INTRODUCING THE TEACHING OF AFRICAN LEGAL JURISPRUDENCE IN THE 21ST CENTURY: THE KIU APPROACH

By

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Abstract

One of the consequences of colonial rule in substantial part of Africa was the Received English Law. This law was not only alien to the cultural orientation of the African people but significantly compromised the cherished traditional African Justice System, by subjecting amongst others, the customary rules to 'validity' test. The colonial approach of planting the United Kingdom legal system intothe *colonized territories without considering the cultural values and peculiarities of the indigenous people has caused* huge *historical legal imbalances.This research will review the traditional African justice system prior to the arrival of the received English law; during colonialism and in the post-colonial era with particular emphasis on the 21st century law teaching at Kampala International University. The research will recommend a unified approach aimed at* marrying *the inherited legal system with the traditional Africa justice system with a view of bringing out an efficient and acceptable legal system which will reflect the needs and values of the African people.*

Introduction

In the olden days, Africa, education was undertaken by practice.[1] The concept of knowing and doing was well established. Whatever degree of proficiency a person wanted to attain in a vocation, craft or trade, he had to undergo varying periods of practical instruction and training within the complexities of his own familial and social system. For instance, the son of a fisherman spent his mornings by the seashore swimming in the surf until he became proficient in swimming and diving as in

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[1] David Kimble "A Political History of Ghana" 1963

walking and running. Therefore, the education of an African child by the African system is a preparation and practical training for the life that lies before it[2]. Unfortunately, this form of education is deemed to be informal and usually discarded by the 'revered' formal education which is predominately literary. Students' heads are being filled with stuff which they do not understand, much less apply.[3]

This article will adopt the doctrinal method of research in analyzing the pre and post-independence legal education in Africa with specific reference to KIU as a case study and thereafter recommend ways of tackling the hurdles facing the teaching of legal education in the 21st century Africa. The article will conclude by providing a workable merger between the inherited legal system and the indigenous traditional African justice system with a view of providing an acceptable legal system which reflect the yearnings and peculiarities of the people of Africa.

Pre- Independence Africa Legal System

The use of customary law systems as part of the delivery of justice services to the poor and vulnerable people in African countries was the practice prior to the coming of the colonial masters. It was a flexible legal system which evolves as communities evolve, inexpensive, accessible and speedy. Its proceedings are easily understood by users of the system and it provides communities with a sense of ownership in contrast to formal legal systems that are perceived as alien to a considerable number of people in Africa.[4]

Prior to the Europeans' arrival in Africa, there appeared to be no formal system of legal education that produced 'legal professionals' as the term is presently understood[5]. Inheritance, ownership of moveable or immovable property, status of individual rules of behavior and morality were matters irrevocably settled by the customary law with which everyone was familiar with from

[2] Samuel O. Manteaw "Legal Education in Africa: What Type of Lawyer Does Africa Needs? McGeorge Law Review, Vol. 3, 2008

[3] Ibid @ 951

[4]Minneh Kane et. al "Reassessing Customary Law Systems As A Vehicle For Providing Equitable Access To Justice For The Poor" Arusha Conference, New Frontiers of Social Policy, December 12-15, 2005

[5] Samuel O. Manteaw supra @ p910

childhood and litigation regarding such matters was almost inconceivable.[6]

Traditional legal systems and customary laws in African polyethnic societies formed part of a functioning, coherent and consistent totality of the African way of life. The role of legal professionals was not litigation. Rather, they performed public interest services and used mediation to resolve disputes andmaintain balance and harmony between parties and in the community at large. Such legal professionals include Chiefs, Elders and people with law related responsibilities or functions.[7]

Traditional courts are a useful and desirable mechanism for the speedy resolution of disputes given their nature as an easily accessible, inexpensive simple system of justice. Some of the advantages of the traditional African justice system include:

- Accessibility: These exist in almost every area of jurisdiction which is within reach of most inhabitants. People do not have to travel long distance to conventional courts.
- Cost: Traditional Courts are cheaper in terms of court levy which in turn makes access to justice affordable.
- Familiarity with the law: Traditional courts apply customary laws which consist of rules and customs of a particular group or community. Ordinary people understand it and relate to it much more than the largely imported common law or the statutory law applied in regular courts. This encourages popular participation in the exposition of the law.
- Simplicity and Informality: The procedure in traditional courts is simple, flexible and expeditious. The procedure allows for the parties to present their cases and have their witnesses give their version of events. This informality makes these courts user friendly and public participation makes the process popular in the sense of regarding it as their own and not something imposed from above[8].
- Language: The language of the court is invariably the local language of the parties before it, with no risk of distortion through interpretation makes the courts attractive to the users and give greater satisfaction to the parties. Unlike when

[6] Ibid

[7] Ibid @ p910

[8] See Bekker J.C "Seymour's Customary Law in Southern Africa" Juta, 1989 @ p29

translations in formal courts are required, the proceedings are usually long and turgid, quite often, the translations are hopelessly inaccurate and invariably they do not capture the nuances of the speaker's mother tongue[9].

