TRANSNATIONAL CURRICULUM- FOR TOMORROW'S LAWYERS

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Ladies and Gentlemen, let me start by thanking the organizers of this programme for inviting me to speak on this very important subject that is gradually gaining world attention, entitled "Transnational Curriculum for tomorrow's lawyers".

It is a fact that the world is shrinking as its economy is increasingly becoming borderless and cross-cultural activities, more than ever before, prevalent.

To borrow the words of Marshall Mcluhan, the world has become a Global village[i]

The concept of globalization involves the movement of goods, capital, services, people and ideas across national borders or to put it more technically, involves the internationalization and multinationalization of commercial activities.

These activities necessarily give rise to lawyers rendering service beyond national borders, which has been termed `cross border practice' and also underscores the need for a system of training which will adequately prepare lawyers to effectively discharge their legal and social responsibilities.

RESPONSIBILITIES AND CHALLENGES OF TODAY'S LAWYERS

A lawyer has a social responsibility to strive for the protection of basic human rights and the realization of social justice. Thus, the institution of lawyering has been established to enable those who have acquired legal expertise and skill to assist the public in the use of the legal system so as to safeguard the basic human rights of all generation

(i.e. civil, political, economic, social, cultural and group rights) and thereby create a society governed by justice and the rule of the law.

In this context, lawyers face enormous challenges in the complex and gradually unifying world of today irrespective of their area of practice.

A few examples will suffice. In the area of business transaction, international commercial transactions present several problems for lawyers whose practice relate to that area, for example, the problem relating to international commercial arbitration (irrespective of particular governing law).

The challenges of the lawyers whose practice relate to non-governmental organizations (NGOs) are no less enormous. The activities of these organizations, for example, the International Committee of the Red Cross, the collaboration of NGOs with the United Nations under the coordination of their impact in all facets of the Economic and Social Council (ECOSOC)[ii] and the activities of the United Nations including but not limited to international legislations, is axiomatic.

In Africa, the impetus given to NGOs by the African Commission on Human and Peoples Rights to bring communications (petitions) against states in respect of human right violations under the African Charter on Human and Peoples Rights, further underscores the enormous responsibilities of NGOs on transnational basis[iii].

The challenges are even more enormous for lawyers who work for or with or whose work relates to governmental organizations, for example, the United Nations and its various Agencies including Programmes and Funds, Research and Training Institutes, Commissions, Specialized Agencies, Entities etc.

This is the same for lawyers whose work relates to international courts and Tribunals and Regional and sub-regional groupings, for example, the African Union (AU), Economic Community of West African States (ECOWAS), Council of Europe,

European Union (EU) and the Organization of American States (OAS).

There is even a further challenge faced by all lawyers by the gradual unification of the world legal system in all disciplines. A good example can be found in human rights laws.

Since the adoption by the United Nations in 1949 of the Universal Declaration on Human Rights, the world has known a single human rights legal system.

The rationalization of the principles of this declaration as seen in the European Convention of Human Rights and Fundamental Freedom 1950, the Inter- American Convention on Human Rights 1969 and the African Charter on Human and Peoples Rights 1981 and the consequent injection of these norms into national Constitutions, leave no room for jurisdictional disparities in this area of law.

Other areas of law equally enjoy the attention of the International Community and the recent efforts in the area of criminal law (particularly individual responsibility) which has found its best expression in the creation of the International Criminal Court (lCC) can only underscore this changing world legal order.

Surely, these challenges call for a departure from the present system of training whereby the training curriculum of lawyers greatly depends on and varies according to each country's history, national character and culture and whereby the lawyer's knowledge and experience depend largely on specific national laws.

This system has become grossly inadequate to deal with today's society and therefore pose a threat to the success of tomorrow's lawyers.

There is therefore need for a transnational curriculum for tomorrow's lawyers. The term curriculum, in this sense, refers to detailed set of materials, source books, syllabus and bibliography for teaching, research and policy reform.

It is true that many curriculum experts do not favour the globalization and internationalization of curriculum mainly for reasons of preservation of cultural and social peculiarities which are part of education itself. These are genuine concerns which must be accommodated. However, it must be noted that a transnational curriculum is not necessarily devoid of these peculiarities.

