

## FORM II HISTORY AND GOVERNMENT NOTES

### UNIT 8: DEMOCRACY AND HUMAN RIGHTS

#### What is democracy?

The word democracy is derived from the Greek word *Democratia* (Demos meaning people and *Kratas* meaning 'rule or power').

It is a form of government where political decisions are directly in the hands of the citizens.

#### Key aspects of a real democracy

- Political aspect.* The consent of the governed (expressed directly or indirectly through their elected representatives) must be sought when making political decisions. Public opinion must be given priority in governance.
- Social aspect.* Human dignity must be valued at all times. Every individual should be free to organize his own lifestyle, hold and express opinions, enjoy company of others and join associations.
- Economic aspect.* All citizens must be provided with equal opportunities. Exploitation of humans by fellow humans should be eliminated. Means of production should be nationalized to reduce inequalities between the rich and the poor.

#### Types of democracy

- Pure or direct democracy.* This is where the people are directly involved and participate in decision-making. Such a democracy has an advantage in that the laws made are easily accepted by all the people since they feel they own the laws. This is common form of democracy in smaller organizations and was also used in ancient Greece.
- Indirect democracy.* This is a type of democracy where citizens exercise their right in decision making not directly as individuals, but through their agreed representatives, elected by the citizens. Parliament acts as the basic institution in this type of democracy. The elected may make *Appointments* of persons to fill other positions like the Cabinet or carry out *Nomination* (hand-picking of additional representatives to join the elected ones).
- Constitutional Democracy.* This is where democracy is exercised but within the limits of the constitution. The minority rights are guaranteed (freedom of expression, association and worship)  
It is also referred to as Liberal democracy and is a form of representative democracy.

#### Merits of democracy

- It is founded on the concept of the people and therefore leaders cannot ignore the people from whom they get authority to rule. It is most popular form of government.
- It recognizes equality among all the people without discrimination. It advocates equality before the law and anyone can rise to power regardless of one's background or environment.
- It promotes patriotism or national pride as it urges people to participate in their governance. This reduces chances of a revolution
- It promotes liberty and peace as it advocates for peaceful coexistence. People develop a sense of cooperation. It can also promote international cooperation when extended beyond the borders.
- Since it is based on moral and educative values, democracy helps individuals to develop their personality. It develops initiative of the people and their sense of responsibility.
- Democracy balances the liberty of the individual with the power of the state.

#### Demerits of democracy

- Democracy promotes dictatorship by the majority. The majority government by fulfilling the election pledges to please the supporting electorate ends up neglecting the political, social and economic interests of the minority who did not vote for it.
- Democracy encourages class struggle and corruption as only those that possess money can engage in intensive campaigns and get elected due to their influence. Then once elected, they pass laws that protect their interests.
- A democratic government is usually slow and wasteful since consultations have to be made when making a decision. Time and public resources are used in the process of seeking the views of the majority.
- The ethical value of democracy is questionable. It is not easy to find an honest, sincere man of good moral character being elected.
- Democracy may perpetuate incompetence since it is numbers which matter when choosing a leader not the leadership qualities. Where a majority of the electorate is ignorant, they may make poor decision during elections thus promoting incompetence.
- Although democracy is regarded as the rule of the majority, in essence, it is the elected minority who rule. Democracy is therefore as a form of dictatorship by the informed or elected minority.

#### Principles of democracy

Principle-basic truth or general law

- a) *Freedom of speech, debate and enquiry.* The basic healthy political culture among a group of people is based on open debate among citizens where they can express their views without fear.
- b) *People's participation as a whole in government.* Through free, fair and regular elections, the government should remain a servant of the people and not master. Democracy is based on consent which can be withdrawn if the government fails to satisfy peoples' expectations.
- c) *Open and accountable media.* The media must be open in their agenda and be held accountable to the public. Media monopolies should not be allowed to develop.
- d) *Economic democracy.* This implies the decentralization of economic power so that individuals and communities can be economically empowered to create and control their own wealth.
- e) *Equality before the law.* Judgment should be made in accordance with a written law, rather than in an arbitrary manner. Each citizen also has an equal ability to seek and receive justice.

