right to education; the right to health and wellbeing; the right to work and fair remuneration; the right to form trade unions and free associations; the right to leisure time; and the right to social security. Cultural rights, on the other hand, include such rights as the right to the benefits of culture; the right to indigenous land, rituals, and shared cultural practices; and the right to speak one's own language and 'mother tongue' education.

Section Three: International Human Rights Law

The formal expression of inherent human rights is through international human rights law. A series of international human rights treaties and other instruments have emerged since 1945 conferring legal form on inherent human rights.

The creation of the United Nations provided an ideal forum for the development and adoption of international human rights instruments. Other instruments have been adopted at a regional level reflecting the human rights concerns of the region. Most States have also adopted constitutions and other laws that formally protect basic human rights. Often the language used by States is drawn directly from the international human rights instruments.

International human rights law consists mainly of treaties and customs as well as, inter alia, declarations, guidelines, and principles.

Section Four: State responsibility for human rights

The obligation to protect, promote and ensure the enjoyment of human rights is the prime responsibility of States, thereby conferring on States responsibility. For the human rights of

individuals. States owes many human rights to all people within their territories, while certain human rights are owed by a State to particular groups of people: for example, the right to vote in elections is only owed to citizens of a State. State responsibilities include the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory.

State Responsibility towards Advancement of Human Rights under Somali Provisional Constitution

Article 12:

1. The fundamental rights and freedoms recognized in this Chapter shall always be respected in the making and application of the law. Likewise, they must be respected by all individuals and private organizations, as well as by every state institution and state official as they carry out their official functions.
2. It is the responsibility of the state not only to ensure it does not violate rights through its actions, but also to take reasonable steps to protect the rights of the people from abuse by others.
3. The rights recognized in this Chapter may be limited only by a law as provided for in Article 38.

Under international law, the enjoyment of certain rights can be restricted in specific circumstances. For example, if an individual is found guilty of a crime after a fair trial, the State may lawfully restrict a person's freedom of movement by imprisonment. Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Economic, social and cultural rights may be limited by law, but only insofar as the limitation is compatible with the nature of the rights and solely to promote the general welfare in a democratic society.

Section Five: The relationship between humanitarian and human rights law

Humanitarian law and human rights law were traditionally regarded as separate areas of international law.

Human rights law setting standards for State conduct in guaranteeing the rights and freedoms of individuals and humanitarian law providing standards for the protection of war victims and the manner in which hostilities are conducted. In other words, it was thought that human rights law was less applicable in situations of humanitarian emergency and armed conflict. Those holding this view pointed to the provisions in the ICCPR that permit States to derogate temporarily from some civil and political rights in times of public emergency that threaten the life of the nation. However, the provisions of most international human rights instruments apply even in times of armed conflict.

Section Six: Core Human Rights Treaties

The following nine core international human rights treaties set international standards for the protection and promotion of human rights to which States can subscribe by becoming a party. There will be also a small description of Somalia' ratification status of these tries followed by African Human rights instruments Somalia singed or ratified

- 1965 International Convention on the Elimination of All Forms of Racial Discrimination.
- 1966 international Covenant on Economic, Social and Cultural Rights.
- 1966 International Covenant on Civil and Political Rights.
- 1979 Convention on the Elimination of All Forms of Discrimination against Women.
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 1989 Convention on the Rights of the Child.
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- 2006 Convention on the Rights of Persons with Disabilities.
- 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

Current List of Human Rights International Treaties and Instruments That Somalia Signed or Ratified

1. CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment acceded on 24 Jan 1990 (a)
2. CCPR - International Covenant on Civil and Political Rights acceded on 24 Jan 1990 (a).
3. CERD - International Convention on the Elimination of All Forms of Racial Discrimination ratified on 26 Aug 1975.
4. CESCR - International Covenant on Economic, Social and Cultural Rights acceded on 24 Jan 1990 (a).
5. CRC - Convention on the Rights of the Child ratified on 01 Oct 2015.
6. CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict signed on 16 Sep 200 .
7. CRPD - Convention on the Rights of Persons with Disabilities ratified on 06 Aug 2019.

Current List of African Human Rights Treaties and Instruments That Somalia Signed or Ratified

1. African Charter on Human and People's Rights which Somalia ratified (1985).
2. Protocol to the African Charter on Human and Peoples 'rights on the Establishment of an African Court on Human and Peoples' Rights signed on 23/02/2006.
3. The African Charter 0n Democracy, Elections and Governance That Somalia Signed On (28/01/2013).

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa signed 23/02/2006

Section Seven: Treaty Implementation Bodies(committees) and their functions

The treaty bodies are the committees of independent experts that review the reports by the State parties on their application of the provisions of the core human rights treaties. This section sets out to explain their work and why it is relevant to the lives of people around the world. The general purpose of the treaties is to create legal obligations on State parties to promote and protect human rights at the national level.

