

Enhancing the Teaching of Human Rights in African Universities: What Role for Law School Clinics?

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I. Introduction²

This Paper aims at exploring the weight accorded to the teaching of human rights in law schools generally and in particular it will attempt to examine the status of human rights in clinical legal education (herein after referred to as “CLE”) in law schools in Africa, with a view to recommending more emphasis in the teaching of human rights and the establishment of specialist human rights clinics as a viable growth initiative for CLE, especially in Africa. Concerns over similar issues were seriously debated during the last conference on Educating Lawyers For Transnational Challenges held from 26–29 May 2004 in Hawaii, USA, (herein after referred to as the “Hawaii Conference”) just as much as they formed a serious bone of contention during the design and implementation of the new LL.B curriculum for South African Universities especially in 1997 and 1998. Because of the intricate issues involved, the emerging concerns are likely to continue. The purpose of raising the concerns here is to increase awareness, provoke more discussion and encourage empirical research on a subject matter considered to be of absolute importance for legal education generally and in Africa in particular.

One has to note at the outset that the human rights discourse, currently taking place the world over, is not only topical because it is full of contentious issues but also because its importance covers a

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multiplicity of complex socio-economic, political and legal issues. Of necessity, therefore, this discussion has to be limited and will thus focus on the teaching aspect of human rights courses in universities especially in Africa and the need to establish specialist human rights clinics as a viable mechanism for advancing clinical legal education programs to address its twin major objectives, namely: to serve clients with problems in the particular area of human rights, while at the same time providing law students with the peculiar opportunity to focus their legal education in developing specialised skills for the practice of human rights. The arguments that follow are based on the assumption that insufficient weight is being accorded to the teaching of human rights and that CLE in law schools in Africa mostly provides programs, which today are still based on the traditional general approach in which the clients and the caseload intake are limited primarily by the financial means of clients rather than by the subject matter e.g. the human rights, of their problems.³ This type of approach is easily understandable in Africa in the context of the rampant levels of poverty existing there, a point we have already made elsewhere.⁴ However, given the concerns over the teaching of human rights and for the purposes of this discussion, a number of emerging issues need consideration and further research, namely: is there a need to review the teaching of human rights in universities? If so, why? Is there a need to review law school curricula to incorporate specialist human rights clinics in law schools? If so, why; and why particularly in law schools in Africa? Would greater emphasis in the teaching of human rights generally enrich clinical legal education in Africa and provide more space for growth initiative in the education of lawyers for tomorrow?

Not only will the present discussion attempt to prove that the time has come for universities in Africa to consider a new dimension to CLE by placing more emphasis on the teaching of human rights, but that their law schools have to join the world wide movement towards establishing clinical programs with specialist areas, particularly in human rights. Following from that, some suggestions will be made to address logistical issues of implementation of such clinics, once a decision is taken to establish them.

Before addressing some of the above concerns, it may be prudent to set the appropriate context by explaining the background for the arguments set out in the subsequent paragraphs.

2. Contextual perspectives

Several factors have influenced the positions taken in this presentation. In the first place, the growing trend in establishing specialist legal clinics cannot be denied; except that the subject matters dealt with in such clinics are as various as are the law schools offering them. One notes, for example: the Sexual Assault Clinic of Monash University, run in conjunction with Springvale Legal Service⁵; the Family Law Clinic also of Monash University⁶; the Domestic Violence Clinic of Tulane University in New Orleans, Louisiana, USA⁷; Refugee Law Clinics established by

3 A point well argued in the case of Australia by Campbell, S and Ray, A in: "Specialist Clinical Legal Education: An Australian Model" (2003) *International Journal of Clinical Legal Education* (IJCLE) p.67.

4 See Iya, PF "Fighting Africa's Poverty and Ignorance through Clinical Legal Education" (2000) *IJCLE* pp.13-32.

5 Evans, A: "Specialist Clinical Legal education Begins in Australia" (1996) 21(2) *Alternative Law Journal* p.79.

6 Campbell, S and Ray, A, *op.cit.*, p.67.

7 Sherman, EF "Special Methods and Tools for Educating the Transnational Lawyer for Transnational Challenges" (2004) *Proceedings of the Conference on Educating Lawyers for Transnational Challenges AASL Ed* 645;

UNHCR, Non-governmental Organizations (NGOs), and law faculties in many universities in Eastern and Central Europe (after the collapse of the Soviet Union), to protect refugees by providing legal services to meet their desperate needs; Women and Gender Clinics found in many American and European universities, to mention but a few.