### **Human rights**

Human rights refers to the accepted principles of fairness and justice- or the universal moral rights that belong equally to all people in their capacity as human beings regardless of sex, race, and tribe, and language, place of origin, age or political beliefs.

### **Why human rights are important.**

- a) Rights are necessary for human beings to achieve a dignified life, fulfill their potential and to satisfy both their physical and spiritual needs.
- b) Rights are inherent to human beings. One has rights purely because they are human. They are not granted by the state.
- c) Rights empower citizens and residents by giving them control in decision making organs of the state.
- d) Rights justify special treatment of minorities and other special or disadvantaged groups or communities.
- e) Rights provide guidance to organs of state regarding the exercise of state power.
- f) Rights such as the right to vote, freedom of expression and of the press ensure the public access the necessary information necessary for the protection of democracy and ensure accountability of public authorities.
- g) Respect for human rights limits internal and external conflicts and strengthens national unity.

### **Classification of Human rights**

- a) *Social economic and cultural rights.* On the basis of these rights, the state is expected to pursue policies that enable individual, families or groups to earn a living and provide basic needs including education and medical care for themselves.
- b) *Solidarity rights.* These are rights that focus on the whole community. They require that the state to pursue policies which do not destroy natural resource or waste financial resources but instead create conditions for peaceful co-existence. These rights include the right to clean, healthy and sustainable environment, peace, and development.
- c) *Civil and political rights.* The rights include the right o vote, right to think and to have access to information. These rights ensure a secure space for the individual to pursue their values and interests.

### **Groups that monitor human rights in Kenya**

- a) Lawyers and Judges and other professionals including teachers.
- b) Religious groups
- c) Journalists (The media-print and electronic).
- d) The police force
- e) Association and special commissions, e.g business associations, women groups, the Kenya National Human Rights and Equality Commission (KNHREC), among others.
- f) Pressure groups

### **Characteristics of human rights**

- a) *They are universal.* Human rights apply equally to everyone by virtue of being a human being.
- b) *They are indivisible.* One right cannot be applied if the other does not exist. They are inherent.
- c) *Incase circumstance demand they can be suspended.* For example during war, or during disease outbreak like Ebola or other contagious diseases, one may be denied the right to freedom of movement.
- d) *Human rights have limitations.* As people enjoy their rights, they should respect the rights of others.

### **United Nations Charter on human rights.**

This is a document that contains the basic human rights to which every person by virtue of being a human being is entitled to. It also reaffirms the equality of the rights of all men and women.

The Universal Declaration of Human Rights was adopted by the United Nations General

Assembly on 10th December 1948. Member states that signed the document are supposed to publicize the declaration in their countries

### ***The basic human rights contained in the Charter include;***

- i. All human beings are born free and equal.

