

Study Session Two

Meaning and the principles of Rule of law

INTRODUCTION

Welcome to session Two on the module “understanding law and justice systems” This session tries to introduce students with the concept, purpose and fundamental features of the rule of law. By so doing this topic tries to enable students view the topic through various perspectives and how it applies in their daily lives.

Study Session Outline

- I. Concepts of rule of law.
- II. The purpose of rule law.
- III. The features of rule of law

Duration of study session-2 hrs of formal study time required

Learning Outcomes of

Study Unit Two

At the end of this unit students will be able to;

- *Describe rule of law*
- *Explain the purpose of rule of law*
- *Discuss the core characteristics of rule of law*



UNIT TWO

Meaning and principles of the Rule of law

2.1 The concept and meaning of rule of law

The **rule of law** is defined “the authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.” (*Oxford English Dictionary, 3rd ed*)

The **rule of law** is a notion that defines the ultimate authority of the law on governmental actions & individual conduct. This implies that governmental and individual actions should comply to the law. (*Anthony Valcke ,2012 p3*) this means rule of law is an institutionalized instrument that created as one norm or practice of a society to treat all the citizens of a country equally and fairly, this institutionalized process is always a guarantee for the people dictatorship form of a government will not be created if the rule of law is very strong and applicable according to what it says. And to be more specific on the arbitrariness **rule of law** prevents people from the use of excess power of government, and where there is rule of law the misuse of power will get its end. (*Ibid, 2012 p4*)

Where there is no **rule of law** and there is an arbitrary form of government that government will be able to act without the limitation of law when it wishes to do things, they do it regardless the law orders or regardless the interest of the public. The **rule of law** implies "the empire of laws and not of men" (*Mortimer N.S. Sellers, Research no 2015-15, p3*)

The **rule of law** is a conception that defines the highest power of the law over governmental activities and individual conduct. It implies that both the governmental responsibilities as well as

the intrinsic individual behavior are ruled by law, **rule of law** therefore implies that every citizen including the government officials, politicians, people with socially accepted status are subject to the law and governed by law not according to their individual interest, including the lawmakers (Legislators) themselves.

The notion of Rule of law contradicts to the idea used traditionally that the ruler is above the law, as it was historically accepted in various states, for example, the recognition of the divine right and dictators, (*Anthony Valcke, 2012 p4-9*)

Hence '**rule of law**' denotes, everyone is under the law and everyone is subject to the law.

Rule of law and rule by law are different concepts, as we have seen in the discussions above, rule of law implies that no one is beyond the law and everyone should obey the laws that are supposed to be respected by everyone and the laws to be respected are believed to serve for every one equally, achieve justice and fairness. However, it may be possible that governments impose whatever they want including unfair and unjust decisions upon their people based on unjust, unfair, and undemocratic laws. This propensity may be mentioned to as rule by law not **rule of law**.

In general, the **rule of law** implies that the enactment process of laws, the enforcement and implementation of law, and the associations among legal rules is always regulated, so that no one even government officials is above the law. The legal implication of rule of law is that the government should obey existing laws as much as its citizens do. Rule of law is also highly related with the conception equality before the law, which proposes that every citizen of a country is subject to laws of the country.

One of the concerns that mostly specified to this perceptions of **rule of law** is the privileges that most of the time given to the high placed government leaders, and there are exclusive rights that only given to a person by the mere fact that he or she is a member of a cabinet of he or she is a member of the legislator parliament, even though all citizens of the state are equal and the laws of the country should be applied to all those rights are given to those public leaders by the interest of the public, which means that those people are not only responsible for themselves but also they are accountable to the minster office or any other organ of the state so that they need some exclusive exercised rights, but this immune right of those government officials are with limited

lists of privileges; in addition limiting those privileges is basically to not use abuse of power by government officials.

The **rule of law** requires such basic necessities about how the law should be recognized in society, it also implies definite abilities about the characteristics and composition of the laws themselves. In particular, laws should be open and clear for everyone; general in form, and universal in presentation meaning its application should be for all not limited by political involvement or governmental rank, and knowable to all, law must be publicized to all members of the society regardless to the position they have. Thus, the law should be comparatively stable and include determinate necessities that people can refer before acting, and legal obligations should not be retroactively established. Furthermore, the law should remain internally consistent, if the law by itself is not stable and if there is inconsistency the people arise violence against the law.