There is the other factor relating to the acknowledgement and support by legal educators for increased weight to be accorded to the teaching of human rights in law schools particularly in the developed countries. The extent of this factor became evident during the Hawaii Conference referred to earlier⁸ when arguments in support of the need for specialised human rights clinics, as the best method for training transnational lawyers became a dominant position. Speaker after speaker argued in favour of having such a clinic.⁹ Besides, and more importantly, it is common knowledge that Africa's record of human rights abuse is so disturbing as to generate greater sensitivity to the promotion of the culture of human rights across the continent, thus justifying not only its emphasis in the law school curriculum but its place in a clinical programme as the most ideal for the purposes of training the lawyers in human rights for tomorrow.

Equally to be noted as an important factor is a personal experience acquired during the implementation two year Project at the British Institute of International and Comparative Law (BIICL) on the Application of the Death Penalty in Commonwealth Africa. Indeed, a needs assessment for the Project indicated that there is very little information available on the death penalty in Africa and comparative legal information is often not available.¹⁰ While, information on international human rights and other treaties is only now being made available in Africa by a variety of institutions via different sources including websites,¹¹ comparative African legal materials have, however remained lacking. Of even greater concern is the fact that lawyers working in Africa have often had little or no training in advocacy in capital cases and are left without guidance and sometimes in ignorance of international standards. In Africa, the circumstances surrounding the imposition of the death penalty are often far removed from the text of the law. Furthermore, prison conditions, delays in the criminal justice system and underfunding are matters of concern. Equally important are issues surrounding the sentencing to death of minors and women (e.g. under Sharia Law). Critical to all these concerns is the fact that there is very little, if any, information sharing network on a regional African basis on this important topic. Whilst there has been a *de facto* moratorium observed in many African countries, the death penalty still remains in the statute books of, and is rigorously applied in, many of them. It is important that steps are put in place to strengthen knowledge and awareness regarding the application of the death penalty among legal professionals (defence lawyers, prosecutors, judges, NGOs, Ministries of Justice and other departments); to strengthen networks of lawyers representing people on death row or working within the criminal justice system; and to strengthen human rights values within the legal systems of African countries.¹²

8 Sherman, *op.cit.*

9 *Ibid*; teaching methods and approaches constituted an important aspect of the conference agenda.

10 Grant Application submitted by BIICL 22/03/2002 to the European Commission ('EC') under The European Initiative for Democracy and Human Rights: Support for the Abolition of the Death Penalty p.4-5.

11 *Ibid.*, p.4 e.g. Library Resources Project run by the Bar Human Rights Committee in Tanzania (1999) and in Uganda, Botswana and Malawi (2000).

12 These are the objectives of BIICL's Death Penalty Project.

The BIICL experience coupled with the rest of the above factors in Africa has not only confirmed the need for specialised knowledge and skills acquisition in the field of human rights, but has further strengthened the belief that clinical programs in human rights at law schools are the best place to lay the foundation for a culture of human rights in the young lawyers of tomorrow; hence the resolve for establishment of such clinics in Africa.

The subsequent paragraphs will accordingly be used to elaborate the impact of all the above factors.

3. Why curriculum review?

It has already been argued that rethinking the responsibility of law schools in preparing tomorrow's lawyers will demand facing up to the human rights challenges and perspectives in the contemporary order, through changes provided to students in their legal education program.¹³ The significance of this argument can be found in the following statement:

"If Universities constitute a privileged locus for the production and transmission of knowledge, as well as for action for social change, it is fundamental to incorporate (in their curricula) the contemporary challenges of implementation of human rights, in as much as they constitute the only emancipatory platform of our time".¹⁴

However, it is not just a matter of incorporating human rights in the law school curricula to achieve academic pursuits. Law schools should go further to consider establishing practical training programs, such as establishing law clinics within law schools, staffed by a new cadre of clinical human rights teachers, where students could learn not just to think like lawyers but also to represent victims of human rights abuses under the supervision of human rights' practical lawyers and clinical teachers. The question that emerges, though, is: what makes human rights so fundamental as to necessitate its incorporation in law school curricula, including establishment of specialist human rights clinics?

