

Unit 2

Rule of Law

Introduction

In Grade 9 lessons, you studied and discussed basic principles of rule of law. You have also learnt concepts such as constitution and corruption. Now you will see the relationship between rule of law and constitution, how rule of law limits the power of the government, how a constitution is drafted and how a constitution is a source for the rule of law.

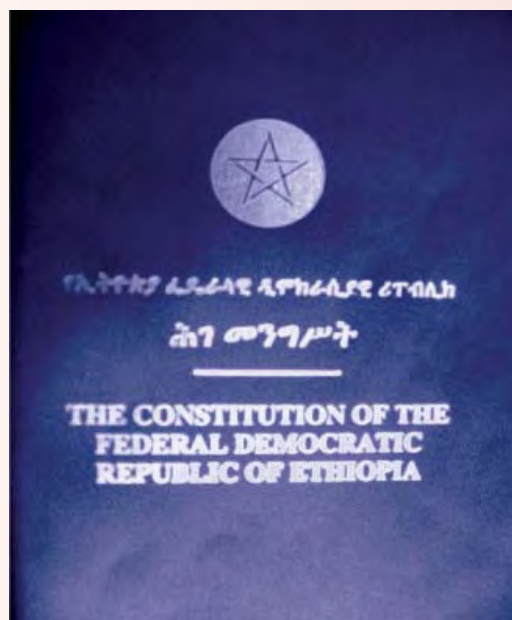
Lessons

1. Constitution as a Source of Rule of Law
2. Understanding Rule of Law
3. Rule of Law as an Instrument to Limit the Political Power of the Government
4. Breakdown of Rule of Law

What you will learn

You will:

- recognize the role of a constitution in a society.
 - recognize the importance of rule of law.
 - understand the consequences of absence of rule of law.
- ### Key words and concepts
- Constitutional development
 - Custom
 - Dictatorship
 - Federal government
 - International law
 - Monarchical absolute power
 - Summary execution
 - Unlimited power



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LESSON

Constitution as a Source of Rule of Law

By the end of this lesson, you should be able to:

- define the major purpose of a constitution.
- explain how constitutions have been drafted in Ethiopia.

- List some of the main purposes of a constitution, and discuss as a class.
- Do you have any idea how a constitution was drafted in Ethiopia?

In previous unit, you have learnt about building a democratic system. All states have a constitution. Most constitutions, whether they are written or unwritten, are basic documents of that country or state. Therefore, a constitution is a fundamental law of a country, which:

- establishes the relationship between the state and the society;
- provides basic organs of government and administration;
- provides for the structure, composition, powers and principal functions of these organs;
- defines the interrelationships of these organs with each other, and regulates their relationship with the people or citizens.

For example, the FDRE Constitution in Article 1 establishes the state:

Nomenclature of the State

This Constitution establishes a Federal and Democratic State structure. Accordingly, the Ethiopian state shall be known as the Federal Democratic Republic of Ethiopia.

The Constitution also establishes the basic organs of the government.

The three basic organs of the government are:

- the legislature, or the parliament, which makes laws;
- the executive which implements and executes laws;
- the judiciary which interprets the laws and administers justice.

For example, in the FDRE Constitution, Article 50 clearly defines the structure and organs of the government as follows:

Article 50

Structure of the Organs of State

1. *The Federal Democratic Republic of Ethiopia comprises the Federal Government and the State members.*
2. *The Federal Government and the States shall have legislative, executive and judicial powers.*

? Form groups in class and each take one of the three organs of the government. Discuss their functions and importance, then present a summary of the discussion to the class.

Constitution as a Source of Rule of Law



Emperor Haile Selassie I addressing parliament

In the following readings, you will see some important points on how a constitution is formulated and ratified in Ethiopia.

The 1931 Constitution

It was the first written constitution formulated and ratified by Emperor Haile Selassie. This Constitution provided the three organs of the government. It created a bicameral (two-house) parliament — upper house and lower house. The upper house was strong, composed of important members of the nobility, selected and appointed by the Emperor. The lower house had an advisory role, and was composed of individuals elected by the nobility in the upper house. Therefore, there was no public election of any of the members of the houses.