NATURE OF TRANSNATIONAL CURRICULUM

There are basically three approaches to achieving a transnational curriculum. These are as follows:

The Transnational Approach:

This approach is thought to be the best to meet the requirements of tomorrow's lawyers. Experts are of the view that a typical transnational curriculum (i.e., international as against comparative) should include, in any given subject, the transnational law, international law, supernational law and supranational Institutions.

- Transnational law will address issues that cross borders both at the international and/or supranational level
- International law will include
    a. National laws with extra territorial aspects
    b. Competition or conflict between national and supranational laws on the subject.
    c. Co-operation between nations related to the subject.

- Supranational law includes internationally recognized substantive law on the subject (as defined by international conventions, regional treaties, other international instruments and by international customary law).
- Supranational Institution includes organizations concerned with the formulation of supranational and transnational policy on the subject area

including the development of substantive international law,

- Supranational Institution includes organizations concerned with the formulation of supranational and transnational policy on the subject area including the development of substantive international law, adjectival or procedural law, enforcement policy and allocation of jurisdiction, for example, the United Nations and its Agencies and Regional Organizations.

These principles had been applied at a workshop of experts held in 1994 in Canada to fashion out a transnational curriculum in Criminal law.[iv]

Comparative Approach:

This will involve teaching law on comparative basis. That is, different jurisdictions will be compared. This may be difficult and may not create a general standard.

Inter-disciplinary Approach:

This will involve the integration or incorporation of other disciplines into law degrees. The five-year law degree programme introduced into Nigeria since about 1991 whereby the first year is spent on general non law courses would seem to be consistent with this approach.

MATTERS ARISING FROM A TRANSNATIONAL CURRICULUM

It must be noted however that the adoption of a transnational curriculum will, no doubt, give rise to several issues which ought to be contemplated and addressed along with the idea. These issues include the following:

Teaching Methodology:

A Transnational curriculum will invariably result in change and modernization of teaching methodology, for example, an increased use of information technology-internet and telecommunications.

These devices will, no doubt, play a significant role in the success of such a programme, yet, they are a far cry for most Tertiary Institutions in Nigeria (my country) today and only a few people (including the teachers) can claim any proficiency in their use.

Ethical Standards:

Transnational Curriculum may give rise to liberalized or cross border practice thereby necessitating a unification of ethical standards which may create a problem, given the current jurisdictional disparities in ethical standards.

Funding:

Huge funds will be required both for the development as well as the implementation of the curriculum.

WAY FORWARD:

Given these issues and many more that may follow the adoption of a transnational curriculum, it may be necessary to establish an international Association to embrace all Cornmon Law and non Common Law jurisdictional authorities responsible for tertiary and university legal education and for the formulation of national curricula for legal education to coordinate the idea in its entirety. Such an Association should be able to see to the raising of the required funds and formulation of the necessary policies to actualize the idea.

CONCLUSION

In conclusion, I have to admit now, if it is not obvious that I have already done so, that transnational curriculum for tomorrow's lawyers is most desirable. I must however, hasten to add that, for now, it seems to be only an ideal, and perhaps, may remain so for some time until most and if possible all nations of the world agree to it as a policy and its take off for the common good.

NOTES:

[i] Mcluhan, Marshall and Fiore, Quentin, War and Peace in the Global Village (New York, Banton Books, 1967)

[ii] The Economic and Social Council of the United Nations has granted over 2000 NGO's consultative status with the UN and these NGOs play a role in the formal deliberations of the United Nations. In 1948 when

this role was first assigned to NGOs, only forty-one NGOs were granted consultative status by ECOSOC.

See the United Nations Department of Publication DP1/2301A of February, 2003 (Press Release).

[iii] In Nigeria, many NGOS have taken advantage of this and have challenged the actions of the government of Nigeria (particularly under the former military dispensation) at the Commission. See, for example, communication 102/93, Constitutional Right Project and Civil Liberties Organization V Nigeria; 155/96, the social and Economic Rights Centre and the Centre for Economic and Social Rights V Nigeria 105/93, Media Rights Agenda V Nigeria. This is also the case elsewhere in Africa.

iv The workshop was organized by the International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver, Canada and Max-Planck Institute for Foreign and international Criminal Law, Freiburg, Germany and took place in Vancouver, British Columbia, Canada between April 5 and April 8 l