Human Rights Law

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Outline

1) List of rights;
2) Questions for discussion;
3) What are human rights?
4) Nature of human rights?
5) Brief history of (international) human rights;

2) Questions for Class Discussion

- Are there human rights in Ethiopia? What is the meaning of an assertion that human rights exist (or do not exist) in Ethiopia or in any other state?
- Is there a ‘human rights law’ in Ethiopia?
- Is there a world-wide human rights law, such as international human rights law?
- Is the idea of ‘human rights law’ essentially national, sub-regional, regional, international or all of these and even more?

3) What are human rights?

- Human rights are rights ***inherent*** to human beings;
  - Come from the dignity or worth of human beings;
  - Not granted;
  - Intrinsic value;
  - Humans as ends in themselves;
  - Come from the nature of mankind;
  - Autonomy;
  - Without discrimination;
- Rights are entitlements, claims, freedoms, benefits, etc;
- Universal and moral;
- They impose duties on states (limits on the power of the state) and individuals;
- Vertical and horizontal effects of human rights;
- Legal rights, need to be sanctioned by law;
- Rights are parts of national systems (history, culture, and so on): for example the Ethiopian HRs system;
- International (including regional human rights): rights internationally (through norm making, sources, enforcement, etc in international law)

4) Nature of Human Rights

- They are:-
  - Universal (all are equally entitled; born with them;),
  - Inalienable (not to be taken away),
  - Interdependent and Indivisible:
    - CPR prevailing over socio-economic rights?
    - Competition of rights?
    - Right to elect be elected or the right to education? Divisible in the end?
    - C,P, E, S, C rights: interrelated, depend on one another, bidirectional, complementary, not to be divided, equally important, mutually reinforcing, all human rights have equal status, best realized when implemented together, no hierarchy, etc;

  (Source: the 1993 Vienna Declaration and Program of Action);

4) Nature of HRs (cc'd)

- But:-
  - Is the list of human rights universal?
  - Assuming similar lists exist or the lists substantially overlap, are they enjoyed equally?
  - What if resources of a state and government are limited?

4) Nature (cc'd)

- Despite our affirmation, this is not to mean they are enjoyed everywhere the same:
  - Legal recognitions vary;
  - Practices vary;
  - There are other factors for enjoyment:-
    - Political conception of human rights (political commitment and others);
    - Cultural/social conception of human rights (e.g. cultural practices not compatible with human rights);
    - Economic conception of human rights (lack of resources for example);
- HRs limit sovereignty, power, etc.. of the State, government, etc.;
- HRs are many: socio-economic, civil and political rights,...;

5) Brief History of HRs

- Before World War II (why this periodization?):-
  - Brief history or itemization of ‘human rights’ events;
  - From ancient time such as in Greek philosophy and world religions;
  - Several charters (today’s constitutions) as important steps towards the idea of human rights
  - The texts are available (for those of you interested in world history of human rights);

5) Brief History (cc'd)

- Review the following instruments for their historical importance regarding human rights;
- Note:
  - They are not as such human rights instruments rather 'constitutional' documents (mostly given by grace, grant, privileges, etc);
  - They are not universal;
- Here are among important historical documents regarding human rights:
  - Magna Charta Libertatum, 1215 (England)
  - The Golden Bull of Hungary, 1222
  - The Erik Klippings Håndfaestning, 1282 (Denmark):
  - La Joyeuse Entrée of 1356, Brabant (Belgium):
  - The Union of Utrecht of 1579 (The Netherlands),
  - The English Bill of Rights of 1689

5) Brief History (cc'd)

- Theologists and jurists played a role in the history of human rights;
- Theologists:
  - Francisco de Vitoria (1486-1546: anticolonial view and just war; defended American Indians) and
  - Bartolomé de las Casas (1474-1566: called for abolition of slavery; objected the oppression of indigenous peoples in the Americas);

5) Brief History (cc'd)

- The Enlightenment was crucial in the development of human rights concepts:.
  - Hugo Grotius (1583-1645), one of the fathers of modern international law (natural law; on the law of war and peace),
  - Samuel von Pufendorf (1632-1694) (natural law and reason),
  - John Locke (1632-1704):-
    - Developing a comprehensive concept of natural rights (inalienable rights);
    - Among the God-given rights: life, liberty and property;
    - So government to protect those rights;
  - Jean-Jacques Rousseau (1712-1778) (rejects natural rights instead of social contract and the sovereign; rights are no limits to the sovereign);

5) Brief History (cc'd)

- But extensive enumeration of rights is given in:
  - The American Declaration of Independence of 4 July 1776
  - The US Bill of Rights of 1791 of the US Constitution;
  - The French Déclaration des Droits de l'Homme et du Citoyen of 1789 (The French Declaration of the Rights of Man and of the Citizen),
- Both the American and French Declarations were intended as systematic enumerations of these rights.
- The classic rights of the 18th and 19th centuries related to the freedom of the individual;

5) Brief History (cc'd)

