

CHAPTER FOUR

CONSTITUTION AND CONSTITUTIONALISM

Introduction

This chapter assesses the meaning, principles, types and major characteristic feature of constitution. Constitution as a fundamental or supreme law of a country or a state has its own principles. A given country needs to have a constitution not only to limit the government power but also to grantee freedom and right to their citizens. So, when you go through this chapter you will notice not only the major purpose and functions of constitution but also you will observe its historical development. As far as history is concerning, there is traditional and modern classification of constitution, however, here we will give emphasis on the latter to go through classification of constitutions. In doing so, you will assess the Ethiopian constitutional experience. Finally, you will look at the fundamental principles enshrined in the FDRE constitution.

Objectives

After studying this chapter, you will be able to:

- describe the basic features of constitution and constitutionalism
- list the major purposes and function of constitution
- distinguish modern classification of constitutions
- elaborate the Ethiopian constitutional development
- identify the nature of the Ethiopian Constitutions
- explain the unique features of the FDRE constitution
- tell the difference between democratic and other constitutions

LESSON ONE: MEANING AND CHARACTERISTICS FEATURE OF CONSTITUTION AND CONSTITUTIONALISM

Introduction

As already described in chapter two, state is the political organization which is administered by the group of person known as the government. This government cannot run the state according to the sudden, passing, and often fanciful idea. There has to be certain rules and principles on the basis and under the authority of which the government can run the state. This set of principle is called the Constitution. In this lesson you will assess the basic concepts of both constitution and constitutionalism. In so doing, you will find out the definition of constitution and constitutionalism, as well as its major purpose and functions.

Objectives

After studying this section, you will be able to:

- define constitution
- define constitutionalism
- identify the major characteristics features of constitution
- describe the fundamental constitutional principles

4.1.1 Meaning of Constitution

📌 What is constitution?

State is the political organization which is administered by the group of person known as the government. When we say the government of a state, it means basically the executive, the legislative and the judiciary. But this government cannot run the state according to the sudden, passing, and often fanciful idea. There has to be certain rules and principles on the basis and under the authority of which the government can run the state. This set of principle is called the Constitution.

It is the fundamental law of a nation or state that establishes the institution and system of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.



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Constitution can be defined as: a frame of political society, organized through and by law, that is to say one in which law has established permanent institutions with recognized functions and definite rights. Again, a constitution possibly said to be a collection of principles according to which the powers of the government, the rights of the governed, and the relations between the two are adjusted.

Constitution is the aggregate of laws and customs under which the life of the state goes on. Government without a Constitution is a power without a right. Historically, before the evolution of modern-style, codified national constitutions, the term constitution could be applied to any important law that governed the functioning of a government. In this case we can say that constitution is a state book of fundamental political principles, and establishing the structure, procedures, powers and duties, of a government, which help the government to guide the nation/state.

To be brief, we know that State, like any other organization, requires a set of laws to govern it. Thus, a constitution is a body of laws that determines the nature of the State. It is a fundamental document according to which the government of the State functions. A constitution is, therefore, the basic law which defines and delimits the powers of various organs of the government and it also enumerates the basic rights of the citizens.



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But

whatever its form, a true constitution will have the following facts: first, how the various agencies are organized; secondly, what power is entrusted to those agencies; and thirdly, in what manner such power is to be exercised. Like a human body, constitutions have organs which work harmoniously. In order to function well a state, or body politic, is said to have a constitution in which its organs and their functions are definitely arranged and are not subject to the some dictators.

4.1.2 Meaning of Constitutionalism

👉 What is the difference between constitution and constitutionalism?

Constitution consists of a set of rules or norms creating, structuring and defining the limits of, government power or authority. Understood in this way, all states have constitutions and all states are constitutional states. Anything recognizable as a state must have some acknowledged means of constituting and specifying the limits placed upon the three basic forms of government power: legislative power, executive power and judicial power. Constitutionalism is thus, the idea that government can and should be legally limited in its powers, and that its authority depends on its observing these limitations.



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There is a close connection between constitutionalism and the rule of law.

Both are premised on limits on the power of the state and its institutions, with law as the principal means of defining and ensuring the limits. In all its successive phases, constitutionalism has one essential quality: it is a legal limitation on government; it is the anti-thesis of arbitrary rule; its opposite is dictatorial government, the government of will instead of law.

Both constitutionalism and rule of law were concerned about the limits on state power, but unlike the origins of the rule of law, constitutionalism also emphasized the political mandate and accountability of the government, which placed a greater importance on the legislature.

📌 Have you understood the difference between constitutionalism and rule of law?

Constitutionalism is based on the notion of a supreme law which governs the jurisdiction and powers of state institutions and determines the limits and mode of their exercise. The role of the constitution has been to establish institutions of the state and to define their jurisdiction. There is an assumption that due to underlying cultural understandings and a common history, there is substantial agreement on values, aspirations and identity. It is indeed these understandings (and joint commitment to live together) which makes it possible for the people to form a state.



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When

scholars talk of constitutionalism, they mean not only that there are rules creating legislative, executive and judicial powers, but that these rules impose limits on those powers. Often these limitations are in the form of

individual or group rights against government, rights to things like free expression, association, equality and due process of law. But constitutional limits come in a variety of forms. They can concern such things as the scope of authority (e.g., in a federal system, provincial or state governments may have authority over health care and education while the federal government's jurisdiction extends to national defense and transportation); the mechanisms used in exercising the relevant power (e.g., procedural requirements governing the form and manner of legislation); and of course civil rights.

Furthermore, constitutionalism is a system of political arrangements in which there is a constitution, in which all (particularly the entire system of government) is governed by the constitution, in which only the people's will can change the constitution, in which changes can only be made rarely due to the difficulty of acquiring the necessary popular support, and in which there are separation of power, checks and balances and an independent judiciary dedicated to legal reasoning to safeguard the supremacy of the constitution. Thus, constitutionalism need two things: first and for most there should be democratic constitution and then this democratic constitution must be implemented.

Some scholars argued that, unless a constitution is supreme, it is difficult to talk of the existence of constitutionalism. That is, the constitutional constraints on various branches of government should not be unilaterally changed by the departments themselves. Constitutionalism is a necessary foundation of rule of law. It is the limitation of government by law. Constitutionalism implies also a balance between the power of the government on the one hand and the rights of individuals on the other.



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In sum, constitutionalism is the doctrine that governmental power should be constrained by individual rights and a system of checks and balances, codified in a formal constitution.

The constitution should, moreover, be considered superior to other laws and be enforced within a legal system with independent courts. At the core of this idea is the view that a well-functioning political system needs a clear division of power.

Activity: 1

1. Think of any constitution that established by the will of few individuals, let's say government, and it is implemented according to the principles of the constitution. In such away do you think that there is constitutionalism? Why? Why not?

4.1.3 Major Characteristic Features of a Constitution

👉 Could you mention some of the characteristics feature of a constitution?

A constitution has distinctive features that distinguish it from any other laws. The following are some of the features of a constitution.