Colonization changed this state of affairs significantly. It introduced formal legal education and legal representation and compounded Africa's plural legal system. Though, it provided useful juridical patterns for contemporary African legal systems, colonization and the legal education it introduced focused on litigation to the detriment of other useful roles that lawyers could perform.[10]

African Legal System During Colonial Era

During the colonial period, the European powers introduced their own metropolitan law and systems of courts into Africa. Indigenous laws and procedure were in some cases allowed to co-exist to the extent that they were compatible with European notions of international justice and morality.[11]

The British colonial administrator introduced a system of courts patterned after the British system. An organized legal profession able to apply English laws and procedure thus became necessary. Despite the need for legal education institutions, virtually no steps were taken to establish local training facilities and legal education in Africa during the colonial period. According to W.L Twining, this was not an accident, colonial policy deemed it more important to train Engineers, Doctors and Agriculturalists than lawyers because Africans who wished to read law were regarded as preparing for a career in politics and it would be self-destructive for a colonial government to encourage the production of politicians.[12]

Since there was no form of formal legal education in the colonized African countries, the only way an African could become a lawyer was to journey to London, join the Inns of Court

[9] The Harmonization of the Common Law and Indigenous Law: Traditional Courts and The Judicial Functions of the Traditional Rulers- South African Commission, Discussion Paper 82, May 1999

[10] Samuel O. Manteaw supra @ p912

[11] Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems- Penal Reform International, November 2000

[12] Samuel O. Manteaw supra P914

and acquire English qualifications. Only the rich could embark on such a quest to attain legal education. As a result, in the colonial era, British expatriates, Asians and West Indians heavily patronized and dominated the legal profession in African colonies. This can be seen in the statistics that, of the one hundred lawyers in Tanganyika (Now Tanzania) in 1961, only one was African; out of over three hundred qualified lawyers in Kenya, less than ten were Africans and out of about one hundred and fifty lawyers in Uganda, only twenty were Africans.[13]

The African legal profession composed largely of wealthy foreigners who had little interest in public interest law as opposed to the practice in the pre-colonial times. The profession's focus as influenced by British legal education curricula was on private practice representing rich and commercial clients and litigating cases. This seems to have facilitated the profession's loss of touch with local realities and with the needs and aspirations of the poor majority. More importantly, there were grave inadequacies in the London legal training that prepared these lawyers for practice in Africa. Because the English trained lawyers did not study the customary laws of African countries as part of their education notwithstanding that customary laws was and still is a very important part of the African legal system.[14]

According to L.C.B Gower, because African lawyers were trained exclusively as barristers, the focus in African law was and continues to be litigation. Not even the dramatic increase in local training initiatives during independence era could change the profession's fixation on litigation and private practice[15]. Similarly, in the word of Grady Jessup, the law courses of early curricular design did not reflect the needs of the society and the training of lawyers was based on doctrinaire teaching geared to an adversary setting catering for litigation for the fortunate few at the cost of social injustice to the deprived many.[16]

Post- Independence Africa Legal System

[13] Ibid p915
[14] Ibid p917
[15] See Centre For Human Rights, University of Pretoria: The 6th All African Human Rights Moot Court. Available on http//www.chr.up.ac.za
[16] Grady Jessup "Symbiotic Relations: Clinical Methodology-Fostering New Paradigms in African Legal Education" Vol. 8, Clinical Law Review pp 377-387, 2002

In the era immediately following independence, there was significant scholarship on the need, processes and character of legal education in Africa. Policymakers, politicians and academics all saw the need for training legal professionals who could assist in the transformation of African legal systems and aid in the development of Africa[17].

The British political and legal order has the culture of democratic haggling, literary argumentation and verbal disputations which are regarded as disrespectful by feudal and aristocratic political despot. The failure of the British legal order can be explained by the fact that it is an alien legal system which had ceased to be very relevant in regulating post-colonial, socio-economic relations in a state with religious and nation-state cleavages and a poor culture of political determinism[18]

Unlike India, which has moved away from the British legal system and had established a social justice system which has visibly propelled India to gain acceleration in the right directions, the East Africa jurisprudence has not yet emerged[19]. The popular Lord Denning committee recommended among others that African countries should not admit lawyers to local practice merely on the basis of British qualifications; it suggested requiring additional practices training in local laws and procedure. The committee further recommended the establishment of a law school in Dar-Es-Salaam to serve East Africa[20]. Therefore, in Africa, a law degree does not alone qualify one to practice as a lawyer. A further period of postgraduate practical learning is required.

