

GLOBALISED CURRICULUM FOR “GLOBAL LAWYERS

by

Professor Bolaji Owasanoye,

Director of Research

Nigerian Institute of Advanced Legal Studies,

University of Lagos Campus, Akoka,

Lagos, Nigeria.

Theme: Transnational Curriculum for Tomorrow’s Lawyer.

That legal education is a major contributory factor to improving the legal profession has been proved by the work of the 104 year old Association of American Law Schools. For a legal educator from a developing country it behoves one to consider the same vision from the prism of local situation and circumstances especially since the 2004 AALS Conference is drawing participants from all parts of the world, therefore information and cross fertilisation of ideas ought to be similarly widespread.

Some thirty years ago, one of the foremost, if not indeed the foremost, international jurist that Nigeria, nay black Africa, has ever produced, late Judge T.O. Elias, former President of the World Court at the Hague, said that the major tasks which face law, by extension the lawyers and of course law students aspiring to be lawyers, in any developing country are¹ –

- that laws should be a conscious means of economic development of the community and that it should accordingly ensure the orderly advance and social progress of the community;
- that it should aim at consciously improving the moral as well as the cultural tone of the community;
- that it should, above all be promoting the various ethnic groups through deliberate discouragement of ethnic particularisms and ethnocentric prejudices; and
- that it should foster the growth of uniform laws.

When Elias offered his view, he did not identify legal education as a major instrument of assisting the law and the lawyer to achieve its laudable objectives, the ends of which may be summarised in one word – “justice”. Elias wrote at a time when

¹. T.O Elias, Law in a Developing Society, (Ethiopia Publishing Corporation, Benin City, 1975.)

modern concepts such as globalisation and information technology now linked to the predominance of international law, had not assumed their current importance.

Himself an internationally renowned scholar of international law, Elias wrote from the background of the frustrating divide between law and development in a developing economy struggling to keep abreast of changes driven by international norms and practices. 30 years down the line, Elias' observation remains no less relevant. The main addition one may propose is that the content of legal education and the preparation of law students for the future is now widely recognised as a critical factor in assisting the law and the lawyer achieve their objectives if they are to remain relevant in the international community.

Transnational Practice in the Lens of Domestic Law and Training – How Feasible?

About 16 years ago, another foremost jurist from Nigeria, the late Dr. T. Aguda, former Chief Justice of Botswana delivered a thought provoking lecture titled - **The Challenge for Nigerian Law and the Nigerian Lawyer in the 21st Century.**² The lecture essentially x-rayed areas considered crucial to development such as sources of law, system of adjudication, the role of the judiciary and the concept of social justice using the tasks identified by Elias as a guide.

It is instructive that the erudite advocate of reform and legal education narrowed his thesis to concerns of national challenges. The propositions made twelve years into the new millennium contemplated repositioning the Nigerian lawyer for practice within the national courts only, in spite of the apparent influence of international law and the growing spectre of transnational practice at the time. Indeed, the title of the lecture belied the scope of the subject matter because its content and scope was fastidiously domestic. This “omission” is not a defect in the jurisprudence of the scholar but rather an indication of the failure, up till that time of Nigerian law and the lawyer to achieve socio-economic justice within national boundaries in a manner that could enable the lawyer participate competitively in the global economy. Sixteen years hence and four

² Nigerian National Merit Award Lecture, 1988

years into the new millennium, the concerns raised remain germane in the context of most developing countries.

At a just concluded Distance Learning Training on Judicial Reform for Improving Governance in Anglophone Africa organized by the World Bank Institute and the International Law Institute for stakeholders in the Bar and the Bench in Ethiopia, Ghana, Kenya, Nigeria, Tanzania and Uganda it was revealed that Anglophone sub-Saharan Africa countries face similar problems in areas of legal education amongst other things³.

It is not that the legal profession is not aware of changes beyond its borders which it must take account of in order to remain relevant internationally, it is just that the dominant opinion, not necessarily of the majority but of the vocal minority, is that the main priority of legal education in a developing country seeking to entrench democracy will for sometime remain the fight against poverty, ignorance and disease. This position is influenced by the statement of Kwame Nkrumah, former President of Ghana who said at the opening of the Accra Conference on Legal Education at the Ghana Law School on January 4 1962 that -

“... In a developing country, the first priority is not for lawyers trained to conduct litigation between wealthy individuals. The lawyers needed in a developing state are in the first place, those trained to assist the ordinary men and women in their everyday legal problems and particularly in the new problems likely to arise through industrialization.... Secondly, and perhaps most important of all, we need lawyers in the service of the state to deal with treaties and commercial agreements and with questions of private and public international law ...”

Clearly, President Nkrumah anticipated the challenges of international relations in his observation that the State needs lawyers to deal with treaties, commercial agreements and questions of private international law. Forty-two years after that observation, it remains true and relevant.

³ This writer was Expert Country Facilitator for the programme, which was conducted via the satellite from October 9 – November 11, 2003. It featured

With this as a background there is no doubt that a lawyer from a developing country is doubly challenged to face the problems associated with a developing society while at the same time he or she must be prepared for the challenges posed by developed states to which the country is aspiring.

Curriculum for “Global” Developing Country Lawyers

In his concluding remarks Dr. T.A. Aguda opined that in order to prepare the Nigeria lawyer for the challenges of the 21st century, training for the Bar must last no less than seven years after high school. The first two years should be devoted to general studies in History, Language, Literature, Science, Economics, Psychology, Philosophy, and Mathematics etc. The next four years should be devoted to pure law subjects including customary law and Islamic law which should both be taught as components of each law subject. The final year is to be devoted to practical aspects of legal practice. After seven years, a student is to undergo a further training of one year of “apprenticeship” before obtaining a certificate to practice in all courts of the land⁴.