2.2 The purpose of rule of law

The following can be mentioned among the purposes of **rule of law**:

Having **rule of law** in any state implies that each and every citizen is subject to laws and law of the country, and in building democracy or fair Justice Systems the contribution of this idea of **rule of law** has a noteworthy input. And among the major purposes of **rule of law** is that it will minimize the interest of individuals to gain political and governmental positions and if the contrary is true and a state is with no principle of **rule of law** plus if the governmental ranked officers are not subject to the laws of the country every person will be interested to get in to the positions which the laws of the state did not exposure. (*Anthony Valck, March, 2012*)

Another purpose of **rule of law** is that it will guarantee every citizen of the country as they are equal and treated fairly by the laws of the country the similarly, this purpose of **rule of law** can lead the people of the state to build trust and believe on the law of the state. (*Ibid,2012*)

2.3 Core characteristics of Rule of law

Rule of law is expressed by the following core characteristics

A. Legality

The principle of legality reveals that laws must exist in order to be tolerated by all. This principle of **rule of law** shares that for the acceptance of the law and to its existence in needs to be accepted by all, that means society ought to be ruled by a government of laws, government officials should show respect for the law. Moreover, individuals and governors must accept the law equally and the legality of **rule of law** can be assured by its approval by all the citizens. To speak about rule of law there must be laws before promulgated by the relevant authority that is also intended to be respected by the governor and the governed. (*Gebremeskel Hailu, 2019*)

B. Controls on the discretion

All powers should be with certain limits, there must be controls on executive discretion so that unrestricted authority does not lead to arbitrariness. (*Gebremeskel Hailu, 2019*) This means **rule of law** is a means of limiting the government power. If there is no law and rule of law, the government may exceed and abuse power. In this case rule of law is a mechanism of limiting government power and ensures check and balance and enhances accountability in cases of abuse. For example, the constitutions of *Somalia, Sudan or Ethiopia* may serve as mechanism by which government powers and duties are listed at the same time rights of citizens are provided in a broader context. That means the constitutions put limits on the scope of government power and the realm under which citizens exercise their rights.

C. Independent Justice System

When we discuss about the independence of the judiciary it demands for the existence of an institutionalized, independent Judiciary that can realize the rule of law. An institutionalized, independent judiciary is crucial to both functions of the rule of law: it is also important to hold government officials accountable, and to resolve disputes between citizens according to the law. This means establishing an independent and impartial judicial system is a fundamental element in realizing rule of law. Independent and impartial judicial system may include independent judicial

organ as institution and imperial and independent judges and court staff. (*Ayalew Getachew, august 2012, pp113*)

D. Just and fair Legality

Rule of law encapsulates certain values and it is expected to comply with certain standards. Most of the values of rule of law are often embodied under the human rights values, for example equality, fairness, justice etc... In other words, rule of law can mean complying with the substantive human rights values. The fundamental human rights values also honor & promote human liberty, equality & dignity. (*Gebremeskel Hailu, 2019*) Human rights values and principles provide limits on state powers to restrict citizen's rights. Therefore, we can see that many of the human rights values and principles serve as a means of realizing rule of law.

E. Socio-economic justice

As many writers indicate, socio-economic justice is part of the human rights area. One of the writers Roosevelt suggests world peace and the enjoyment of civil and political rights may rely on the area of economic justice. State should support for socio-economic policies to help the weak, the oppressed & the marginalized. The realization and fair distribution of the above rights may also demand the intervention of states. That means states should ensure rule of law in order to achieve socio-economic justice. (*Ibid, 2019*) Hence, rule of law is vital tool in achieving economic justice.

F. Effective Government

Effective governance may emanate from factual control and administration of certain territory or as a result of elections. In either way, the government should be capable of enforcing the law & order & ensuring socio-economic & legal justice. If there is no effective government that can enforce laws, it may be impossible to talk about rule of law. Citizens are expected to respect the law and accept the results of all legal processes. (*Gebremeskel Hailu, 2019*)

Self-Review Questions

1. Define **rule of law**?

2. What are the principles of **rule of law**?

3. Do you agree with the idea “the rule maker should be above the law” why?

4. Discuss the distinction between **rule of law** and rule by law?