Generality: a constitution provides the general principle of a state and carry on foundation and sets out general framework of the law and the government. Other laws provide the details of the subject for which they are created. Constitutional principles are a guideline for others laws. Any law that contradicts the constitutional provision will be null and void. In this case, constitution only states the general principles. Thus, this makes

constitution different from other laws that may found in a given country.

Permanency: unlike laws constitution is made for undefined period of time. That means constitution serve for a long lap of ages. It is purposely made to be stable and permanent. One of the mechanisms to ensure this permanency is through constitutional amendment. Judicial interpretation is also another ways of making a given constitution adaptability. In short, amendment is necessary to offer stability in a country. Thus, constitutional stability is one of the factors for creating a durable peace in a society. Unstable constitutional environment mostly indicates a socio-political instability.

➡What do you think is the importance of making constitution permanent?

Supremacy: a constitution is a supreme law of the land. As a mother of law, it is original law by which the system of government is created, and to which the branches of government must look for all their powers and authority. It is original because it is directly made by the people as the direct expression of the will of the people.



Constitution is a supreme law of the land.

To ensure this supremacy, the constitution needs to have the following:

First and for most, the constitution must have a supremacy clause. All written constitutions have this clause. This provision commands that individuals, government institutions, and private institutions must observe the constitution. The second way of adjustment of a constitution with a changing need of the people is via interpretation. But that must be in accordance with the procedures established by the constitution. Otherwise the constitution is at the state of risk. In majority of states, this task is given to the Supreme Court or a specialized constitutional court. Thus, judicial review should be there, to ensure the supremacy of the constitution.

Finally, in order to make constitution a fundamental law of the country we need special amending procedures. If the constitution is amended by those in power, there might be a state of crisis. Thus, the constitutions must state the amendment procedure clearly; this promotes its supremacy.

Activity: 2

1. In Ethiopia the power to interpret constitution is given to the House of Federation unlike many other federal countries. What do you think is the reason? Why not to the Supreme Court? Explain briefly

4.1.4 Fundamental Constitutional Principles

Popular Sovereignty

The concept of sovereignty is one of the most complex in political science, with many definitions, some totally contradictory. Usually, sovereignty is defined in one of two ways. The first definition applies to supreme public power, which has the right and, in theory, the capacity to impose its authority in the last instance. The second definition refers to the holder of legitimate power, who is recognized to have authority. When national sovereignty is discussed, the first definition applies, and it refers in particular to independence, understood as the freedom of a collective entity to act.

When popular sovereignty is discussed, the second definition applies, and sovereignty is associated with power and legitimacy.



Popular sovereignty is refers to the holder of legitimate power, who is recognized to have authority.

To this end, sovereignty implies the power to have a final say on an issue.

The preamble of the Ethiopian Constitution for instance says, “We the Nation, Nationality and Peoples... adopted....this Constitution”, expressly providing the doctrine of popular sovereignty, or rule by the people. Article 8 of the Constitution is more explicit in providing that ultimate political authority resides not in the government or in any single government official, but rather, in the Nation, Nationality and Peoples of Ethiopia.

In democracy, the peoples own the government. The delegation of powers in no way damages or diminishes the peoples’ right as the supreme sovereign. The government's legitimacy remains dependent on the people, who retain the inalienable right peacefully to alter their government or amend their constitution. Besides, there are situations where the people’s sovereignty in a democracy is expressed through their direct participation.

Separation of Powers

Most of the literature on federalism has emphasized the relationship between national and sub-national governments but overlooked the organization of sub-national powers. Likewise, the debate on the separation of powers in presidential and parliamentary systems has neglected the role of federalism in strengthening the separation of powers. We argue that a federal polity is a constitutional arrangement that creates executive, legislative, and judicial branches of government in its constituent units. This definition is applied to all countries that are classified as federations, or unions.

In order to promote accountability of government, hinder corruption and protect the fundamental freedoms of citizens from the will of the government of the day, it is essential to keep separate the Parliament’s power to make laws, from the Executive’s power to administer laws, and from the Judiciary’s power to hear and determine disputes according to the law. This separation is designed to protect the people from a concentration of power, and the ability of individuals or groups to manipulate

government for personal gain and to ignore the will of the people. Separation of powers is, therefore, an essential feature of constitutional government. Further, constitutionalism ensures that the principal powers of government-legislative, executive, and judicial-were not monopolized by any single branch.



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The Rule of Law

In almost all countries, the concept of the rule of law has been reflected either in their constitutions or statutes. There are two aspects of the rule of law that are important: First, the law should govern the people and the people should obey the law, and second, the law must be capable of being obeyed (good laws).

This made the rule of law different from 'rule of men', where the people were ruled by 'bad' laws. In order to maintain the rule of law, an institution, independent from the legislative or executive or other forces, impartial and free from interference or influence is required.



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In this case, the rule of law is the principle under which a government exercises its authority in accordance with clear, objective, and publicly disclosed laws. Laws must be adopted and enforced through established procedure and

incompliance with international recognized standards. The rule of law is a key component of a social order grounded in consistency, predictability, and transparency. It is the foundation of a democratic society-the means by which people protect their liberty in a society of equals. The principle is intended to be a safeguard against arbitrary rule.

Independence of the Judiciary

Although judicial independence seems on its face to be an obviously essential ingredient to any just and fair legal system, a precise definition of the scope of the principle may be difficult in a world of diverse cultures and legal systems.

Simply stated, judicial independence is the ability of a judge to decide a matter free from pressures or inducements. Additionally, the institution of the judiciary as a whole must also be independent by being separate from government and other concentrations of power.

The principal role of an independent judiciary is to uphold the rule of law and to ensure the supremacy of the law. If the judiciary is to exercise a truly impartial and independent adjudicative function, it must have special powers to allow it to “keep its distance” from other governmental institutions, political organizations, and other non-governmental influences, and to be free of repercussions from such outside influences.



The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

Judicial Review

Judicial review is another major principle of a democratic constitution. It is a

process of striking down the acts of parliament and executive decision as invalid when it is found to be inconsistent with constitutional rules. But which institution of government is suited for judicial review? Although there are debates at the normative level, in practice almost all democracies the task of judicial review, particularly constitutional interpretation, is given to courts, regular or specialized.

Secularism

Secularism is mostly understood to mean separation of state and religion. Secularism asserts the freedom of religion, and freedom from the government imposition of religion upon the people, and absence of state privileges or subsidies to religions.

Activity: 3

1. In our past history until 1974 there was no secularism i.e. separation of state from religion. Do you know the reason? Please discuss with your friends or refer history books and come up with tangible evidence.

LESSON TWO: MAJOR PURPOSES AND FUNCTIONS OF CONSTITUTION

Introduction

The constitution sets out the form of the government, creates the branches of government and determines their powers and authorities. These are one of the major purpose and functions of constitution among others. In this section you will study the major purposes and functions of constitution.

Consequently, you will test the importance of having a constitution and you will notice why countries of the world need to have constitution.