In response to the above concerns and without going into details, it is common knowledge that human rights has a critical role to play in development because international and national protection of fundamental human rights provides the essential requirements for the achievement, maintenance and promotion of sustained development. At present, international instruments and national constitutions and legislations, the details of which are outside the scope of this discussion, all provide clear statements on those fundamental human rights and freedoms for development. Any desire to achieve sustained development must be based on the dignity and supreme value of the individual through respect and protection of all human rights related to material, financial and social welfare. These are in fact the necessary factors to recognise in determining a good standard of living and freedom that any human being should have.

Unfortunately, it is simple to provide evidence to prove that in many places the culture of human rights is not being properly observed nor developed, and indeed their respect and promotion are being totally infringed. The world over, most individuals and communities have continued to experience a long and painful history of human rights abuses. There is a bit of everything in their lives: inequality, unemployment, poverty, hunger, injustice, dictatorship, racial discrimination and so many other abuses that result from social discrimination at local, national and international levels.¹⁵

13 Piovesan, F "Human Rights Challenges and Perspectives" Conference Proceedings, Hawaii Conference – see www.aals.org/international2004/Papers/Piovesan.pdf.

14 Ibid.

15 Omara-Otunnu, A "Historical and Legal Aspects of Humanitarian Crisis in the Great Lakes Region of Africa" A Public Lecture delivered on 20 February 2004 at the Africa Centre in London, UK.

It is against such a backdrop that the legal profession is expected to rise to the challenges posed by such wide and growing abuse of human rights. Therefore, the need thus arises for lawyers, and would be lawyers who intend to start careers as international human rights lawyers, to engage in special training leading to specialisation in human rights. Such an approach would meet the goals of legal education to provide knowledge and skills that contemporary lawyers need to serve their clients in the specialised field of human rights, thus offering opportunities for careers not only in the United Nations, international organisations including courts and tribunals, regional groupings of sovereign states and nongovernmental organisations, but also at governmental level within all its structures. All this will be in addition to providing that service in private legal practice on human rights issues with national and international perspectives.

The critical point to note here is that since human rights constitute the basis for humanity and for the law, legal education should therefore have human rights' courses at its core. However, in order to fulfil its function of helping future lawyers to both understand and acquire the relevant values knowledge and skills, the teaching of human rights must not focus too much on formalistic repetition of rules, but rather emphasise acquisition of the necessary skills for their application in resolving the multifaceted problems emerging from the application of those rules. This explains the basis for emphasising the training of lawyers in human rights through enhanced teaching of human rights and through clinical legal education programs. The conviction of this direction further explains the growing trends the world over, not only in curricula review with the emphasis on human rights teaching in the curricula but also in the establishment of specialist human rights clinics earlier discussed. University law schools in developed countries have taken the lead in these areas. Hence, the law schools in Africa should not be left behind.

4. Why specialist human rights clinics particularly for law schools in Africa?

That universities in Africa are engaged in the teaching of human rights is a matter of common course. However, the point of departure arises from a personal experience in teaching in a number of law schools/faculties in Africa, revealing that human rights as a course is taught in most law schools but only as part of International Law to undergraduate students.¹⁶ For a few others, in addition to offering it as part of International Law, it is also offered as an elective in the last year of undergraduate study just as much as it is offered as an elective for postgraduate students. Very rarely does one find a law school where International Law and /or Human Rights are compulsory courses. Even rarer is the situations where human rights as a course is applied as an integral part of every law course. The unfortunate result is the de-emphasis of human rights teaching and yet, Africa's record of human rights abuse is one of the worst in world, given the crises in Liberia, Sierra Leone, Nigeria (in Western Africa); in DRC, Rwanda, Burundi, Sudan, Northern Uganda (in the Great Lakes region of Africa); Ethiopia, Somalia (in Eastern Africa); and Zimbabwe, Swaziland (in Southern Africa), to mention a few.¹⁷

16 The author has taught law in the universities of Makerere in Uganda; of Swaziland in Swaziland; of Witwatersrand, Vista and Fort Hare in South Africa.