Second, the Constitution established a ministerial executive and a judiciary with the Emperor's court "Zufan Chilot" as the last court of appeal. Third, the Constitution legalized the Emperor's absolute power. That meant, all powers and authorities, such as appointment and dismissal of any government officials, granting land, the rendering of justice and declaring war

and all other necessary power and authority, was in the hands or will of the Emperor.

An article from the 1931 Constitution reads:

Chapter 2

6. *The Emperor of Ethiopia has full and supreme governance over the Imperial realm. He secures the operation of governance, acting in accordance with established law.*

? Discuss the nature of the 1931 Constitution in terms of its formulation and recognition of the rights of the people. Present the summary of your group's discussion to the class.

The 1955 Revised Constitution

The Emperor revised and granted the 1955 Constitution. This Constitution gave more attention to strengthening the absolute power of the Emperor and his family. It declared that the Emperor had an absolute power over the executive, the legislature and the judiciary. This Constitution also granted him power over the Orthodox Church. As a result, all rules and regulations of the church were issued by the Emperor, and the election and appointment of the patriarch were to be approved by him.

Unlike the 1931 Constitution, the 1955 Constitution gave at least a textual recognition to rights and liberties of citizens. For instance, the right to vote was recognized in the process of electing the members of the Chamber of Deputies. But moveable properties or possession of land, the value of which was to be determined by the electoral board, was a requirement to be a rightful candidate.

There was a notable indifference in the protection and enforcement of rights and liberties of the people. The Emperor, on the other hand,

Constitution as a Source of Rule of Law

had an inviolable right and was not accountable to the people.

Article 62, from the 1955 Constitution states:

- (a) *In accordance with tradition and the provisions of article 4 of this constitution, no one shall have the right to bring a suit against the Emperor.*

? List some of the differences of the two Imperial constitutions. What are the main differences? Discuss in a group. Present the summary of your discussion to the class.

The 1987 Constitution

This was the third written constitution in Ethiopia. In 1974, after the fall of the Imperial regime by the popular struggle, Derg, the military Junta, took the peoples' victory, assumed power and established a temporary government called the Provisional Military Administrative Council (PMAC). At this time the country was without a constitution and was ruled arbitrarily by proclamations. After some time the Derg came up with the 1987 Constitution. This constitution was formulated by small groups of officials and their supporters. It was eventually ratified by a meaningless referendum.

The 1987 Derg Constitution emphasized socialism and territorial integrity as a policy of the country. The Constitution, with its 119 articles, explicitly and implicitly affirmed socialist values. The preamble started by making the "Working people of Ethiopia" owners of the Constitution. It established a unitary state with administrative and autonomous regions. The ultimate power was said to reside in the working people, exercised through their assemblies called Shengo.

The Constitution also provided for a Council of State headed by the President as the executive

organ. The powers of leadership over the only political party, the Shengo, the Council of State, and the armed forces were to be vested in the President. The concentration of power in the hands of one person weakened the principle of separation of power. Thus, the President became a virtual dictator.

Articles from the 1987 Constitution

Article 3

1. *In the Peoples' Democratic Republic of Ethiopia, power belongs to the working people.*

Article 6

1. *The Worker's Party of Ethiopia, which is guided by Marxism-Leninism, is a vanguard party dedicated to serve the working people and protect their interests.*

? Discuss the characteristics of the 1987 Derg Constitution in a group. Present the summary of your discussion to the class.



Colonel Mengistu Haile Mariam, the embodiment of a dictatorship

Constitution as a Source of Rule of Law

The 1995 Constitution

After the fall of the Derg in 1991, the resistance groups fighting against the Derg came together and formed a transitional government and formulated a transitional charter. The 1991 Transitional Charter laid the base for the adoption of the 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE).

The 1995 Federal Constitution was formulated by a Constitutional Commission with the participation of the public. This constitution was ratified by the Constituent Assembly elected by the nations, nationalities and peoples of Ethiopia.

An article from the 1995 Federal Constitution states:

Article 8

Sovereignty of the people

1. *All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia.*

2. *This Constitution is an expression of their sovereignty.*
3. *Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation.*



House of People's Representatives, the embodiment of the will of the people

? List some of the basic differences of the 1987 Constitution, and the 1995 FDRE Constitution. Discuss in a group and let each group present one of the Constitution's basic concepts, then discuss as a class.

