

Law and Society in African Context

Counsel Victor Onzere*

Abstract

This paper focusses on the effects of Law and Society in African Context dwelling specifically with East African Countries and other African countries and its effects on the economies of these countries as well as the societies in these countries. It discussed the following subtopics Law and Society: Aristotle's Version 384–322.B.C.; Law and Society: Plato's version 429–348B.C.; Law and Society: Plato's version; Law and Society: Aristotle's Theory of law; Law and Society: Functions of law; Law and Society: Justice; Law and Society: Stability; Law and Society: Certainty; Law and Society: Flexibility; Law and Society: Regulatory; Law and Society: Enforcement; Economic Growth: Fight against Corruption: Conclusion: Access to Justice: Deterrence against Crimes: Political Instability: Violation of Human Rights: Dictatorship: and Corruption.

Keywords: Corruption, criminal court, human rights, justice, law, society

INTRODUCTION

Law and Society have for a very long time been used by politicians to control, manage and violate the various human rights and needs of the majority of the masses. I am going to focus on the effects of Law and Society in African Context dwelling specifically with East African Countries and other African countries and its effects on the economies of these countries as well as the societies in these countries.

Law and Society work hand in hand for the good or the bad of the society and country as a whole which affects the continent and the world at large hence I shall focus of both the positives and negatives of law and society giving examples to occurrences of up-to-date matters.

LAW AND SOCIETY: PLATO'S VERSION 429–348 B.C. [1]

- Law is one of the means to social control. In Africa many countries use law to control the behaviors, thoughts and appearance mainly controlled by governments. In Kenya this has led to widespread gap between those in power, the poor and the rich
- Plato's the state of Republic is an executive state, governed by the free intelligence of the best men rather than by the rule of law. Justice is too administered "without law".
- Plato said law is always imperfect.
- Justice administered without law.

*Author for Correspondence

Counsel Victor Onzere

E-mail: psydney18@gmail.com

Managing Director, Syper Collectors Enterprise Limited
Alumnus Mount Kenya University School of Law, Nairobi
Kenya

Received Date: January 11, 2021

Accepted Date: January 17, 2021

Published Date: June 05, 2021

Citation: Counsel Victor Onzere. Law and Society in African Context. Journal of Constitutional Law and Jurisprudence. 2021; 4(1): 38–42p.

LAW AND SOCIETY: PLATO'S VERSION

- Plato admitted it is difficult to get man of highest wisdom to build utopia state (perfect state). In the Republic of Rwanda, the President has changed the constitution to extend his term since 1994 (genocide in Rwanda by Philip Gourevitch) and this has made it hard for the society to have new leadership to enhance the growth of the country as a whole [2].
- He (Plato) prepared for second alternative state with law in his The Laws.

LAW AND SOCIETY: ARISTOTLE'S VERSION 384–322 B.C. [3]

- Student of Plato. Postulated a state based on law as the only practice able means of achieving the “good life”. Even the man who is eminence in virtue must rule the state with law. Nigeria as a country has had mass violation of Human Rights by allowing groups like Boko Haram (Beneath the Tamarind Tree by Isha Sesay) [4] to reign terror on civilians leading to economic instability and insecurity.
- Man, he explained “when perfected is the best of animals, but is isolated from the law and justice, he is worst of all”.

LAW AND SOCIETY: ARISTOTLE'S THEORY OF LAW

- Rightly constituted laws should be the final sovereign. Uganda as a country has had one president for over 30 years which, in accordance with the 1962–1967 Uganda constitution, was not supposed to be the case [5].
- Reason should rule not man should rule because reason is free from all kinds of passion.
- Imperfection of law can be cured by principle of equity. There is no equity in most African countries due to inadequacies in implementation of laws fully.

LAW AND SOCIETY: FUNCTIONS OF LAW

- Justice
- Stability
- Certainty
- Flexibility
- Regulatory
- Enforcement

LAW AND SOCIETY: JUSTICE

- In Kenya the Supreme Law of the Land is the Kenyan Constitution which was enforced in 2010. It provides for the various laws of the land which are very good but have not yet been fully implemented on the ground [6]. This is because the rich can afford to buy their way out even though there are daring facts that implicate the offenders. Many are not able to get justice as most of them are not able to even afford lawyers. This has led to the decay of moral values in the society (A theory of Justice by John Rawls of 1971) [7].
- Uganda has also a constitution that dates to 1995 which is also good, but the implementation is poor, the president has become a dedicator and massively violated the same constitution so as to protect his interests [8].
- There is a saying in Law that says, “justice delayed is justice denied (William E. Gladstone)” and this saying has been applied in many African Countries leading to mass failure in access to justice leading to the growth of a lawless society making people lose faith in Laws [9].