- ii. Everyone is entitled to all rights and freedoms set forth in the declaration without discrimination on basis of sex, race, colour, sex, language, religion, political or other opinion, racial origin birth or any other status.
- iii. Everyone has a right to life, liberty and security.
- iv. No one should be held in servitude or slavery or perform forced labour.
- v. Everyone has a right to recognition as a person before the law.
- vi. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- vii. Every person's dignity should be respected and protected.
- viii. Everyone has a right to nationality. One is free to change nationality.
- ix. No person will be subjected to physical or psychological torture, corporal punishment or cruel and inhuman treatment.
- x. Everyone has a right to free movement and residence within the borders of each state.
- xi. Everyone has a right to ownership of property alone as well as in association with others. State cannot take away ones property without proper compensation.
- xii. Every citizen has a right to peaceful assembly and association.
- xiii. Every citizen is free to make political choices, which includes the right to form, or participate in forming, a political party and to participate in the governing process of the country.
- xiv. Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.
- xv. Every person has the right to accessible and adequate housing, and to reasonable standards of sanitation.
- xvi. Every person has the right to be free from hunger, and to have adequate food of acceptable quality.
- xvii. Every person has the right to clean and safe water in adequate quantities.
- xviii. Every person has the right to social security
- xix. Every person has the right to education. Elementary education shall be compulsory while technical and professional education should be made generally available.
- xx. Every person has the right to a clean and healthy environment. It is our duty to ensure that the environment is protected for the benefit of present and future generations.
- xxi. Every person, whether individually or as a group, has freedom to manifest any religion or belief through worship.
- xxii. An adult has the right to marry a person of the opposite sex, based on the free consent of the parties. Parties to such a union enjoy equal rights.
- xxiii. Every person should be subjected to an efficient, lawful, reasonable and procedurally fair administrative action.
- xxiv. Everyone has freedom of opinion and expression.
- xxv. Everyone has a right to seek and enjoy, in other countries, asylum from persecution. The right is however enjoyed only for political reasons.
- xxvi. Everyone has a right to a fair and public hearing by an independent and impartial tribunal in the determination of one's rights and obligations.
- xxvii. Everyone has a right to protection of the law against interference or attacks against one's property, home or correspondence.
- xxviii. Everyone has a right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment.
- xxix. Everyone has a right to leisure, which includes reasonable working hours and periodic holidays with pay. ght to freely participate in the cultural life of the community, to enjoy the arts e.g drama, music, dance etc.
- xxx. However every person has various duties to the community in which they live.
- xxxi. Freedom from torture and cruel, inhuman or degrading treatment or punishment.

### ***Importance of the UN Charter on human rights***

- a) Protection of human rights, which is the core thing in the UN Charter, is important for the Establishment and maintenance of peace and security. Where there is violation of human rights, it becomes difficult to prevent conflict and maintain peace.
- b) Respect for human rights is an important requirement for efficiency and effectiveness in governance. The principle of non-discrimination, principle of international human rights law, enables one to strive for more equitable societies even within the level of resources available.
- c) Respect for human rights promotes development. National development strategies can only lead to tangible improvement in the lives of people if they have as their key objectives realization of economic, social and political rights.
- d) The UN Declaration provides a guideline for collective action towards eradication of poverty.
- e) The UN human rights mechanisms have given utmost attention to countering of terrorism as a way of protecting human rights.
- f) A SOCIETY that observes respect for human rights reduces the chance of conflict outbreak.

- g) The UN Charter on human rights is the foundation on which peace-making (peace-building and peace-keeping) is built. Any strategy to achieve peace anywhere is accompanied by strategies to uphold human rights like was the case in Yugoslavia.
- h) In recognition of human rights, the UN has played a key role in giving humanitarian assistance to the people of different countries suffering from effects of natural disasters and other emergencies.
- i) The UN Charter on Human rights promotes the rights of women and their empowerment by affirming the equal rights for women and fighting discrimination based on gender
- j) The UN Charter champions the rights of vulnerable groups like the minority migrant workers, abused children, indigenous people and persons with disabilities.

### **The Kenyan Bill of Rights**

This is a statement of human or civil rights in the constitution of Kenya. The Bill of Rights is covered in chapter four of the constitution of Kenya (2010).

#### ***Importance of the Kenyan Bill Of Rights***

- i) States that every individual has the right to life
- ii) It guarantees liberty to all citizens by forbidding enslavement, detention without trial etc.
- iii) It protects the individual from all forms of torture and inhuman treatment
- iv) It guarantees the protection of private property and allows Kenyans to own property anywhere in the country.
- v) It protects individuals' freedom of conscience and religion.
- vi) It guarantees the protection of the freedom of speech and expression
- vii) It gives Kenyans the right to move freely throughout the country and to reside in any part of the country.
- viii) It guarantees individuals against any form of discrimination on the basis of colour, creed, and gender.
- ix) It protects individual against arbitrary search, arrest and entry into one's property without his/her consent
- x) Rights and fundamental freedoms contained in the Kenyan Bill of Rights.