REMEMBER

- ❑ The 1931 Constitution was the first written constitution in Ethiopia. It was made and 'given' by Emperor Haile Selassie I.
- ❑ The 1931 Constitution was revised in 1955.
- ❑ Unlike the 1931 Constitution, the 1955 Constitution gave at least a textual recognition to the rights and liberties of citizens.
- ❑ The 1987 Derg Constitution emphasized socialism and territorial integrity as a policy of the country.
- ❑ After the fall of the Derg in 1991, the Transitional Government of Ethiopia (TGE) was established.
- ❑ The TGE's guiding document that served as a constitution was the Transitional Charter.
- ❑ The 1995 FDRE Constitution was adopted in August 1995.

LESSON 2

Understanding Rule of Law

By the end of this lesson, you should be able to:

- explain the importance of rule of law in governing human relations.
- describe the sources of rule of law.
- explain the different types of law.

Do you have any idea how the rule of law affects your own life?

In Grade 9, you were exposed to the concept and practice of the rule of law. In this lesson, you will learn more about it and explore the wider horizons of the rule of law. You will be able to understand how the rule of law evolves and governs relations between individuals, groups and institutions.

The rule of law is a political and legal concept which is closely related to democratic governance. The practice of the rule of law is possible when people are the source of power of government. In non-democratic governments, laws can be practiced, but this does not give rise to the rule of law. Obviously, this is because such governments do not have the mandate of the people to rule and, as a result, they are not transparent in what they are doing — the basis of rule of law.

In a democracy, rule places the law above persons and institutions. The practice of law governs all social relations. In a democracy, law is like a big umbrella that stretches over the heads

of citizens of a country. It gives them equal shade and protection. The umbrella does not allow anyone to step on it but everyone can remain under it.

It is this concept and practice of law that gives rise to what is commonly called the rule of law. It is an overriding principle to place the law above everybody. Under the rule of law, citizens have no fear of officials because the law treats everyone equally.

To be an official does not mean they are immune from the exercise of the rule of law. They cannot manipulate law to their own personal interests. Any attempt by officials to do so results in punishment. The rule of law means the general practice of the legal system in democracy has constitutional backing. It is the constitution that ensures the practice of the rule of law.

Laws in general are formulated taking many factors into consideration. These include customs, traditions and culture. So, usually laws are specific to their country of origin.

The rule of law in a democracy upholds the respect to the supremacy of the person. To think that the person is supreme is to uphold human rights and to believe that man is the source of power and the very foundation of democratic rule. This thinking upholds the sovereignty of the people.

Understanding Rule of Law

State sovereignty is another source of the rule of law. This requires territorial definition and capability to protect its people from invaders. A democratic government has to promote and ensure rule of law.

The concept of law incorporates varieties of laws. In religions, there is a belief called **divine law**. Such a law is considered to be the outcome of divine power. This belief considers that everything else in this world and in the universe is created by a supernatural force. To those who believe in **divine law**, this force has given the universe reason for its existence.

The other variety of law is **natural law**. This law is supported by scientific discoveries. Natural law confronts divine law, denying the existence of a supernatural force. In science, natural law governs the existence of the universe and everything else. The law of gravity is one of the natural laws that you might know.

Common law comprises the body of those principles and rules of action relating to the existence of government, security of persons and

property. This arises from the usage, customs, judgements and decrees of courts recognizing, affirming and enforcing such usage and custom.

Statute law is a formal written law enacted by the legislative body declaring, commanding or prohibiting something. So it is different to common law in form. Statute law derives its authority from the declaration of the will of the legislative. The laws issued by the House of Peoples' Representatives are examples of statute law.

International law includes those customary and treaty (convention) rules which are considered legally binding by states in their relation to each other. It may be defined as the body of general principles and specific rules which the members of the international community consider binding upon them in their mutual relations. The UN Universal Declaration of Human Rights of 1948 gave rise to a number of international agreements and conventions. These agreements and conventions govern relationships between countries.



National army working
for the rule of law

? What is the difference between rule of law and absence of rule of law?
Discuss as a class.