- International developments pre-WWII: Before the UN Charter, fragmented legal principles and institutions aiming to protect certain groups of people:
  - State responsibility for **injuries to aliens (more of a diplomatic protection)**;
  - **International humanitarian law** (among the oldest);
    - **"**It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare**"**
  - **Minority protection (19th and early 20th century)**:
    - Frequent inter-state disputes in connection with **the protection of the rights of minorities** in Europe.
    - E.g Treaty of Berlin of 1878;

5) History (con´d)

- The protection of minorities under the League of Nations (owing to redrawing of maps and emergence of new states, e.g. The collapse of the Austro-Hungarian and Ottoman empires):
    - Some as part of peace treaties,
    - Some separate minority treaties;
    - Some as conditions for membership to the League, i.e. unilateral minority declarations,
    - Others bilateral treaties for protection of minorities
    - The minority rights included:
        - Equality (life, liberty and other rights without discrimination),
        - Special guarantees to minorities
            - » Use of minority languages (in courts and schools),
            - » To have their own religious, educational and welfare institutions and
            - » Proportional share of state expenditure to these institutions;
- But with few states and also exclude the victors (they were kind of imposed);

5) History (con´d)

- **Labour rights (beginning of 20th century)**:
  - Industrial countries began to introduce labour legislation, raising the cost of labour, affecting competitive advantage in relation to other countries with no labour laws.
  - Economic necessity forced the states to consult each other.
  - As a result of this, the first conventions were formulated in which states committed themselves vis-à-vis other states in regard to their own citizens.
  - The Bern Convention of 1906, prohibiting night-shift work by women as the first multilateral convention meant to safeguard social rights.
  - Many more labour conventions were later drawn up by the International Labour Organisation (ILO), founded in 1919.
- The Covenant of the League:
  - **The mandates system** for the protection of the populations of former colonies.
  - Article 22 of the Covenant of the League:
    - The well-being and development of peoples form a sacred trust of civilization;
    - Mandatories´ obligation to report;

5) Brief History (cc'd)

- Post World War II Developments:
  - The atrocities of World War II and citizens.
  - Human rights are considered with international law (substance, institutions and so on):
  - UN and other bodies;
- Traditional IL was normally about diplomacy (diplomatic protection), laws of war, international trade, etc;
- The identity of international law is substantially transformed owing to international human rights law,
- Today no area of international law in which human rights are not a subject;
- International HRs movement is After World War II;
- Begins with the Charter of the UNs of 1945 (the Charter-based system for example);

5) **Brief History of IHRs/HRs**

- The Charter contains a number of articles specifically referring to human rights.
- Less than two years later, the UN Commission on Human Rights (UNCHR),which was established early in 1946, submitted a draft Universal Declaration of Human Rights (UDHR).
- The UN General Assembly (UNGA) adopted the Declaration in Paris on 10 December 1948, This led in 1948 to the adoption by the UN General Assembly of the UDHR, which was proclaimed as a “common standard of achievement for all peoples and all nations”.
- This day was later designated Human Rights Day.
- International Bill of Human Rights:-
  - UDHR +
  - International Covenant on Civil and Political Rights (ICCPR) +
  - The International Covenant on Economic, Social and Cultural Rights (ICESCR).

5) History (cc’d)

- Since the UDHR, a number of treaties and declarations and resolutions, etc;
- The Core Human Rights Treaties;
- In addition, an elaborate system of supervisory mechanisms has been adopted;
- HRs are important now in foreign policies;
- Human rights are gaining more attention at the regional levels as well:
  - The European,
  - the Inter-American and
  - The African context,

5) Brief History of HRs

- World Conferences on Human Rights:
  - The Proclamation of Teheran (1968) (from the first Conference on Human Rights),
  - **The Vienna Declaration and Programme of Action** (from the Second World Conference in Vienna in 1993). [e.g. The World Conference of Human Rights held in Vienna in 1993. In the Final Declaration of that Conference it was stated: “All human rights are universal, indivisible and interdependent and interrelated.” However, this was followed by the ominous addition, that has since then been quoted on many occasions, that “(...) the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind.”]

5) History of Human Rights (Ethiopia)

- Do we have a history of human rights?
- The 1931 Constitution?:
  - The right of Ethiopian subjects to pass freely from one place to another;
  - “No Ethiopian subject may be arrested, sentenced or imprisoned except in accordance with the law.”
  - The right to be tried in a legally established court.
  - The right to privacy.
  - The right to petition;
  - The right to property;
- The 1955 Revised Constitution of Ethiopia:
  - Influenced by the UDHR;
  - The rights to equality, freedom of expression, privacy, prohibition of arbitrary deprivation of life, liberty, property.
  - The right to peaceful assembly and judicial guarantees including the principle of presumption of innocence.
  - Statutory instruments were influenced by these;
- The 1987 Peoples Democratic Republic of Ethiopia (PDRE) Constitution?
- The Transitional Charter?
- The 1995 FDRE Constitution?