LAW AND SOCIETY: STABILITY

- The constitution of Tanzania was implemented in the year 1977 and has been a good tool in upholding the norms of the people of Tanzania. There has been smooth transitioning of power from one regime to another [10].
- The laws have not been amended to feed the needs of politicians who are in power which has tremendously led to the stability of the country.
- The Laws have also upheld the cultures of the people of Tanzania who use “Swahili” in their parliament hence reaching even the uneducated members of that country.
- In contrast Kenya, Nigeria, Democratic Republic of Congo and other countries have experienced a lot of violence during transition of power leading to violence and even deaths. This has in turn affected the economic stability of these countries leading to the loss of jobs and insecurity as well as other aspects of the economy.

LAW AND SOCIETY: CERTAINTY

- In most African countries, most of the Laws created are uncertain and easily changed. Kenya for example has very good constitution but a lot of bylaws and legislative acts have been created to work hand in hand with the constitution which has negatively affected the certainty of the constitution. (Certainty in law by Humberto Avila) [11].
- Algeria where there is no direct election has had stability as compared to many other countries that conduct direct elections, this is due to the certainty of the laws that were created way back and have not been tampered with by new laws leading to a sustainable economy and growth.
- Countries like Zimbabwe and Rwanda have also had their fair uncertainty of their laws as the presidents who have been in power have on various occasions amended the laws when elections are about to occur leading to massive electoral malpractices thus affection the stabilities of this countries and their economies at large.
- Certainty of laws leads to steady growth and stability of the society while uncertainty on the other hand leads to massive insecurity, loss of jobs, loss of lives as well as corruption in the countries.
- South Africa is also another African country that has made tremendous growth in its laws as most of their laws are certain and not easily amended as the other countries do (Justice in South Africa by Albie Sachs) [12].

LAW AND SOCIETY: FLEXIBILITY

- African countries have very good laws that if fully implemented can lead to stability and economic growth (East Africa Community Law by Emmanuel Ugirah Sebuja and others) [13] The other challenge that comes with these laws is their flexibility, this simply means these laws can be easily twisted so as to fit the interests of those who are in power.
- Ethiopia (constitution of Ethiopia 1995) has a flexible constitution which makes it easy for the legislature of that country to be able to amend and change laws at their will, this makes it easier for the politicians to pass laws that may affect the larger masses of the society which has led to increase in unemployment in the country as well as corruption which in turn affects the economy of the country [14].

LAW AND SOCIETY: REGULATORY

- Laws are meant to be regulatory in nature, most legal scholars have said that the main SI Unit of law is to regulate and to punish.
- In Kenya today, the government has embarked in ensuring that the laws created are regulatory and are fully implemented, agencies such as Ethics and Anticorruption Commission have been given powers to fight corruption and, in this year, only the agency has managed to recover billions of shillings that were acquire through corruption. (It's our time to eat by Michela Wrong) [15]
- The Director of Public Prosecution, Judiciary, the Police and other agencies have had an overhaul in their management structures, and this has led to the arrest and prosecution of those who engage in crimes or corruption including politicians and even cabinet secretaries. This is due to the government commitment in ensuring that the laws of the land are regulatory and punish the guilty.
- In contrast Uganda as a country has laws that limit even the freedom of expression by some of the politicians as was seen in the recent arrests and torture of Bobbie wine who is an opposition leader.

LAW AND SOCIETY: ENFORCEMENT

- Enforcement refers to the implementation of laws, this can either be to deter or to punish the violators of the laws in the society (Blood lessons by Chuck Remsberg) [16]
- The president of Tanzania has been the most active in ensuring that all the public officers who go against the laws or are sleeping in the job get punished or laid off duty. Recently he sent home a senior police officer for failing to do his duties as per his job to the public.