Objectives

After studying this lesson, you will be able to:

- identify the major purposes and functions of constitution
- realize why countries needs to have constitution

4.2.1 Purposes of Constitution

Among the usually recognized purposes of constitutions the following are the major:

A constitution is charter of government: Government derives its whole authority from the governed. The constitution sets out the form of the government, creates the branches of government and determines their powers and authorities. It specifies the purpose of the government, the power of each department of the government, the state-society relationship, the relationship between various governmental institutions, and the limits of the government.

👉What is the importance of limiting government power?

The constitution is a job description: In a democratic state, the people as a whole hire some officials to administer the government for public good, and the constitution is the employment contract and job description. Although many other laws are also job descriptions for the government, the constitution is the highest. The constitution is a guide for legislation and for

the interpretation of legislation.

Put limits on the powers of government and rights protection function: Constitutional provision could be enforcing or empowering whose objective is giving powers to government. But there must also be 'Negative Clause' or 'No Clause', so that a constitution could be a guardian of fundamental rights. Negative clauses, by putting specifically what governments must not do, will limiting and tie the hands of those who exercise powers. Otherwise, the people will certainly be exposed to various kinds of abuses of power.

The constitution is a commitment device: In a democratic state, the constitution binds not only the government, but also the people. Through the constitution, the people collectively commit to certain institutional procedure for managing public affairs and resolving social conflicts. Thus, the constitution not only limits the arbitrary power of the government, it also prevents public administration from being poisoned by people's short-term temper and passions. Through the constitution, the people collectively commit to be abide by the terms of constitution.

The constitution as covenant, symbol, and aspiration: In so far as a constitution is a covenant by which a group of people agree to transform themselves in to a nation, it may function for the founding generation like a marriage concluded through the pledging partners' positive and active consent to remain a nation for better or worse, through prosperity and poverty, in peace and war. A constitution may serve as a binding statement of a people's aspirations for themselves as a nation. In short, a constitutional text may guide as well as express a people's hopes for themselves as a society. The ideals the words enshrine, the processes they describe, and the

actions they legitimize must either help to change the citizenry or at least reflect their current values. Otherwise, it will quickly fade. This is why we see differences among constitutions.

LESSON THREE: HISTORICAL DEVELOPMENT OF CONSTITUTIONS IN THE WORLD

Introduction

In this section you will trace back, so as to see the historical development of constitution in the world. Similarly, you will assess ways of classifying constitution i.e. traditional and modern classifications of constitution, but here you will see only the modern classification of constitution.

Objectives

After studying this lesson, you will be able to:

- discuss the historical development of constitution in the world
- identify the difference between written and unwritten constitution
- distinguish the rigid and flexible constitution
- explain the difference between unitary and federal type of constitution

4.3.1 The Origin and Development of Constitution

The rise of the constitutional state is essentially an historical process. The historical emergence and evolution of constitution can be traced back to earlier stages of civilization. In the history of human societies, the emergence of constitutional government is related to the desire to limit the absolute powers of rulers over those who are ruled. In its modern sense, constitution emerged during the 17th c in England. But the concepts and practices of constitution as political phenomena extend further back in to previous historical periods.

The origin of constitution is related to, the law of Hammurabi in ancient Babylon, the Hebrew constitution, the Greeks, the Romans and Magna Carta. However, here under let's precisely look the modern constitutional practices.

Accordingly, in the modern sense, the US Constitution is considered to be the first written constitution and it has had a profound influence in the history of constitutional writing in the modern times. The writers of the constitution became the teachers of why and, most importantly, how constitutions should be written. The principal reason for the influence of the constitution may be because of its success. That is why the American constitution is the longest-lived constitution.

📌 Why the American constitution lived long?

In almost all countries in modern times, countries adopt a constitution because they need to begin with a fresh start. People who administer their affairs according to traditions and customs do not need a constitution. The memories of their elders are sufficient for them. Historically whenever a constitution has been framed, it had mostly followed a revolution.

A constitution has been intended to usher in a new social and political order. In the 18thc, when the first written constitution in the world appeared (i.e. US constitution) only the bare structure of a federal republic government was laid down. That was a break with the monarchical colonial links of Britain. Within two years, this constitution went through ten amendments incorporating the rights of the people in the form of limits to governmental power.



People who administer their affairs according to traditions and customs do not need a constitution. The memories of their elders are sufficient for them.

In many countries constitution is considered as an instrument in which government can be controlled. Thus, at least an amendment of it can be taken place through a special process different from that by which the

ordinary law is altered. What is more, if an act is of parliament or an act of any state is contrary to the terms of the constitution, it is void. Historically, the need for a constitution arises as soon as a source of power is no longer God, but the people. The people need to formalize its social contract and to define the rules and procedure that regulate the society and the power system in it. Every aspect and institution of human civilization requires some form of government to prevent injustice and maintain order. People need boundaries; citizens are subject to the laws of the land in which they reside.

4.3.2 Modern Classification of Constitutions

📌 How could you classify constitutions?

In effect, it is difficult to divide states into classes by taking each state as a whole in turn, because the totality of powers of all states is the same; that is to say, every state is a sovereign body politic. If a community is not this, it is not a state. The only manner in which states may be differentiated is according to the structural peculiarities of their governmental organization. The basis of our constitutional classification, therefore, should be found, under the following heads: the nature of the state to which the constitution applies i.e. whether unitary or federal; the nature of the constitution whether written or unwritten and flexible or rigid; the nature of the legislature; the nature of the executive; and the nature of judiciary. Accordingly, in this section we will try to see the characteristic features of written or unwritten, flexible or rigid and finally unitary or federal constitutions.

Written or Unwritten

📌 What is the difference between written and unwritten constitution?

A constitution is a set of rules, generally in written form, which identify and regulate the major institutions of the state and govern the relationship between the state and the individual citizen. In most countries the written

constitution is the ultimate source of legal authority; all actions of government and the law-making body (the legislature) must conform to the constitution. In order to uphold and interpret the constitution there will be a Supreme Court. As the constitution is the ultimate authority, any action which contravenes the rules of the constitution will be both unconstitutional and unlawful. Written constitutions also contain procedural rules for the amendment of the constitution.



As the constitution is the ultimate authority, any action which contravenes the rules of the constitution will be both unconstitutional and unlawful.

Simply, written and unwritten is a distinction between those rules regulating a government, mostly rule of law-which are written down either in a constitution or in some act of parliament or other legal documents, and other rules, mainly the customs and conventions and usages regulating the government, which have usually not been precisely formulated and put in writing. Constitutions, whether written or unwritten, will share common features. They will identify the principal institutions of the state - the executive, the legislature and the judiciary. In relation to each of these, the constitution will specify their functions and powers. In addition the constitution will identify the rights and freedoms of citizens, through a Bill of Rights which operates both to protect citizens and to restrict the power of the state.



Constitutions, whether written or unwritten, will share common features. They will identify the principal institutions of the state - the executive, the legislature and the judiciary.

A constitution may be written or unwritten. A written constitution is always enacted while an unwritten Constitution is evolved. A written constitution is one which is framed at a given time and comes into practice on a fixed date.