One may of course argue that some of the subjects proposed for study would be at the comparative level in order to adequately prepare the budding lawyer. However, that the role and place of international and comparative law was not highlighted nor did it dominate the discourse is indicative of the concern of the author at the time.

The parochial view of the direction of legal education in developing countries is not restricted to the individual opinion of influential writers but to national policy. For example, the Revised National Policy on Education released in the 80s and still applicable in Nigeria states that the national educational aims and objectives are: -

- the inculcation of national consciousness and national unity;
- the inculcation of the right types of values and attitudes for the survival of the individual and the Nigerian society;
- the training of the mind in the understanding of the world around us; and

⁴ *ibid.*

- the acquisition of appropriate skills, abilities and competence both mental and physical as equipment for the individual to live in and contribute to the development of his society⁵.

Clarifying the policy with regard to legal education, the National Universities Commission stated that undergraduate programme in law should be in the light of social, political, economic, cultural and technological advancement.⁶ It is noteworthy that at this time there was no specific mention of the need to prepare the lawyer for trans-national practice neither was the growing importance of international law considered crucial to undergraduate legal education.

That special attention was not accorded legal training with a global perspective is surprising because globalisation was having its influence in the polity especially considering the cold reception given the military overthrow of the democratically elected government of 1983, a clear indication that customary international law forbids the change of a government by revolution. That human rights, environmental law and the economy transcended the domestic arena was clear with the revolutionary emergence of information technology and the rapid spread of democratic ideas and ideals around the world.

A national policy and its vision are important in charting a course for legal education. If the policy and vision have global perspectives the curriculum, teaching aids and methods will of necessity be global. Having said this, the most apparent route towards preparing tomorrow's lawyer for transnational practice is by interdisciplinary and comparative law training. But this is easier said than done. National objectives and local needs and capacity will also need to be considered. In spite of what appears to be gaps in the proposals of Aguda and Elias above, their thesis remains valid with slight modifications or shift towards globalisation in order to meet the needs of the moment.

At this point one may hazard a few proposals. First is that the continued expansion of international trade, commerce and industrialisation will be the determining factor of the

⁵ Revised National Policy on Education at p.8

⁶ National Universities Commission, Approved Minimum Academic Standards in Law for All Nigerian Universities, (1989)

limit and balance between comparative law and interdisciplinary approaches to legal training, rather than international politics. A blend of the two seems inevitable. At the very minimum, training for the budding global lawyer must include the rudimentary principles of the law and adjudicatory systems of the major industrialised nations of the world because they set the pace.

Secondly, modernised systems of teaching must be imbibed. The clinical approach being championed in the United States and Great Britain which emphasise close teacher student relationships in small classes using the benefits and advantages of information technology must be encouraged.

Thirdly, associated platforms must be built. Staff development is a major associated platform because staff development is closely related to curriculum development. Staff student ratio and infrastructure support must be a requirement of minimum standard by accrediting authorities for legal education without which professional accreditation will be withheld. In Nigeria for example, though far from the ideal, a minimum standard for legal education has been maintained by the Council of Legal Education, which refuses to accredit a law school programme if certain conditions are not met.

For developing countries the wider challenge relate to capital, personnel and political will.

Conclusion

Inadequacy of the curriculum of the developing country lawyer is no more hidden within the hazy cloud of domestic legal system. No other event highlights this more in recent times than the privatisation exercises going on in a number of developing countries. To underscore the lack of confidence in the lawyer even within the national economy, the privatisation of major state owned corporations going on in some sub-Saharan countries have been dominated by foreign professional consultants who are partnered with local firms perhaps to douse the outcry of marginalisation of internal manpower.

In order to compete within the process, local law firms established alliances with reputable international law firms. The truth however remained that there is great doubt as to the competence, currency of knowledge and capability of local legal resource to handle privatisation exercises involving complex legal instruments of international dimensions.

This is not to say that there is no local legal manpower resource to tackle briefs at the international level. Indeed, there are many practitioners who are highly competent and with considerable exposure representing multinational firms and practising beyond national boundaries. They are however few in number.

Of more importance is that the training of lawyers, which at the moment in many African countries is done at three levels viz, at the universities (undergraduate and post graduate) for teaching of basic subjects; mandatory professional training (e.g. at the Nigerian Law School for one year which is regarded as more theoretical than practical); and through ad hoc continuing education seminars and workshops, do not specifically and directly address the growing need of the trans-national lawyer. For one thing, during undergraduate training, International Law, which is an important subject for any trans-national lawyer is not amongst the compulsory subjects. The work of the Nigerian Institute of Advanced Legal Studies, the only institution for continuing education and legal research in sub-Saharan Africa shows that a weak grounding in international law is the bane of government legal advisers in Africa.

Since lawyers will find a myriad of reasons not to update their knowledge, mandatory continuing legal education is the only way out for developing countries. The mandate must include institutionalised periodic review.

To modify the suggestions of Aguda on curriculum, I conclude by observing that the challenges of the trans-national lawyer from developing countries will need careful balancing. While the challenges are not likely to arise solely from subjects like chieftaincy matters, landlord and tenant, trespass, conversion or customary law which some advocates of backward integration in Africa for example latch onto fastidiously. Rather, the major challenges will arise from subjects like international trade, banking, finance, environmental law, human rights, constitutional law, international

immigration etc. This is however not to say that local needs and circumstances must be totally ignored. This is where the balance comes in.

The outcome of the 2004 Conference on “Educating Lawyers for Trans-national Challenges” is the first major trans-national challenge towards securing a much-needed international framework for the future of legal education.

Bolaji Owasanoye,

February 2004.

bowa@infoweb.abs.net

bowasanoye@yahoo.com