- Kenyan president also sent home some of his cabinet secretaries who were accused of being corrupt and taken to court for the same.
- In South Africa the former president was made to step aside after massive corruption allegations were brought against him leading to his resignation (enemy of the people by Adriaan Basson & Pieter DuToit) [17].
- In Libya after years of dictatorship by President Gaddafi, the citizens decided to ensure that the laws were enforced leading to his arrest and detention thus the rule of the law was upheld. (The rise and fall of Gaddafi by Alison Pargeter) [18]
- Sudan also ensures the arrest of former president Bashir for crimes against humanity and many other economic crimes leading to his arrest and prosecution at the International Criminal Court. (The dictator by William Webb) [19].
- It is worth noting that enforcement leads to law and order thus making the economy grow, reducing unemployment, insecurity and other negative effects that come with non-enforcement of laws in the society.

CONCLUSION

Although Law and Society in Africa has had a lot of negative effects in most African countries, it is worth noting that there have been great achievements that among others include:

1. Economic Growth
2. Fight against Corruption
3. Access to Justice
4. Deterrence against Crimes

Economic Growth

Good Laws in societies and various countries has had a positive impact in starting economic growth in various sectors of the economy by ensuring that they prevent economic crimes such as money laundering which affects the economies of the country. Countries such as Kenya, Tanzania Ethiopia and South Africa are some of the good examples of how law has promoted their economic growth.

Fight against Corruption

Stringent measures taken to enforce laws in society have also contributed to the fight against corruption. It is worth noting that some countries in Africa such as Egypt and Morocco have registered a reduction in corruption cases compared to others in Africa due to their laws zero tolerance to corruption.

Access to Justice

Equality before law has enabled all members of the society to access Justice in accordance with the laws and policies of the various countries in Africa hence making justice equal to all.

Deterrence against Crimes

Laws have also deterred members of the societies from engaging in criminal activities due to their punitive nature that includes life imprisonment, hanging or even death in some jurisdictions. This brings order and peaceful coexistence in the society.

It's also worth noting that Laws in societies has also had negative impacts in various countries including but not limited to:

1. Political Instability.
2. Violation of Human Rights.
3. Dictatorship.
4. Corruption.

Political Instability

Weak electoral laws and regulations has led to political instabilities due to electoral malpractices which has led to decline in economic growth in various countries such as Kenya in 2007 election, Sudan, Nigeria not to mention but a few.

Violation of Human Rights

Law and Society has also been negatively affected by poor upholding of the universal human rights due to lack of enforcement. Countries such as Uganda, Libya and South Sudan are some of the countries in Africa with vast violation of Human rights.

Dictatorship

In Africa most countries have flexible and uncertain laws which allow political leaders to manipulate citizen using the law hence leading to dictatorship in these countries, a good example of this countries include Uganda and Zimbabwe.

Corruption

Laws in Society have increased corruption due to the ambiguity of this laws and makes people in position of leadership to exploit their powers by using dubious means leading to growth of corruption levels in countries such as Kenya and Nigeria.

REFERENCES

1. Plato's Version. 429–348 B.C. social control and administration of justice.
2. Philip Gourevitch. Genocide in Rwanda 1994. No perfect state.
3. Aristotle's Version 384–322 B.C. isolation from law and justice.
4. Isha Sesay. Beneath the Tamarind Tree.
5. Uganda Constitution of 1962–1967. Presidential terms.
6. Kenyan Constitution of 2010. Fundamental freedoms and rights.
7. John Rawls. A theory of justice 1971. Access to justice.
8. Uganda Constitution of 1995. Universal Human Rights.
9. William E. Gladstone. Justice Delayed is Justice Denied.
10. Tanzania Constitution of 1977. Presidential Tenure.
11. Humberto Avila. Certainty in Law. Uncertainty in laws.
12. Albie Sachs. Justice in South Africa. Corruption and Access to Justice.
13. Emmanuel Urigah & Others. East Africa community laws. Flexibility of laws.
14. Ethiopian Constitution of 1995. Rigidity of the laws.
15. Michela Wrong. It's our time to eat. Effects of corruption.
16. Chuck Remsberg. Blood Lessons. Enforcement of the laws.
17. Adriaan Bason & Pieter Dutoit. Enemy of the people. People's Power.
18. Alison Pargeter. Rise and fall of Gadaffi. Laws and Dictatorship.
19. William Webb. The dictator. Laws and end of dictatorship.