An unwritten constitution on the other hand is a result of evolution it is given by history. It is never framed by any Constituent Assembly. It is based on conventions, customs and statutes that grow over the centuries. The British Constitution is the best example of an evolved and unwritten constitution.

The strength of a written or enacted constitution is that it is clear and definite. When the constitution is in the form of a document, people have a clear understanding about the powers of the government. In a written constitution the rights of the people are secure. In a federal State like Ethiopia, there are two sets of governments: Federal Government and State Governments. The written constitution mentions clearly the division of powers between those levels of government.

The weakness of a written constitution is that it fails to adapt itself to changing conditions easily. Generally, the process of amending or changing a written constitution is comparatively complex. It is generally said that written constitution is helpful in providing solid government, but this viewpoint can also be disputed. For example, England is a well administered country though its constitution is unwritten.

A written constitution has three important advantages: the first is that a single text contains the sum of what state authority consists of, how it is constituted, how it can be used, and what non-violent methods of addressing disputes are to be adopted. This gives clarity.

The second argument is that such a text can be made available to all inhabitants (and visitors). The basis of the political system is therefore comprehensible to all, instead of in the hands of a specialized guardian classes. This is vital when there are to be dealings between individuals and the State. The third argument is that because the limits of state power are so clear, it is necessary to invoke an amendment process, in order to change even a small component of the constitution.



A written constitution has three important advantages, i.e. it gives clarity, can be made available to all inhabitants, and is so clear.

On the other hand, the disadvantage of written Constitution may be the following: the first is that, the implementation of a written constitution usually involves interpretation. In some instances such interpretation leads to dispute between branches of the government. It is also not possible to absolutely define the extent of devolution of power among different levels of governance in a country. Further, written constitution is not easily adaptable to changing circumstances to make this real, written constitutions need to be continuously amended or modified.

In contrast, one of the major advantage of unwritten constitution is, relatively speaking it is more flexible. However, it is disadvantageous because there is no single document that clearly states the fundamental rights and duties of citizens and of governments. In this case, it would be difficult to quickly determine which aspects of the constitution is violated and when. Since there is no legal restraint and because it is not accessible to public, it can easily be distorted or even changed without the consent of the people. As a result there may arise difference in society regarding which conventions or custom is acceptable and which is not, since there could exist different conventions and customs in a country. Because of its inaccessibility, it is nearly impossible to create awareness through education on the fundamental constitutional rights and freedoms, duties, and obligations of citizens.

To sum up, a constitution generally called written is one in the form of a document which has special sanctity. A constitution generally called

unwritten is one which has grown up on the basis of custom rather than of written law. But sometimes the so-called written constitution is a very complete instrument in which the framers of the constitutions have attempted to arrange for every conceivable contingency in its operation. In other cases, the written constitution is found in a number of fundamental laws which the constitution makers have either framed or adopted with a view for giving as wide a scope as possible to the process of ordinary legislation for the development of the constitution within the framework thus set. It is, of course, necessary to distinguish between written and the unwritten constitution and, we shall refer to the former as a documentary and to the latter as a non-documentary constitution.



A constitution generally called written is one in the form of a document which has special sanctity. A constitution generally called unwritten is one which has grown up on the basis of custom rather than of written law.

Activity: 4

1. Go to Art. (105) of the FDRE constitution, and evaluate whether our constitution is flexible or rigid?

Rigid or Flexible

➤ What is the difference between rigid and flexible constitution?

Constitutions may also be classified as rigid or flexible. A rigid constitution amendment is very difficult, requiring special procedures to be employed before any changes can be made.

Where constitutions were devised by their founders as a complete statement of arrangements for the future, it will generally be difficult to amend them. For this reason it is particularly difficult to amend a written constitution: it is 'rigid', rather than 'flexible' in nature. The Constitutions of, the United States of America, Switzerland and Australia are considered as rigid constitutions.

On the contrary, a flexible constitution is one which can be amended easily by an ordinary legislative process. It can be amended without any special procedure. For example; the Constitution of England is flexible because any provision can be changed by an act of Parliament.



A rigid constitution is one in which amendment is very difficult, requiring special procedures to be employed before any changes can be made.

The strength of a rigid constitution is that it is a guarantee against quick changes. It is stable, whereas a flexible constitution is unstable. Moreover, the fundamental rights of the people and the interests of the minorities are more secure under a rigid constitution. A flexible constitution, however, is considered progressive in nature and helpful in the development of the nation as it changes easily and adapts to the changing circumstances. A rigid constitution, on the other hand, may not be easily changed according to the changing conditions.



The constitution which can be altered or amended without any special machinery is a flexible constitution. The constitution which requires special procedure for its alteration or amendment is a rigid constitution.

Activity: 5

1. Go to Art. (105) of the FDRE constitution, and evaluate whether our constitution is flexible or rigid?

Unitary or Federal

➤ What is the characteristics feature of unitary and federal state structure?

Every modern constitution state belongs to one of two great classes: Unitary or Federal and this introduces of difference of the very first importance. A

unitary state is one organized under a single central government; that is to say, whatever powers are possessed by the various districts within the area administered as a whole by the central government, are held at the discretion of that government, and the central power is supreme over the whole without any restrictions imposed by any law granting social powers to its parts. Unitarianism in the political sense was the habitual exercise of supreme legislative authority by one central power. The best example of unitary state is the United Kingdom. Of course, in the case of the United Kingdom, local government is strong, but the central government can take all those powers of the local government at any time.



In unitary state powers may be devolved to local governments, however, these powers remain subject to the ultimate control the central government.

Actually, it is important to distinguish clearly between local government in a unitary state and state government within a federal state. In a federal state the powers of the central or federal authority are limited by certain powers. We note, therefore, in a federal state a distinction of powers between the federal authority and the authorities of the units forming the federation. This being the case, there must be some authority which determines this distribution. The authority is the constitution itself.

A federal constitution will state either the rights that are to be retained by the federating units or the rights that the federal authority takes over. In either case it stands to reason that neither the ordinary legislature of the individual states nor the legislature of the union can have the power to alter the constitution without some special means being adopted for discovering the views of the constituent members. These means in federal country, the constitution will define which powers are exercisable by the central/federal government, and which powers are exercisable by the constituent parts of the

federation, usually known as states.

In a federal state power is diffused rather than concentrated in any one body. The constitution has overriding force and any conflicts between the federal government and state governments will be determined according to the constitution. Clearly, in federal countries the constitution is seen as a covenant. Thus, the constitution is serving as the fundamental laws of a country. This is one of the essential characteristics features of a federal state.

Thus, true federalism shows three clearly marked characteristics: first; the supremacy of the constitution, by means of which the federation is established; secondly; the distribution of powers between the federal state and the co-ordinate states forming it; and thirdly, some supreme authority to settle any dispute which may arise between the federal and state authorities. Not all states which we call federal states are exactly like this. Federalism is, in fact has its own unique and as well as common characteristics features. Those that do not exactly conform to the type of completely federalized state we may call quasis-federal states.