#### **1. Right to life.**

Life begins at conception and no child should be deprived of life deliberately. Abortion is not therefore permitted unless occasioned by the need for emergency treatment or life of the mother is in danger.

People who attempt to commit suicide are also punishable on the strength of their right

#### **2. Equality and freedom from discrimination**

Every person is equal before the law and has the right to equal protection and equal benefit of the law. This means that both men and women are equal before the law. Any form of discrimination is illegal and is prohibited in the constitution.

#### **3. Human dignity**

Every person's dignity should be respected and protected. One must not ridicule or embarrass other members of society.

#### **4. Freedom and security of a person.**

This right protects a person from being detained without a good reason and without trial. No person will be subjected to physical or psychological torture, corporal punishment or cruel and inhuman treatment.

#### **5. Freedom from slavery, servitude and forced labour.**

No one should be held in servitude or slavery or perform forced labour. Every employer should treat his or her employees with dignity and not to force them to work.

#### **6. Right to privacy.**

Every person has a right NOT to have him or herself, his or her property searched, or his or her possessions seized. Not revealing a person's family or private affairs unnecessarily or private communications interfered with.

#### **7. Right to assembly, demonstration, picketing and petition.**

Every citizen has a right to assemble and participate in peaceful demonstrations and even present petitions to public authorities.

#### **8. Political rights**

Every citizen is free to make political choices, which includes the right to form, or participate in forming, a political party and to participate in the activities of, a political party.

Every citizen has the right to free, fair and regular elections based on universal suffrage and the free` expression of the will of the electors for any elective public body or office

Every adult citizen has the right, without unreasonable restrictions, to be registered as a voter; to vote by secret ballot in any election or referendum and to be a candidate for public office, or office within a political party and, if elected, to hold office.

#### **9. Freedom of movement and residence**

Citizens have a right to free movement and ownership of property in any part of the country. Anyone is also free to leave the country or enter and remain in the country

#### **10. Economic and social rights**

Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.

Every person has the right to accessible and adequate housing, and to reasonable standards of sanitation.

Every person has the right to be free from hunger, and to have adequate food of acceptable quality.

Every person has the right to clean and safe water in adequate quantities.

Every person has the right to social security

Every person has the right to education.

A person shall not be denied emergency medical treatment.

The State must provide appropriate social security to persons who are unable to support themselves and their dependants.

#### **11. Consumer rights**

Consumers have the right to goods and services of reasonable quality.

Consumers have the right to the information necessary for them to gain full benefit from goods and services.

Consumers have the right to the protection of their health, safety, and economic interests.

Consumers have the right to compensation for loss or injury arising from defects in goods or services.

#### **12. Right to fair labour practices.**

Every worker has a right to fair labour practices like *fair remuneration, reasonable working conditions, the right to join or practice in trade union activities and the right to go on strike.*

Every employer has a right to join an employers' association and participate in its programmes and activities  
*Responsibility.*

One must respect the right to fair labour practices of one's employees

Employees on the other hand must conduct themselves responsibly, even during strikes, to avoid causing physical injury to innocent people, or destroying property.

#### **13. Right to clean and healthy environment.**

Every person has the right to a clean and healthy environment. It is our duty to ensure that the environment is protected for the benefit of present and future generations.

#### **14. Freedom of conscience, religion, belief and opinion.**

Every person, whether individually or as a group, has freedom to manifest any religion or belief through worship, practice, teaching or observance, including observance of day of worship.

One cannot be denied employment or educational opportunity because of belonging to a particular religion or because of one's belief or religion.

A person cannot be forced to engage in any act that goes against his or her belief or religion.

#### **15. Freedom of expression.**

This guarantees all Kenyans the freedom to seek, receive or impart ideas or information. It also guarantees freedom of artistic creativity, academic freedom, and freedom to conduct scientific research.

#### **16. Freedom of media.**

The freedom and independence of the media is guaranteed. The state should not interfere with the media.