17 See Omara-Otunnu, *op.cit.*, p 10.

Another interesting experience with optional courses is that students will register for them only if lecturers are available and/or if that particular available lecturer is a “soft” or “easy” one because of his/her generosity in awarding marks. Given such a scenario, it becomes obvious that human rights teaching will not get the seriousness and prominence it deserves and an optional offer of the course may end up as no offer at all, since no students will register for the course for the many reasons explained.

Personal experience apart, a quick survey of CLE in Africa provides little evidence of specialist human rights clinics in African Law schools.¹⁸ The latest report of the Association of Universities Legal Aid (AULAI) of South Africa does not list human rights as one of its subject matters for clinical legal education.¹⁹ One may argue that the reason for its omission is because every aspect of a client’s case in the clinics involves human rights. However, does such an approach provide students wishing to specialise in human rights issues with sufficient grounding in the challenges he/she will face in the future practice of human rights? Besides, given the increasing importance accorded to the role of human rights, does such an approach really do justice to the subject matter?

It is also often argued that specialisation in human rights issues should be left to students pursuing postgraduate programs. The support of this argument is evidenced by the mushrooming of human rights centres in Universities in Africa which not only provide postgraduate programs but also avail facilities for research, documentation/information, conference organisation, internships, publication, international cooperation programmes, radio and television programmes etc in human rights from which postgraduate students may benefit.²⁰ The main criticism against specialisation in human rights being left to postgraduate students in the context of the de-emphasis of human rights in undergraduate courses in Africa is the limitation of specialised knowledge and skills to only a few academically outstanding students, thus cutting out the majority of students interested in careers in human rights from acquiring the required knowledge and skills to enable them to participate fully in the growing challenges of human rights.

There are also those who argue that human rights issues, including training, are already being provided by NGOs whose numbers and human rights activities have recently swollen in most African countries.²¹ However, accepting such an argument would be abdicating the role of the university to train lawyers for society. In any case are most NGO’s more suited than universities to provide that type of training?

It is, therefore, submitted that the above arguments appear very persuasive in explaining and supporting why the teaching of human rights should be enhanced and specialised human rights clinics should be established in the law schools of Africa. A review of law school curricula to reflect this motivation is, to many educationists including the writer, a natural consequence. But the question then is: What strategies should be employed in the design of a suitable curriculum and how does one ensure viability?

18 Iya, PF: *Fighting Africa’s Poverty and Ignorance Through Clinical Legal Education 2000 International Journal of Clinical Legal Education* p. 13.

19 Association of Universities Legal Aid Institutions’ 2003 publication.

20 See UNESCO publication on *World Directory of Human rights Research and Training Institutions* (6th ed).

21 Kaburise, J: “Non-Governmental Organizations” Paper delivered at the Hawaii Conference pp. 233–237.

5. Strategies, viability and sustainability considerations

5.1 Educational values and expectations – towards a paradigm shift in Africa

In developing countries generally, and Africa in particular, there are vast economic and social differences between the rich and the poor; the majority of the population are not only ignorant of their legal rights but remain unrepresented and with hardly any access to proper legal services; the majority too are victims or potential victims of human rights abuses; and more importantly, lawyers who work in universities and NGOs or related structures are becoming more and more sensitized about human rights issues. It is against this kind of background that the introduction of new economic policies under the New Partnership for African Development (NEPAD) and establishment of the African Union are creating a paradigm shift in values and expectations. In January this year the Protocol to the African Charter on Human and Peoples' Rights came into force and a few months later a new Pan African Parliament was inaugurated, meaning that Africa now has a Pan African Parliament and will soon also have a Human Rights' Court.

While these developments herald a paradigm shift in Africa, they also introduce new demands for well trained lawyers, including judges to address the emerging socio-economic challenges of development. Targeted are issues of poverty, ignorance, HIV/AIDS, good governance, conflict resolution and many other problems of development most of which, as earlier discussed are issues of human rights and humanitarian concerns. Legal education, including clinical education, is thus expected to make provision for such concerns. That should explain why clinical programmes in Africa today are conceived to encompass activities directed towards achieving human rights objectives and the justification for such activities is based on the expectation that law students can play a valuable role in assisting with combating issues of human rights and of a humanitarian nature and in this endeavour, they are expected to liaise and closely cooperate with other organisations outside universities for the wider and greater benefit of society.