Education is important for
rule of law to be effective

Understanding Rule of Law

REMEMBER

- ❑ Rule of law evolves and governs relations between individuals, groups and institutions.
- ❑ Rule of law is closely related to democratic governance.
- ❑ Rule of law is possible when people are the source of the power of government.
- ❑ In non-democratic governments, laws can be practiced, but this does not give rise to the rule of law. This is because such governments do not have the mandate of the people to rule.
- ❑ Divine law is a belief that considers everything in this world and in the universe to be created by a supernatural force.
- ❑ Natural law claims the universe and everything else to be governed by nature.
- ❑ Common law comprises the body of those principles and rules of action relating to the existence of government, security of persons and property as per usage, customs and decrees of courts.
- ❑ Statute law is a formal written law enacted by the legislative body declaring, commanding or prohibiting something.
- ❑ International law is the body of customary and treaty (convention) rules, which are considered legally binding by states in their relation to each other.



Members of the Derg government brought to trial for their violation of rule of law

LESSON 3

Rule of Law as an Instrument to Limit the Political Power of the Government

By the end of this lesson, you should be able to:

- describe that rule of law serves to limit the power of the government.
- abide by the rule of law yourself.

What do you think is the relationship between rule of law and limiting the power of government officials?

In your previous lesson, you learned that rule of law is a situation in which all citizens, including government officials, are bound by the law of a country. That means nobody can be above the law. This is true in democratic countries where all people, including government officials, are under the rule of law and their political power is limited. One of the major purposes of law is to limit government power. This means a government must act only according to the laws, particularly the constitution. In democratic countries, the power of the government is limited through protecting the rights and freedoms and by making the government transparent and accountable in its activities.

But there are countries in which government authorities are not under the law and act above

the law. In most cases they violate or disrespect the law for their personal or group benefit. In this case you can understand that the absence of rule of law can lead to authoritarian rule whereby individuals or groups are above the law and violate the freedom and rights of the people.

From your discussion about the Ethiopian Constitution you already know that the concept of rule of law in Ethiopian history was unthinkable. Up to 1991, it was rule by kings and the rule of the authoritarian and the few. For example, the 1931 and 1955 Constitutions of Imperial Ethiopia gave all power to the Emperor. The king was the sovereign, not the people. The king was the one who gave the Constitutions to his subjects. The king held all powers. That means he was the law maker/the legislature, the executive, and the judiciary. It was clearly stated in both Constitutions that the king's power was of divine origin and he belonged to the Solomonic dynasty, the lion of Judah, which mythically traced back its origins to King Solomon of Jerusalem and Queen Sheba of Ethiopia. This myth brought the Emperors into a blood relationship with Christ in the house of David. Thus, Ethiopian Emperors had been regarded as having mystic, semi divine powers, guaranteeing the wholeness and prosperity of their people.

Rule of Law as an Instrument to Limit the Political Power of the Government

In 1974, following the Ethiopian popular revolution against the Imperial regime, the Derg came to power. The Derg continued ruling the country without a constitution. It simply nationalized land and houses, issued special penal laws and established a special court by decrees and proclamations. People were killed and tortured, detained or put in jail arbitrarily, without any decision of courts by the local and central government authorities.

After 12 years of arbitrary rule the regime came up with the 1987 Constitution. This constitution allowed only one party for governance. It did not allow multiparty democracy. All power was concentrated in the hands of few officials. Under the Constitution, the president was the head of

the executive, the party, the National Shengo/the legislature and the armed forces. Hence the Derg's Constitution failed to confirm rule of law, as the party, and the government exercised unlimited power.

Divide the class into three groups.

- The first group will discuss the rule of law and list its major expressions.
- The second group will discuss the nature of the rule of law during the Imperial time and list its points.
- The third group will discuss the nature of rule of law during the Derg time and list its points.
- Each group will present its list to the class for further discussion.

The consequences of unlimited power

Haile Selassie 'The existence of Ethiopia has no meaning without me'



Red Terror
'This must not be repeated'



Rule of Law as an Instrument to Limit the Political Power of the Government

? Discuss the consequences of unlimited power. Present the summary of your discussion to the class

From what you have read you can see that Ethiopia had little or no experience of the concept of rule of law.

In the past history of Ethiopia, the power of government and its officials had never been limited, which resulted in serious violation of human rights and freedoms. Therefore, it is very important to limit the power and functions of every organ of the government together with their officials.