#### **17. Access to information.**

Every person has a right to access information held by the state, or by others, which may be required for the protection of any right or fundamental freedom. The state is expected to make public any important information affecting the nation.

Every person has a right to the correction or deletion of untrue or misleading information that affects the person.

#### **18. Freedom of association.**



Every person has the right to form, join and participate in the activities of an association of any kind, provided that the association is not engaged in illegal activities, such as stealing or killing.

**19. Protection of the right to property.**

Every person is entitled to own property either individually or as a group, in any part of the country. However the property has to be legally acquired.

This right provides all Kenyans a fair opportunity to invest in property and thus, prosper.

**20. Right to language and culture.**

Every person has the right to use a language, and embrace the culture of the person's choice.

Every person has the right to form or join cultural groups.

Every person is also protected from being forced to join any such group.

Each linguistic group is free to use their language, practice their culture, and form associations and other organs of the civil society.

It is unacceptable to force another person to perform, observe or undergo any cultural practice or rite.

**21. Right to family.**

An adult has the right to marry a person of the opposite sex, based on the free consent of the parties. Parties to such a union enjoy equal rights. Both parties have a responsibility to respect the rights of their spouses during marriage and even in the event of its dissolution.

It is wrong to deny one's spouse access to marital property after separation or divorce.

The constitution also recognizes marriages conducted under traditional, religious, personal or family law. Marrying of underage persons and forced marriages are outlawed in the constitution.

**22. Fair administrative action.**

Every person should be subjected to an efficient, lawful, reasonable and procedurally fair administrative action. This promotes efficient administration in public offices.

**23. Access to justice.**

Everybody should access justice and a reasonable fee will be charged to enhance this, if required. If this is not free, many people will not access justice which will continue to be a preserve of the rich people.

**24. Right of arrested persons.**

An arrested person has;

- a) The right to be informed promptly in a language that the person understands of the reason for arrest, the right to remain silent and he consequences of not remaining silent.
- b) The right to remain silent. – The right of a person to choose to talk or to remain silent.
- c) The right to communicate with an advocate and other persons whose assistance is necessary (freedom of speech with all those who will assist him or her in the case.)
- d) The right of not being compelled to make any confession or admission that could be used in evidence against the person.
- e) The right t be held separately from persons serving a sentence (should not be held in prisons alongside those already convicted)
- f) To be brought to court as soon as reasonably possible, as but not later than twenty four hours after being arrested.
- g) To be charged or be informed of the reason for the extension of detention or release, at the first court appearance.
- h) To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons as to why one cannot be released.

**25. Fair hearing.**

Every person has the right to have any dispute that can be resolved through a court hearing be resolved in such a manner that will accord him or her fair and public hearing. An accused person has the following rights;

- a) To be presumed innocent until proven otherwise.
- b) To be informed of the charges.
- c) To have adequate time and facilities to prepare a defence.
- d) To a public trial before a court.
- e) To have the trial begin and be concluded with few delays.
- f) To be present when being tried.
- g) To be represented by an advocate and be informed of this right immediately. Depending on the circumstances, the accused may be assigned an advocate by the state and at the state's expense.
- h) To remain silent and not testify during the proceedings.
- i) To be informed in advance, of the evidence the prosecution intends to present, and to have reasonable access to that evidence.
- j) To challenge the evidence.
- k) To refuse to give self-incriminating evidence.
- l) To have the assistance of an interpreter if the accused person cannot understand the language used in the trial.

m) If convicted, to appeal, or apply for review by a higher court.

## 26. Rights of persons detained, held in custody or imprisoned.

A person, who is detained, held in custody or imprisoned under the law, retains all rights and fundamental freedoms in the bill of rights. Except those that are impractical and inapplicable under the circumstances.

A person who is detained or held in custody is entitled for an order Habeas *Corpus*- This is a law that states that a person who has been arrested should not be kept in prison longer than a particular period of time unless a judge in a court has decided that it is right. It is the right of the person who is detained, held in custody or imprisoned to be treated in a humane manner.