It will have been observed that, although we talk of a federal state, we have referred to the federating units themselves also as states. This is due solely may I say, be short of language. As soon as a number of states have federated they become constituent parts of a federal state, and there by cease to be states themselves in the full sense, because, they have sacrificed some part of that essential quality of a state namely; sovereignty. Thus, for instance the fifty four/five states which now form the American Union are not individually sovereign states; the true state here is the Union as a whole. Yet the states retain a wide legislative power, their legislatures being what we may describe as semi-sovereign law-making bodies. Again, none of the nine states of our country is a real state. Ethiopia as a whole is the state, the

federating unit are regional states.

From all that has been said, it is clear that we have here a very sound basis for the classification of modern constitutional states. Even though, as we have seen there are various kinds of unitary states and different kinds of federal states, no constitutional state of today can be entirely outside these two categories.

We might have added here a subsidiary basis of classification under this same head namely, whether the state is centralized or localized; that is to say whether there is a strong element of local government within the state or not. In Great Britain, for example, local government plays a large part in the political life of the community. We mention it here in order to emphasize the difference between local government and state government (within a federation), a difference clearly illustrated in the fact that, while a unitary state, is some what inactive in local government, however, federal countries like Ethiopia has a very active local government.



In a federal country, there must be distribution of powers between the Centre and the State governments. Because it is crucial, without it a federation cannot exist.

Activity: 6

1. How can a government be legally limited if Constitution is the creation of government? Discuss
2. How constitution to be interpreted? In terms of literal meaning or the intentions of their authors, or in terms of the possibly ever changing, values they express? Explain
3. Does a constitution establish a stable framework for the exercise of public power which is in some way fixed by factors like the original meaning or intentions? Reason

out

LESSON FOUR: THE ETHIOPIAN CONSTITUTIONAL DEVELOPMENT

Introduction

For a better understanding of the issues and rationale for the present federal system, it is vital to have a basic understanding of the state and constitutional history of Ethiopia. In this section you will briefly see the constitutional history of Ethiopia starting from the traditional constitution to the present FDRE constitution.

Objectives

After studying this lesson, you will be able to:

- evaluate the major achievements of traditional constitution of Ethiopia
- explain the motives of the 1931 Ethiopian constitution
- compare the 1931 and the 1955 revised constitution
- identify the silent features of the 1995 FDRE constitution

4.4.1 Traditional Constitution of Ethiopia

Ethiopia had sophisticated traditional unwritten constitution, which included the major principles of the monarchy, as well as the exclusive right of the imperial court, the church, and the nobility. There was constitutionally significant document. The following are the most prominent constitutionally significant traditional documents.

The *Fetha Negest* (The law of the Kings) The basic content of the *Fetha Negest* was the religious ethics of Christianity, then common in nearly the whole Christian world. It basically dealt with religious, civil and criminal

affairs. It was used as a traditional law in Ethiopian church starting from 16thc, depicting the fact by stating that every subject must submit to the authority of the ruler, since he is appointed by God and God has given them authority; one who opposes the ruler and rebels against him, rebels against his creator. Thus, it was essentially a codex of law providing for secular and spiritual and legal provisions rather than a constitution.

Other important documents in the constitutional process are *Kebre Negest* and *Serate Mengest*. The *Kibre Negest* (the glory of kings), strongly dealt with the legend of a Solomonic Dynasty and thus served certain political-religious needs of the time in the constitutional process. Beyond that, it gave the Ethiopian state a legitimizing basis. Another is *Serate Mengeste* of the 19thc which deals with administrative protocols within the government institutions.

Activity: 7

1. Have you heard the legend of King Solomon of Israel and Queen of Sheba of Ethiopia? Refer some history books and prepare a short report on the mythology.

It is also important to examine some of the major constitutional philosophy and foundation of the monarchy. The following are the major principles:

- ✦ **The Dynastic claim:** the legend of the Solomonic Dynasty, disseminated by church and state, served as a powerful source of legitimization by the subsequent Ethiopian monarchs. According to this story, the monarchs of the Axumite Empire were descendants of the “Solomonic Dynasty.”
- ✦ **The Ethiopian Orthodox Church:** since legend of Solomonic Dynasty in the 10th c, Solomonic genealogy and Christianity religion remained the core twin foundation of legitimacy and unity of the Ethiopian state

until 1974. Certainly the connection between the emperor and the church is strong. The emperor is not only required to be believer of the ancient Orthodox Christianity, but also to defend it.

- ✚ **Male succession of the throne:** *Kibre Negest* established the legitimacy of Solomonic throne by stating that, ‘no one except the male seed of David, the son of Solomon the king, shall ever reign in Ethiopia” The exceptions are Yodit, the usurper of state power of the traditional constitution, and Zewditu, due to extended regency. In any case, it is clear that the exception in either case proves the principle.
- ✚ **The principle of imperial supremacy:** as we saw earlier, the *Fetha Negest* portrayed the fact that every subject must submit to the authority of the king, as he is God’s appointee. The kings’ power was considered as personal, unaccountable and unlimited.

4.4.2 The 1931 Written Constitution

It is important to note that despite the long history of people and state, Ethiopia has little experience with written constitutions. Similarly the principle of separation of power and separation of state and religion were odd to Ethiopia’s legal culture. Another notion which was unfamiliar to the Ethiopia’s legal culture was of federalism.

The coming in to power of Emperor Haile Silasse heralded the period of written constitution. This era starts with the promulgation of the first written constitution in 1931. The Constitution, however, was significant not for its liberal traditions but rather for its symbolic role in providing formal definitions of the relations between the emperor and the nobility and the administration of the government.

The Constitution can be considered as more of a formal agreement between the monarchy and the feudal lords. A two chamber parliament was founded, and was given the power to discuss laws, except those on subjects including government organization, the armed forces and foreign affairs, which were reserved to the Emperor; the Senate was appointed directly by the Emperor, and the chamber of Deputies was elected by the nobilities in the Upper House. The 1931 Constitution did not bother about problems of ethnic, linguistic and religious diversity. For the same reason any form of decentralization of government were contrary to the purpose of the Constitution. Generally, the constitution has two motives:

One of the most important historical goals of the Constitution was to breakdown the powers of the regional lords by bringing them under powerful centralized state machinery. This Constitution strengthened the traditional position of the emperor by weakening the role of nobility.

It also marked the culmination of the struggle of centralization process started by Tewedros II during the 19th c. Thus, consolidation and centralization of power was the sole motives of the first written constitution. Secondly, its major purpose was modernization. The entrance of Ethiopia to the League of nation directed to introduce a series of political reforms on the basis of advices from the League. Ethiopia was expected to show to the outside world that it is becoming civilized.



The 1931 Constitution did not bother about problems of ethnic, linguistic and religious diversity.

The most interesting and novel aspect of the constitution was its provision for the establishment of a Parliament of two Houses-the Senate and the Chamber of Deputies. The senate was composed of members appointed by the Emperor from among the nobility (*Mekuanent*), who have for a long time served Him as Princes or Ministers; Judges or high military officers.

