**African Customary Law**

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Legal Systems Very Different from Ours

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* **Abstract**

Many times when laws and policies are imposed by the authority i.e. the king, the government or “from the ground” as customs develop. Authoritarian law necessitates the support of an influential minority whereas customary laws require mutual acceptance (Bruce, 2011, p. 13). Customary laws are rules of conduct that have been long established and formally adopted by a community such that the general law regards as a legal practice. It is worth to note that customary laws are not only accepted because they were supported influential people or organizations but also because people recognizes and acknowledges the benefits of acting in harmony with the society’s expectations. For instance, ‘Law of Nations’ is a customary norm that resulted from historical and diplomatic exchanges between countries. The Twelve Commandments, the Salic Law and Russkaia Pravda are examples of old laws in which customs played a significant role.

Customary laws play a pivotal role in international relations and in settling disputes where legal codes do not cover a particular social relationship. In ancient Africa, customary laws were the only basic legal system based on culture, traditions, and philosophies of each community. This paper seeks to explicate the African Customary laws i.e. to have a clear understanding of how individual communities act about these norms so as to facilitate harmony among the African communities and people outside Africa.

* **Introduction**

African customary law were the initial basic legal systems in the ancient African world and was based on the traditions, culture and philosophies of each community. Each region across Africa had its own form of customary law before they were colonized by the Europeans. These customary law was not one for all the Africans but were based on each community or sect. Some of the customary laws were against the universal ethical principles and some were common and aligned with other people’s inherent customary law. Understanding how the customary law is in Africa would help us deal with people in various regions of Africa basing on their customary laws. It would help also in explaining why certain communities act the way they act and hence facilitate living in harmony between Africans and other people of the world.

**1.1 The Concept of African Customary Laws**

The phrase “African customary law” is a collective term used to describe the different African legal systems primarily ethnic in origin and only operating in the area occupied by a particular community. Most African communities have pluralistic jurisdictions composed of customary laws i.e. cultural, religious, legislated and civils laws. Customary laws are the fundamental laws of most ethnic communities and form an integral part in matters to do with marriage, inheritance, and traditions (Ndulo, 2011, p. 87). Even though the sources of these laws are historically and presently accepted as authoritative, interaction with the colonial rule has influenced the legal setting.

Mutuality is the source of recognition of customary norms. For this reason, people’s rights constitute to most original rules of conduct in court systems. Customary laws treat offenses as torts rather than crimes i.e. a crime committed by a single person affects more than one person before a question of legality is realized (Bruce, 2011, p. 14). However, if a victim commits a crime that harms no one regardless of whether the victim committed the crime alone or with the help of another person, the victim is not likely to be a subject to a rule of conduct.

Customary laws have significant effects on matters to do with inheritance, marriage and political authority. Upon application, customary laws have proved to be discriminating in issues to do with pride price and age of the majority. Women are viewed as adjuncts to the community to which they belong rather than equals (Ndulo, 2011, p. 88). Human right campaigners argue that customary rules undermine the dignity of the females, while on the other hand traditionalists contend that such norms promote cultural and traditional values of a community. Such issues have steamed disputes and debates between human rights activists and the conservatives as to whether common rules are compatible with the bill of duties. For such reasons, it is necessary to assess the role of African customary laws in African legal systems and the current tensions between these statutes and formal human rights.

The primary objective of all jurisdictions is to capture and reinforce cultural norms and ethnic practices. It is, therefore, essential to evaluate customary laws about human rights. When compared, common rules stress on sovereignty rights, duties and responsibilities of people in the community whereas human rights enjoin nations to sign treaties subject to respecting human rights and proper measures that help eradicate gender discrimination (Ndulo, 2011, p. 90). In addition to this, human rights outline that women’s rights are universal and that must be must be exercised by all ethnic groups. Such variances in the two approaches have led to debates; the conservatives blame social activists of attempting to modernize the African culture.

The advent of colonialism in Africa has changed the original setting of customary laws. Industrialization is the primary cause of rural-urban migration. In addition to this, efforts to reform African customary laws seem to be fruitless due to intermarriages, urbanization and formal education (Hinz, 2011, p. 60). The position of African customary laws in the legal system can only be analyzed well using three approaches namely; historical approach, the new constitutions approach and the post-democratization era. The historical approach was used during the colonial period whereas the new law method was used after the independence. The courts play a critical role in efforts of advancing human rights. It is fundamentally essential to assess the role of tribunals in implementing African customary laws and the reaction of courts to norms that promote gender discrimination (Ndulo, 2011, p. 92).

References

Bruce, B. (2011). Customary Law. New York: Pacific Research Institute Press.

Hinz, M. (2011). Comparative Observations from a Namibian perspective. Traditional governance and African Customary Law, 60-65.

Ndulo, M. (2011). African Customary Laws, Customs, and Woman Rights. Cornell Law Faculty Publications, 87-99.

**A comparison between Ancient African Customary Laws and Present Formal Laws**