### Application of the Kenyan bill of rights to specific groups of people in Kenya

#### Rights enjoyed by Children in Kenya.

A child refers to a young person from birth to full physical development. The term also refers to a person who has not attained the age of eighteen. The rights of children are contained in the United Nations Convention on the Rights of the Child, and International Agreement on the Rights of the Child put in place in 1990.

The rights include;

a) *Survival rights*

- ~ Every child has the right to a name and nationality from birth.
- ~ Every child has the right to basic nutrition, shelter and health care.

b) *Development rights*

- ~ Every child has the right to free and compulsory basic education.
- ~ Every child has the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.

c) *Right of protection*

- ~ Every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.
- ~ Every child has the right not to be detained, except as a measure of last resort, and when detained, to be held for the shortest appropriate period of time.
- ~ Every child has the right to separate from adults and in conditions that take account of the child's sex and age.
- ~ Every child has the right to a child's best interests are of paramount importance in every matter concerning the child.
- ~ Children should be protected from exploitation such as child labour.

#### Rights enjoyed by Persons with disabilities in Kenya.

- a. A person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning. A person with any disability is entitled
- b. A person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.
- c. A person with any disability is entitled to reasonable access to all places, public transport and information.
- d. A person with any disability is entitled to use Sign language, Braille or other appropriate means of communication.
- e. A person with any disability is entitled to access materials and devices to overcome constraints arising from the person's disability.

#### Rights of the Youth in Kenya

- a. Right to access relevant education and training.
- b. Right to have opportunities to associate, be represented and participate in political, social, economic and other spheres of life.
- c. Right to access employment.
- d. Youths are protected from harmful cultural practices and exploitation.

#### Rights of Minorities and marginalized groups in Kenya.

*The constitution specifies a marginalized community as;*

- A community that because of its relatively small population has been unable to fully participate in the integrated social and economic life of Kenya as a whole.
- A traditional community that, out of need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya.
- An indigenous community that has retained maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy.
- Pastoral persons and communities, whether nomadic or settled and because of their relative geographical location, have experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

### ***Rights of Minorities and marginalized groups***

- a) Minorities and marginalized groups have the right to participate and are represented in governance and other spheres of life.
- b) Minorities and marginalized groups have the right to be provided special opportunities in educational and economic fields.
- c) Minorities and marginalized groups have the right to be provided special opportunities for access to employment.
- d) Minorities and marginalized groups have the right to develop their cultural values, languages and practices.
- e) Minorities and marginalized groups have the right to reasonable access to water, health services and infrastructure.

### **Rights of older members of society in Kenya**

- a) Right to fully participate in the affairs of society.
- b) Right to pursue their personal development.
- c) Right to live in dignity and respect and be free from abuse.
- d) Right to receive reasonable care and assistance from their family and the State.

### **The Kenya National Human Rights and Equality Commission**

This commission was entrenched in the Constitution of Kenya (2010) to replace the KNHRC. The commission constitutes at least three but not more than nine members appointed by the president with the approval of the national assembly.

#### ***Objectives;***

- a) To protect the sovereignty of the people.
- b) To ensure secure observance by all state organs of democratic values and principles
- c) To promote constitutionalism

### **Functions of the Kenya National Human Rights and Equality Commission**

- a) It has a duty to promote respect for human rights and develop a culture of human rights in the republic.
- b) A duty to promote protection and observance of human rights in public and private institutions.
- c) It monitors, investigates and reports on the observance of human rights in all spheres of life in the republic, including observance by the national security organs.
- d) It receives and investigates complaints about alleged abuses of human rights and takes steps to secure appropriate redress where human rights have been violated.
- e) It acts as the principal organ of the state in ensuring compliance with obligations under treaties and conventions relating to human rights.
- f) It investigates any conduct in state affairs, or any act or omission in public administration in any sphere of government, which is alleged or suspected to be prejudicial or improper, or to result in any impropriety, or prejudice.
- g) It investigates complaints about abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

**END**