The functions of Parliament as a law-making body were limited. Legislative initiative was the monopoly of the Emperor though Deputies could ask his permission to deliberate on subjects suggested by themselves. He could veto any law proposed by the chambers. He had the right to draw up their procedure and to dissolve them. The work of the Parliament from its creation to the time of the Italian invasion is very little. The Emperor continued to issue his own decrees and the reserve of absolute power lay in his hands with the principle “Divine Rights of Kings”.



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4.4.3 The 1955 Revised Constitution

👉 Why Emperor Haile Silasse revised the 1931 constitution after twenty-four years latter?

On the silver Jubilee of his coronation, Haile Silasse proclaimed the “Revised Constitution” which outdated the 1931 Constitution. Similar to its predecessor the revised Constitution solidified the absolutism of the monarchy. The first two chapters were devoted to the institution of the monarchy, the holiness of the Emperor, His dignity, and the Solomonic root of the dynasty, etc.



Similar to its predecessor the revised Constitution solidified the absolutism of the monarchy.

Apparently, it was the federation of Eritrea (with its liberal constitution) with Ethiopia which necessitated the revised Constitution. However, this constitution nowhere mentions of the federal arrangement. Hence, there was

no division and sharing of power as is the case in the tradition of federal systems. What is clearly neglected in this Constitution, similar to its predecessor, was the issue of diversity. Due to the Solomonic monopolization of power all those who did not belong to the line are marginalized and excluded.

The revised constitution is more than twice as long as its predecessor. It has made changes either by expanding concepts present in contracted form in the old constitution, or by breaking new ground. By far the most striking change, was the provision for the election of the till then appointed members of the Chamber of Deputies. Meanwhile the veto power of the Emperor is still there.

Moreover, the Emperor can use his power to legislate by decree, under article 92. All the tax legislation of the first five years of the life of the revised constitution and most other economic measures have been regulated by decrees.

There were a new ring about the provision regarding the Judiciary, which makes a positive declaration, that "judicial power shall be vested in the courts established by law and shall be exercised by the courts in accordance with the law . . ." The courts are "a Supreme Imperial Court and such other courts as may be authorized or established by law . . ." In actual fact the Emperor's *Chilot* still functions. Thus, the new constitution brought Haile Selassie's power to better and higher heights, and to consolidate the absolutism of the monarchy.

➤ Can you mention some of the indicators to say the Emperor has absolute powers?

4.4.5 The Dergue (PDRE) Constitution

February 1974 saw the demise of the oldest Christian monarchy and

replaced by military Marxism. A popular revolution involving peoples from all sections of the society succeeded in overthrowing the ancient imperial regime.

The Provisional Military Administrative Council otherwise known as the Derge replaced the monarchy and started to take revolutionary measures immediately. The Derge then acted as the supreme political organ in the country. After the suspension of the Revised Constitution the country was run by pieces of legislations and proclamation.

At the peak of this activities the 1987(PDRE) Constitution came, which resurrected the regional autonomy program initiated by NDR. Accordingly, the country administrative structure was divided in to 29 regions, few of them given autonomous status.

The Constitution starts by making “the Working People of Ethiopia” owners of the Constitution. It goes on at the preamble to note the fact that Ethiopia is a multinational state with various nationalities and diverse communities with essential unity created by cultural intercourse, migration and commerce. Moreover, the equality, respectability and development of all languages are clearly asserted with a rather pragmatic concession to Amharic as the working language of the country.



The PDRE Constitution starts by making “the Working People of Ethiopia” owners of the Constitution.

The Derg Constitution was not aimed at enshrining popular demands for social justice and democracy because they had already been dealt fatal blows during the first days of its assumption of power. The constitution was to satisfy the constant demand of the soviet patrons to legitimize Ethiopia as a socialist state. Indeed, the constitution created the first republic (PDRE).

In PDRE the organization and functioning of the organs of state is based on

the principles of democratic centralism. The preamble states that all organs of state power, from the lowest to the highest shall be established by election. Decision of higher organs shall be executed by lower organs accountable to the higher organs. As per the constitution, all organs of state mass organizations, and other associations and officials shall observe socialist legality.

Sovereignty lies on the workers of Ethiopia and exercised through the National *Shengo*, Local *Shengos* they establish by election, and referendum. According to the Constitution the *Shengo* was the supreme organ of the state power in the country. Candidates to the National *Shengo* were nominated by organs of the Workers' Party of Ethiopia, mass organizations, military units and other bodies. The terms of the *Shengo* would be five years. The members in the *Shengo* were elected from their electoral districts in the country. In the absence of opposition party, the National *Shengo* functioned on the basis of strict party discipline and socialism.



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President of PDRE was elected by the National *Shengo* and answerable to it. He was the head of state, represented the Republic at home and abroad. His major roles include: ensuring the implementation of domestic and foreign policy, commander-in-chief of the armed forces, appoint members of the Defense Council, conclude international treaties, and perform other roles assigned to him by the National *Shengo*.

The Council of Ministers was the highest executive and administrative organ of the PDRE and was accountable to the *Shengo* and between the sessions of

the *Shengo* it was accountable to the Council of the State and the President.

The Judiciary branch consisted of the Supreme Court, Courts of Administrative and Autonomous Units and other courts established by law. President, vice president and judges of the Supreme Court were nominated by the president and approved by the *Shengo* for five years term. Other judges were to be elected and recalled by the *Shengos* in the respective levels.

In sum, the PDRE Constitution built a unitary socialist state having no concern of federalism and insignificant concern for ethnicity. The regime's policy of solving ethnic problems provoked massive resistance from ethno-nationalists and regionalists which finally close the fate of the regime and reshaped the trend in Ethiopian political and constitutional history.



The PDRE Constitution built a unitary socialist state having no concern of federalism and insignificant concern for ethnicity.

4.4.6 The 1991 Transitional Charter

After a long and devastating civil war, the military dictatorship regime that ruled Ethiopia for more than seventeen years was overthrown by a coalition of liberation forces in May 1991. The new Ethiopian governors, lead by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) declared their commitment to a clean break with the past and the establishment of a new society; a society based on equality, rule of law and the right to self-determination.



Ethiopian Peoples Revolutionary Democratic Front declared their commitment to a clean break with the past and the establishment of a new society; a society based on equality, rule of law and the right to self-determination.

Dictated by the various interests advanced by the ethnic based coalition forces and similar ethnic based political groups, who joined afterwards, the recognition of Ethiopians ethnic diversity become the central principle of the new regime's policy. And this is immediately reflected in the Transitional Period Charter of 1991.

The ethnic based liberation movements came together immediately at a conference and drafted and approved an interim constitution or otherwise known as the Transitional Charter. The Charter is a very brief document with only 20 articles. The aspirations stipulated in its preamble include the guarantee of freedom, equal rights, and self-determination of all peoples; ensuring peace and stability by bringing an end to all hostilities, redressing regional prejudices and safeguarding rights of citizens through democratically elected, accountable government, and rebuilding the country and restructuring the state.