In this regard, one has to note the remarkable growth in the number of human rights centres in universities in Africa committed to carrying out programmes of human rights.²² The only point of departure which is the concern of this discussion is that involving legal clinics to enhance the pursuit of the promotion of human rights for the reasons already explained.

5.2 Strategies and viability

A few suggested strategies, which law schools wishing to address the above expectations need to consider, are the following:

1. Human rights issues should form part of every course taught to all law students, whether such a course is compulsory or not and whether or not those courses are offered at undergraduate or postgraduate levels;
2. Human Rights Law should be an undergraduate course in its own right, rather than being left to be taught only as an aspect of International Law, and as such, it should in addition be a compulsory course;

22 UNESCO Publication, *op.cit.*

3. Specialist human rights clinics should be established in which students taking the course participate either during the year they take the course or soon thereafter. Such participation should be compulsory with clear rules of assessment;
4. Specialist human rights research projects and activities should be made available in areas of particular concern e.g. application of the death penalty;
5. Internship programs should be an established program and should be provided for credit;
6. Exchange of staff and students in the field of human rights should be an established feature of the law school.

In applying these strategies, the ultimate mission of the law schools should be to acknowledge the educational value of clinical programs and to regard it as a crucial step towards revolutionizing the educational system since these programs have broader aims for legal education beyond its educational component found in the books, libraries and lecture rooms. By exposing students to a holistic program of clinical activities as outlined above, acquisition of human rights, humanitarian law and good practice, of legal skills as well as of professional values are not only enhanced, but also nurtured and developed in an atmosphere of real life.²³

5.3 Sustainability

It has to be acknowledged that the type of human rights clinic envisaged will serve a number of specific objects in legal education, thereby creating the following advantages for growth initiative:

- To provide expertise;
- To maximise competent service delivery for clients with problems peculiar to human rights;
- To acquire deeper understanding of the structures and mechanisms in the application of human rights values, principles, instruments and practices;
- To develop further appropriate skills in advocating and promoting specific aspects of human rights and humanitarian values.

However, despite some revelation of successful and progressive experiences in clinical education in both developed and developing countries, most writers on the subject agree that such programs are plagued most times by numerous challenges. For example, such practical training is resource heavy and many universities, especially those in Africa, may thus be incapable of introducing them and/or if introduced, maintaining them. It requires the use of legal practitioners with special knowledge and skills (in human rights in this particular case), and such lawyers if available do not usually have the time to participate in university programs. Pedagogically, participatory learning, a valuable aspect of the program, is hard to achieve due to large classes, lack of suitable teaching materials, including books, technical equipment, insufficient training of trainers and generally insufficient resources. There are even those who believe that introduction of a human rights clinic would be an unnecessary duplication of what is already offered by University Human Rights Centres and NGOs. In this respect, sustainability of any related projects becomes a serious challenge. Nevertheless, viability and sustainability as growth initiatives for clinical education focusing on human rights practice would be achievable provided that there is:

23 Iya, PF: "Legal Education for Democracy and Human rights in the New South Africa with Lessons from the

American Legal Aid Movement" 1994 *The Journal of Professional Legal Education* Vol 12 p.216.

- Constant review of curriculum in favour of enhancing the teaching of human rights;
- Established adequate mechanisms for implementing policies and strategies emerging from monitoring, review and evaluation;
- Research to keep up with developments via availability of information;
- Experimentation via pilot schemes; and
- Partnerships and linkages for bench marking, dialogue and information sharing.

7. Conclusion

Rampant human rights abuses in most parts of Africa call for very innovative measures to squarely address the problem. Promoting and protecting human rights at stake in the African context, by applying principles and practices of clinical legal education, is hereby considered one viable initiative not only for meeting the challenges of the culture of human rights but also for pursuing the growth objectives for clinical education in Africa in that designing relevant and responsive law curricula to enhance the teaching of human rights in specialised clinics will contribute to strengthening human rights values within the continent and beyond. Present debates in this area are encouraging; but much more still remains in the challenge for developing further the culture of human rights the world over with Africa as a particular focus as argued in this presentation.