As it was clearly written in the 1995 FDRE

Constitution, rule of law is respected by limiting the power and functions of government organs and their officials through the systems of check and balance and accountability.

Unlike the past constitutions, the 1995 Constitution gives the political power to the nations, nationalities and peoples of Ethiopia. This will guarantee to limit the power of elected officials in respect to the rule of law.

? Limiting the power and functions of government organs and their officials is important for the prevalence of rule of law. Why? Discuss in your groups and present your findings for a class discussion.

REMEMBER

- ❑ In democratic countries everybody, including government officials, is under the rule of law.
- ❑ The major purpose of rule of law is to limit the government power.
- ❑ In the past history of Ethiopia, the power of government and its officials had never been limited, which resulted in serious violations of human rights and freedoms.
- ❑ Unlike the past constitutions, the 1995 FDRE Constitution gives the political power to the nations, nationalities and peoples of Ethiopia.

LESSON 4

Breakdown of Rule of Law

By the end of this lesson, you should be able to:

- describe the consequences of breakdown of rule of law.
- explain the ways in which corruption occurs with the breakdown of the rule of law.
- describe how to struggle against corruption within your capacity.

What do you think would be the consequence of the breakdown of rule of law.

As you have already seen, rule of law is very important to maintain peace and stability in a society. Without rule of law it becomes impossible to maintain peace and stability, since everyone does whatever he or she wants.

When the rule of law breaks down there is a violation of human rights. In such a situation there is nothing that limits the actions of people. Some people violate the rights of others for the purpose of benefiting themselves or to protect their own interests. However, it is important to protect the rights of citizens as well. It is also important for the government to protect human

rights, public security and the common good of the society. Without the prevalence of rule of law, such goals could not be achieved.

Governments violate the rights of humans when the rule of law breaks down. There have been many instances where the governments of Ethiopia used military power to violate human rights. Summary executions are good examples of this case. Summary execution means carrying out death sentences without any formal legal procedure or due process of law. During the Derg regime in Ethiopia in the late 1970s such summary executions happened. It was a period called 'Red Terror'.

During that time there was mass killing, torturing and imprisonment of people who were suspected of being 'anti-revolutionary'. This was done without reviewing the facts and without taking them to court. Dead bodies were seen scattered on the streets. These killings continued without due process of law. People were killed, as mentioned above, just because they were suspected of having a different opinion. You can see that, at that time, the rule of law broke down. It was not able to protect the rights and freedom of citizens.

CASE STUDY

A victim of the Red Terror

There was a woman living in Addis Ababa who had a daughter and a son. She brought them up as

a single mother but she had no regular income to feed and send them to school. She made a living by

Breakdown of Rule of Law

collecting firewood from a far distance and selling it. Sometime she would bake injerra and wash clothes to supplement her income. In spite of the painful way of life, the children succeeded in their studies and passed their exams in Grade 12.

In 1978, on a certain Sunday, the so called ‘Revolutionary Guards’ came and took her children away when she was up on the hill collecting firewood. She never knew what happened to her children. After six months she heard the news that they were both killed. Later she heard that it was her neighbour who told the ‘Revolutionary Guards’ to take them away. He did that because once he quarrelled with the son.

Sadly, after they died the woman discovered that the daughter had scored 3.8 in the school-leaving examination but she was not alive to enjoy such a great achievement. The score would have entitled her to join the medical faculty she was aiming for. The woman lost not only her children but also the hope for a better life that her children would have achieved.



- Discuss this story of the woman and her life?
- What do you think would have happened had there been rule of law?

In Grade 9, you discussed the different types of corruption. Corruption exists when there is a breakdown of rule of law. Without rule of law it becomes easier for corrupt people to continue these misdeeds.

Corruption is the act of using a government position for one’s own or others’ advantage. When there is a breakdown of rule of law, government officials will have a chance to be corrupt without accountability. This could be in the form of accepting bribes. A bribe is the act of taking money or a certain benefit in return for favoring the person or institution that pays the money. Another form of corruption is using public property like a car,

telephone or other resources for personal use or benefit.

When there is rule of law, it is easier to identify and punish the government officials engaged in corruption. On their part, the government officials will be forced to consider the consequences of being engaged in corruption before participating in it. But without rule of law, officials engaged in corruption will feel that nothing will happen to them.