Interestingly the Charter, despite its briefness, puts a high premium on human rights. This is manifested in its direct reference to the Universal Declaration of Human Rights (UDHR) in its Art(1) which states that based on UDHR individual human rights are respected fully and without any limitation what so ever. In accordance with the aspiration of the Charter Art(2) give recognition to the right of "Nations, Nationalities and Peoples to self-determination" there by guarantying their right to a) preserve their identity, culture, history and language; b) self-administration with fair and proper representation at the center; and c) independence when the above mentioned rights are "denied, abridged or abrogated."

Thus, the Charter, in contrast to Ethiopia's legal and political tradition, gave an explicit recognition to the rights of "Nations, Nationalities and Peoples," and also recognized their right to secession. This strong assertion to the rights of "Nations, Nationalities and Peoples" demonstrated the commitment of the new regime towards group rights and decentralization.

The process of decentralization initiated by the Charter was further elaborated by National/Regional Self-Government Establishment Proclamation No.7/1992. Accordingly, 14 National/Regional self-governments, whose borders were determined, based on settlement structure of nations, nationalities and peoples were established. Hence during this period one can say that some degree of federalism has been introduced even though federalism had to wait until 1995 to appear in the Ethiopia's constitutional public speaking.

In general, the Transitional Charter was a breakthrough in many ways, for example as we have seen it, established devolved administrative units on the basis of ethnic and linguistic criteria. On the basis of the Charter, fourteen regional governments were created; Addis Ababa and Dire Dawa were given autonomy on the basis of political and population considerations. Each regional government shall have executive, legislative and judicial power in respect to all matters within their geographic territory, except such matters as defense, foreign affairs, citizenship, declaration of state of emergency, national economic policy and so forth. In any case, decentralization was one breakthrough and the basis of the political program of the Transitional Government of Ethiopia.

Secondly, the charter granted self-determination up to secession to all Nations, Nationalities and Peoples of Ethiopia. Article 2 stated that each Nation, Nationality and People have the right to preserve its identity and have respected, promote its culture and history. Also recognized was the

right to administer its own defined territory and effectively participate in the central government on the basis of freedom, fair and proper representation. Thirdly, the charter allowed the creation of several centers of power and authority. Indeed, different associations, especially political parties were flourished following the promulgation of the Charter. Thus, political pluralism is another departure of the charter from the Ethiopian constitutional tradition.



The Transitional Charter was a breakthrough in many ways, for example: it established devolved administrative units on the basis of ethnic and linguistic criteria; granted self-determination up to secession to all Nations, Nationalities and Peoples of Ethiopia; and allowed the creation of several centers of power and authority

4.4.7. FDRE

The

Constitution

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) came into force in August 1995 after passing through drafting and series of deliberations by bodies set up by the Transitional Government. The text of the Constitution which gives the ownership of the same to “Nations, Nationalities and Peoples of Ethiopia” established a federal state by dividing and sharing power between the federal and state governments. Reducing the number of states recognized by the Transitional Charter by five the Constitution enumerates nine states constituting Federal Democratic Republic of Ethiopia.

Hence, according to Art. (47) member state of FDRE are the following:

- The State of Tigray
- The State of Afar

- The State of Amhara
- The State of Oromia
- The State of Somalia
- The State of Benshangul/Gumuz
- The State of the Southern Nations, Nationalities and Peoples
- The State of the Gambela Peoples
- The State of the Harari People

In line with federal traditions the Constitution stipulated two layers of legislative, executive and judicial organs. Accordingly a parliamentary government is set up at the federal level with bi-cameral Parliament, the upper chamber is the House of the Federation and the lower chamber is the House of People's Representatives. Members of the upper chamber are elected by the states' parliamentary assemblies, whereas members of the lower chamber are elected by popular vote. All recognized national groups are guaranteed representation in the upper house; representation in the lower chamber is on the basis of population, with special set-asides for minorities.

Legislative power is vested in the House of People's Representatives. Also an executive organ led by a Prime Minister whose office is accountable for the House of Peoples Representatives (HPR) is set up. The executive branch includes the President, Prime Minister, Council of State, and Council of Ministers. The president is elected by both legislative chambers for a six-year term. The leader of the largest party in the lower chamber becomes Prime Minister, who submits cabinet ministers for the chamber's approval. All ministers serve for the duration of the legislative session. Executive power is in the hands of the Prime Minister, who is also the commander in chief of the armed forces.

Similarly an independent judiciary with the supreme federal judicial authority vested in the Federal Supreme Court is established. Likewise,

states have the State Council (with legislative power), State administration (highest organ of state executive) and a judicial power vested in courts. The judicial branch is composed of federal and state courts. The Federal Supreme Court is the highest court and exercises jurisdiction over all federal matters; lesser federal courts hear cases from the states. The president and vice president of the Federal Supreme Court are recommended by the Prime Minister and approved by the lower chamber of the legislature.

An institution with the power to investigate constitutional disputes i.e. Council of Constitutional Inquiry (CCI) is envisaged under the Constitution. Furthermore, the offices of Auditor General, National Election Board (NEB) and National Census Commission (NCC) are established by the Constitution. The National Human Rights Commission and the Office of the Ombudsman are other institutions whose legislative establishment is envisaged by the Constitution.

In view of protecting the constitutional order and ensuring the sustainability of the federalism some norms are stipulated as very significant (fundamental) and placed beyond the reach of governments at both level. These norms will be the subject of the subsequent discussion.

Fundamental Principles of FDRE constitution

The Constitution embodied five fundamental principles which relates to sovereignty of the peoples; supremacy of the constitution; human rights; secularism and transparency and accountability of government. These principles give a background to many of the rules that emerge in subsequent chapters thereby setting the framework for a better understanding and interpretation of the rules.

Sovereignty of the Peoples

Under Haile Silasse's Constitutions it is to be recalled that sovereignty was vested in the person of the Emperor. However, the FDRE Constitution unequivocally vests this sovereignty in "Nations, Nationalities and Peoples of Ethiopia." By so doing it presumes the existence of nations, nationalities and peoples who seek sovereignty. This approach of vesting sovereignty in sub-national units has important implications for the federal structure. Furthermore, it is part of an expression of their sovereignty that Nations, Nationalities and Peoples are bestowed with the right to self-determination up to secession.

Supremacy of the Federal Constitution

In line with the trend of federal systems the FDRE Constitution under Art.9 declares its supremacy and makes other laws, customary practices and decisions of an organ of a state or public official null and void if it contravenes the Federal Constitution. This supremacy clause is in fact a reflection of the principle of sovereignty of the people.

This nature of federal constitutions, asserting its own supremacy, is a matter of necessity than choice. In the absence of this provision it means that all the states can take any direction that pleases them to the extent that there will not be any single common minimum norm binding upon them.

Human Rights

As mentioned earlier, one of the distinguishing characters of the FDRE Constitution from its predecessors is the emphasis given to internationally recognized human rights norms. This fundamental principle is stipulated in Art.10 of the FDRE Constitution which articulates "Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable". One can thus readily observe that the long lists in the catalog of

rights set out in chapter three of the Constitution are reaffirmation of this principle.



One of the distinguishing characters of the FDRE Constitution from its predecessors is the emphasis given to internationally recognized human rights norms.