The treaty bodies perform a number of functions aimed at monitoring how their state parties are implementing the treaties. All treaty bodies, except for the Subcommittee on Prevention of Torture, are mandated to receive and consider reports submitted periodically by State parties detailing how

they are applying the treaty provisions nationally. The treaty bodies issue guidelines to assist States with the preparation of their reports, draft general comments interpreting the treaty provisions and organize discussions on themes related to the treaties. Some, but not all, treaty bodies also perform a number of additional functions aimed at strengthening the implementation of the treaties by their State parties. Most treaty bodies may consider complaints or communications from individuals alleging that a State party has violated their rights, provided that State has opted into this procedure. Some may also conduct inquiries and consider inter-State complaints. As earlier mentioned, the following committees monitor the application of the human rights treaties listed:

1. The Committee on the Elimination of Racial Discrimination, the first treaty body to be established, has reviewed the application of the International Convention on the Elimination of All Forms of Racial Dis- crimination since 1969. It has 18 members.
2. The Committee on Economic, Social and Cultural Rights was created in 1985 to carry out the functions of the Economic and Social Council under the International Covenant on Economic, Social and Cultural Rights. It has 18 members.
3. The Human Rights Committee was created in 1976 to review the application of the International Covenant on Civil and Political Rights. It has 18 members.
4. The Committee on the Elimination of Discrimination against Women has reviewed the application of the Convention on the Elimination of All Forms of Discrimination against Women by its State parties since 1981. It has 23 members.
5. The Committee against Torture, created in 1987, reviews the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has 10 members.
6. The Subcommittee on Prevention of Torture held its first session in February 2007. Its mandate is twofold: to visit all places of detention in State parties; and to provide assistance and advice to both States parties and their independent national bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the national preventive mechanisms. It has 25 members.
7. The Committee on the Rights of the Child has, since 1991, re viewed the application of the Convention on the Rights of the Child, as well as its Optional Protocols relating to the involvement of children in armed conflict and to the sale of children, child prostitution and child pornography, by their State parties. It has 18 members.

8. The Committee on Migrant Workers held its first session in March 2004 and reviews the application of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It has 14 members.
9. The Committee on the Rights of Persons with Disabilities, established in November 2008, held its first session in February 2009. It has 18 members.
10. The Committee on Enforced Disappearances was created in June 2011 following the entry into force on 23 December 2010 of the International Convention for the Protection of All Persons from Enforced Disappearance. It has 10 members.

Section Eight: Role of National Human Rights Commissions in Promoting Human Rights

A human rights commission is a state-sponsored and state-funded entity set up under an act of the legislature or under the constitution, with the broad objective of protecting and promoting human rights. In doing so, it may perform a range of functions. These include monitoring of human rights violations, dispute resolution through adjudication or mediation, human rights education, documentation and research, advising governments on human rights issues and human rights standard setting.

Human rights commissions at the national and local level have sprung up in several parts of the world. In others, the institution of the ombudsman has been vested with a human rights jurisdiction. Human rights commissions have received prominence after the United Nations began to actively promote the concept. In 1991, the Centre for Human Rights in Geneva organized a consultation on national human rights institutions. One of the results of this meeting was the adoption of Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles).

The Paris Principles emphasize that these commissions should operate independently of governments and have the necessary resources and infrastructure to function effectively. They also draw attention to the flexibility of these institutions and state that members of commissions should be drawn from different sections of society.

In 1998, the CESCR committee listed activities that national institutions could perform in relation to ESC rights:

- ❖ The promotion of educational information programs designed to enhance awareness and understanding of ESC rights, both within the population at large and among particular groups, such as the public service, the judiciary, the private sector and the labor movement.
- ❖ The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the ICESCR.
- ❖ Providing technical advice or undertaking surveys in relation to ESC rights, including at the request of public authorities and/or other appropriate agencies.
- ❖ Identifying national-level benchmarks against which the realization of Covenant obligations can be measured.
- ❖ Conducting research and inquiries designed to ascertain the extent to which particular ESC rights are being realized, either within the state as a whole or in specific areas, or in relation to particularly vulnerable communities.
- ❖ Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society.
- ❖ Examining complaints alleging infringements of applicable ESC rights standards within the state.

The National Human Rights Bodies in Somalia

There are two federal human national bodies mentioned under the Provisional Federal Constitution, and namely are: Human Rights Commission and Ombudsman Office. Although the two instructions seem to be overlapping when it comes to their functions, none of them has been fully established. The responsibility lies with Federal government of Somalia to expedite the process of their establishment or at least one of them.

The Human Rights Commissions that shall be mandated to: (a) Promote respect of human rights, and the culture of human rights; (b) Promote the protection, development, and attainment of human rights; and (c) Monitor and assess the observance of the conduct of human rights in the Federal Republic of Somalia. The Commission shall have also to perform the following functions:

(a) To investigate and report on the observance of human rights;
(b) To take steps to secure appropriate redress where human rights have been violated;
(c) To carry out research; and
(d) To educate the public and state officials on international standards relating to human rights.

The powers and the activities of the Human Rights Commission shall be stipulated in the Human Rights Commission Act (Art. 111B).

According to Provisional Federal Constitution, the Ombudsman shall investigate complaints regarding:

a) allegations or outright violations against basic rights and freedoms;
b) abuse of power, unfair behavior, mercilessness, lack of clemency;
c) Indiscipline or disrespect towards a person that lives in Somalia by an officer who works at the various levels of government, an apparently unfair behavior, or act in a corrupt manner, or a behavior by an officer deemed as illegal by a democratic society or regarded as mischief or injustice.

The end

References

1. Textbook on International Human Rights, Sixth edition Rhona K. M. Smith, 2012.
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6. Somali Provisional Federal Constitution, 2012.