- List any manifestations of corruption that you have observed in your school and in life and present your ideas to your class.

REMEMBER

- ❑ Rule of law is very important to maintain peace and stability in society.
- ❑ When rule of law breaks down there will be a violation of human rights.
- ❑ Summary execution means carrying out death sentences without any formal procedure or due process of law.
- ❑ Where there is a breakdown of rule of law, government officials may have a chance to be corrupt.
- ❑ When there is rule of law it is easier to identify and punish the government officials engaged in corruption.

UNIT SUMMARY

In Grade 9, you learnt that rule of law is one of the main constitutional principles in any democratic society. As you have seen in this unit, there is a strong relationship between constitution and rule of law to limit the power and functions of government organs and their officials. The Constitution is an important legal and practical document which distributes power to government organs and provides limits of how the power has to be exercised. Therefore the Constitution is the source of rule of law.

In Ethiopian history, we have seen four constitutions under three governments. These are the 1931 and the 1955 Constitutions of the Imperial time; the 1987 Constitution of the military government, and the 1995 FDRE Constitution. These four constitutions were formulated and ratified in different ways. Having a clear idea about the constitutional development of the country helps us to better understand the place of rule of law in Ethiopian history.

To have a clear idea of rule of law and fight for it, it is important to have the knowledge of sources and types of law. This is important because, in a modern democratic society, law is the major instrument governing human relations and rule of law is the overriding principle in these relations. So it is imperative for citizens to know the sources, like the customs, traditions and sovereignty of the people; and varieties of law, like divine law, natural law, common law, statute law and international law, that govern their relationship between themselves and their government.

One important point that you should understand from the lessons in this unit is that, in the past, the concept of rule of law had no place in Ethiopia. In other words, in the relationships between citizens and government there was no prevalence of rule of law. The government power was unlimited and there was a breakdown of rule of law. The breakdown of rule of law led to a gross violation of human rights such as summary executions and rampant corruption.

GLOSSARY

Absolute Monarchy:

Rule by kings or emperors having total control over their subjects.

Custom:

Traditional practice accepted by society.

International law:

Customary and treaty (convention) rules, which are considered legally binding by states in their relation to each other.

Summary execution:

Mass killing without due process of law.

Totalitarian government/Dictatorship:

Government whereby one individual/group has total control.

UNIT REVIEW EXERCISES

Do these review exercises in your exercise book.

Part I – True or false

1. There is no rule of law in all countries which have unwritten constitutions.
2. The importance of rule of law is to rule the people according to the will of the government officials.
3. All constitutions in the world equally respect the human and democratic rights of citizens.

Part II – Matching

Column A	Column B
1. The 1955 Constitution	A. Using public property for one's benefit
2. International Law	B. The 1970s Summary execution
3. Corruption	C. International Covenant on Civil and Political Rights
4. Red Terror	D. Absolute Monarchical power

Part III – Multiple choice

1. Which one of the following is true about the written constitutional development in Ethiopia?
 - (a) the Ethiopian written constitutional history began during the early 18th century.
 - (b) the 1931 Constitution was the first written constitution.
 - (c) the 1987 Constitution provided constitutional federalism.
 - (d) (b) and (c)
 - (e) none
2. Identify the valid statement among the following:
 - (a) the concept of rule of law has nothing to

do with constitution.

- (b) Ethiopia had a good experience of prevalence of rule of law.
 - (c) International law is one of the major sources of law
 - (d) all
3. Which one of the following statements is true?
 - (a) rule of law was one of the principles provided under the 1931 Ethiopian Constitution.
 - (b) Universal Declaration of Human Rights (UDHR) which was adopted in 1948 is a good example of International Law.
 - (c) using public property for one's own personal interest is, strictly speaking, not corruption.
 - (d) none
 4. Which one of the following is true about rule of law?
 - (a) rule of law has no role of limiting the power of government.
 - (b) the gross violation of human rights is one aspect showing the breakdown of rule of law.
 - (c) in a government with a constitution, there is always prevalence of rule of law.
 - (d) all

Part IV – Missing words

1. If we say "the 1955 Constitution and the Monarchy", then we have to say "the 1987 Constitution and
2. is a formal written law enacted by the body having the power to issue or enact laws.
3. is carrying out death penalty without having detail and formal legal procedure.