Also the principle of human rights seems to be in the background of the political, social, cultural, economic and environmental policy objectives of the Ethiopian government. The aspiration to promote sub-national self-rule, rights of equality, especially of ethnic groups and to ensure the enjoyment of economic, social and cultural rights seems to be a programmatic statement of the commitment to human rights.

The weight attached to the fundamental principle of human rights is visible not only in this provision but also in the overriding concern the Constitution extends to rights starting from its preamble to its amendment clause in Art.104. This extra-careful arrangement (majority vote in all state legislators, 2/3 majority vote in the HPR, and similar 2/3 majority vote in the HOF) required for the amendment of provisions of chapter 3 pertaining to rights.

Moreover the whole of chapter three, constituting 1/3 of the Constitution is devoted for human rights and this is a classic evidence to the preoccupation with rights. Of course, there are several illustrations that prove the degree of importance human rights norms are given under the Constitution. The mandate given to the HPR to establish Human Rights commission and the office of the Ombudsman, and to make federal intervention in the states on the ground of rights violations, the textual fact that the policy objectives (especially the political; economic, socio-cultural and environmental ones as propounded in Arts. 88-92) incline toward right protection, taking the

fulfillment of most of the rights as subjects of continuous concern; the need to take extra-caution for rights in the exercise of emergency powers of the Executive; and the need for extra-care in the amendment of human rights provisions of the constitution, all testify to the constitution's concern for human rights, thereby reinforcing the importance of rights as one of the basic principles of the contemporary constitutional order.



Moreover the whole of chapter three, constituting 1/3 of the Constitution is devoted for human rights and this is a classic evidence to the preoccupation with rights. Of course, there are several illustrations that prove the degree of importance human rights norms are given under the Constitution.

Secularism

The FDRE Constitution under Art.11, explicitly declare the separation of religion from the state. In spite of the recognition given to religious law system in a restricted manner the Constitution envisages an entirely secular state in which the state does not interfere in matters belonging to religion and vice versa. Definitely, the principle of secularism can be taken as foundational to the right of freedom of religion to religious equality and non-discrimination based on religion.

In view of the ethnic and religious diversity of the country the adoption of secularism will have a paramount importance in encouraging religious tolerance to differences.

Transparency and Accountability

It is inscribed in Art.12 of the Constitution as the fifth principle. “The conduct of affairs of government shall be transparent,” holds, Art12 (1). Moreover it stresses the fact that “any public official or an elected representative is accountable for any failure in official duties.” It also

reserves the possibility of recalling an elected representative in case of loss of confidence by the people. All in all, the Ethiopian constitutional order, as is expressed mainly in its principles and partly in the preamble and the aspiration provisions of the policy objectives, is one in which popular sovereignty, constitutionalism, human rights, secularism, and transparency and accountability of government become visible large.

In general, fundamental rights and duties are one of the important features of the Ethiopian Constitution. We were denied most of the civil and political rights in our past history; hence, one of the important aspirations of the people of Ethiopia was that they should have some basic rights, i.e. right to freedom, right to equality. The FDRE Constitution provides several fundamental rights. These rights include Right to Equality, Right to freedom; Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies. These Fundamental Rights are justifiable and are protected by the court. In case of violation of any of these rights one can move to the court of law and secure them. Of course, some the Fundamental Rights are not absolute or unlimited. Further, fundamental duties of citizens were also added to our Constitution. Thus, we have to be aware that, rights are our guarantees given by our constitution and we are responsible to protect them.

Activity: 8

1. According to the FDRE Constitution there is a transformation from:

- 📖 Unitarism to Federalism
- 📖 Presidential system to Parliamentary
- 📖 Mono-culturalism to Multiculturalism
- 📖 Excessive centralism to decentralization
- 📖 Rule of men to rule of law

Do you think all this transformations is important for you,

your locality, region and the nation at large? If your answer is yes, in what way? If you say no, why not?

CHAPTER SUMMARY

State is the political organization which is administered by the group of person known as the government. When we say the government of a state, it means basically the executive, the legislative and the judiciary. In order to make the government effective there has to be certain rules and principles on the basis and under the authority of which the government can run the state. This set of principle is called the Constitution. Constitution is the aggregate of laws and customs under which the life of the state goes on. Government without a Constitution is a power without a right. On the other hand constitutionalism is the idea that government can and should be legally limited in its powers, and that its authority depends on its observing these limitations.

A constitution has distinctive features that distinguish it from any other laws. Some of the features of a constitution include: generality, permanency, and supremacy.

In addition constitutions have its own principles like: popular sovereignty, separation of powers, rule of law, of the judicial independence, judicial review and secularism among others. Constitution is also important to serve as is charter of government, to put limits on the powers of government and to protection rights of citizen. Constitution is classified based on the nature of the state i.e. unitary or federal; the nature of the constitution i.e. written

or unwritten and flexible or rigid.

When we see the Ethiopian experience in the development of constitution, Ethiopian had sophisticated traditional unwritten constitution, which included the major principles of the monarchy, as well as the privileges of the imperial court the church, and the nobility. Ethiopia, of course, has little experience with written constitutions. Similarly the principle of separation of power and separation of state and religion were odd to Ethiopia's legal culture. But, during the imperial regime Ethiopia have got its first written constitution in 1931. On the silver Jubilee of his coronation, Haile Silasse proclaimed the "Revised Constitution" which outdated the 1931 Constitution. The new constitution brought Haile Selassie's power to better and higher heights, and to consolidate the absolutism of the monarchy.

The revised constitution was suspended when the military Derg took power in 1974. On there side the military promulgated the PDRE constitution in 1987. The constitution was to satisfy the constant demand of the soviet patrons to legitimize Ethiopia as a socialist state. Indeed, the constitution created the first republic.

After a long and devastating civil war, the military dictatorship regime was overthrown by a coalition of liberation forces in May 1991. Ethiopians ethnic diversity becomes the central principle of the new regime's policy. And this is immediately reflected in the Transitional Period Charter of 1991. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) came into force in August 1995 after passing through drafting and series of deliberations by bodies set up by the Transitional Government. The text of the Constitution which gives the ownership of the same to "Nations, Nationalities and Peoples of Ethiopia" established a federal state by dividing and sharing power between the federal and state governments. The Constitution embodied five fundamental principles which relates to sovereignty of the peoples; supremacy of the constitution; human rights; secularism and transparency and accountability of government.

CHECK LIST

Please check your understanding with the following key ideas of the unit.

N o	Decide	Ye s	Need to Revise first
1	I can describe the distinction between constitution and constitutionalism		
2	I can explain the major characteristics features of a constitution.		
3	I can evaluate the fundamental constitutional principles		
4	I can briefly explain the major purposes and functions of a constitution.		
5	I can trace the historical development of constitution in the world		
6	I can describe the distinction between written and unwritten; a rigid and a flexible; and unitary and federal constitution.		
7	I can briefly explain the historical forces which underlie our contemporary constitution in line with its significance		
8	I can identify the essential features of the FDRE constitution		

If you ticked 'need to revise first', please go to the sections of the chapter you are going to revise.