Most of the problems facing the 21st century African legal education are lack of legal clinics to teach skills and sensitize students to local needs and aspirations; over reliance on lectures; scarce legal aids support services and a lack of perspectives on African juridical and philosophical value system as they relate to the global legal system.[21]

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[17] Samuel O. Manteaw Supra @ p906

[18] Prof. Dr. Emmanuel Omoh Esiemokhan" The Failure of the Colonial Legal System in Nigeria. A Rhapsodic Passacaglia on a Legal Theme" FocusNigeria.com October 12, 2011

[19] Ibid

[20] See Lord Denning Report

[21]Muna Ndalo "The Democratic State in Africa: The Challenges for Institution Building" 16 Nat'L Black L.J 70, 78 (1998)

The type of justice offered by the formal courts may be inappropriate for the resolution of disputes between people living in rural villages or urban settlements where the breaking of individual social relationships can cause conflict within the community and affect economic cooperation on which the community depends[22]. This is because most rural communities are dominated by multiple relationships, that is, relationships based on past and future economic and social dependence which intersect ties of kinship.[23]

Whereas, the functions of law are to act as instruments of social engineering, social regulation and social change. Under the formal system, law was and is being used as an instrument of legal control, legal manipulation, and legal punishment of those who challenged the status quo[24]. The post-independence police laws and military ethics still reflect the colonial punitive way of dealing with political mal-contents. The surveillance system and marking down potential 'trouble-makers' still form the system of law enforcement in most post-colonial African States.[25]

Whilst traditional and informal law involves restitution, reconciliation between the parties and rehabilitation of the offender. By contrast, the emphasis under the formal system is on the punishment of the offender by the state and any fines paid are to the State. The victim is relegated to the status of witness and ignored as far as his or compensation needs are concerned.

The KIU Approach

Over the last three decades, the price of legal education has increased approximately three times faster than the average household income. This erects a formidable economic barrier to becoming a lawyer and restricts the career choices of qualified but indigent students[26]. Kampala International University is one of the accredited private universities in East Africa licensed amongst others to teach law. Understanding the expensive nature of

[22] Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems- Penal Reform International, November 2000
[23] Ibid @ p22
[24]Prof. Dr. Emmanuel Omoh Esiemokhan supra
[25] Ibid
[26] Law School Leadership in the 21st Century; Meeting The Global Challenges- 2nd Annual African Law Deans Forum Held Between 10th – 11th 2013 @ University of Nigeria, Enugu, Nigeria.

acquiring university education and the poverty level within the region, the management of the university as part of its corporate social responsibility designed a yearly scholarship scheme for five thousand qualified but indigent students. This scheme covers all the faculties, schools, and colleges within the university[27]. This single initiative by KIU is an attempt not only to alleviate poverty but bring qualitative university education to the qualified but indigent and less privileged future leaders.

The Challenges of Teaching Law at KIU

It is imperative to state from the onset that using KIU as a case study is just for convenient purpose because virtually all the challenges discussed hereinunder are perfect reflections of what is obtainable in our law teaching faculties in Africa. Just as there is more to practicing law than knowing the content of specific areas of law, there is more to teaching than knowing the content that must be conveyed. In other disciplines, teachers study educational theory and continue to develop their teaching skills through continuing education but most law teachers or professors do not come to the classroom with such background[28]. They were employed without any teaching history and there was no effort whether at the individual or faculty level to train the trainers. What this means is that, most law school teachers or professors have little or no practice experience and no particular training or qualification in education.

The problem is compounded with the overwhelming use of socratic method to the exclusion of many other effective alternatives. One of the challenges of solely adopting this method of teaching is that it provides little or no feedbacks on the performance of the students which in turn negatively affects creativity and innovation[29]. This method of teaching makes the classroom an extremely professor-centered activity. Similarly, the choice about the appropriate teaching method in most cases is a reflection of our own comfort level as teachers rather than a

[27] See Yudaya Nangozi "KIU to offer 5000 more scholarship" The Observer, 17th November, 2014

[28] Linda S. Anderson "Incorporating Adult Learning Theory into Law School Classrooms: Small Steps Leading to Large Results" Appalachian Law Journal, Vol. 5, Spring 2006 @ P127

[29] Paul Bateman "Towards Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back row" QLR Vol. 17:337, 1997.

method created to take care of the students' need and international best practice. As teachers, seeking out the diverse ways in which we teach can only strengthen our own understanding not only of the material we teach but also of the best way to communicate particular kinds of information and skill[30]. Encouraging teaching styles which test ideas, discuss concepts, question assumptions and contribute to students' experience will be much more rewarding[31]. Adopting such approach will produce a law graduate who understands how laws are created, implemented and changed; the contextual underpinnings of the operation of law both domestically and globally.

Another challenge is the student-lecturer ratio. In most cases, the lecturer is overwhelmed because of the number of students he is expected to teach. Teaching a class of hundred students will certainly reduce if not eliminate the chances of the lecturer getting to know his students and provide a one-on-one feedback where necessary. It is therefore important for the university to work with the available man-power and logistics in other to improve the learning outcomes.

In the context of the constantly evolving needs of the global employment market, it is essential that students are equipped to be flexible, adaptable and prepared to take responsibility for their own learning and their own continuous personal and professional development. This places a responsibility on teachers and tutors in higher education to develop teaching environment which encourage students to take a more proactive role in articulating and striving towards self-determined learning goal[32]. This will enhance and develop a form of collaborative learning aimed at increasing students' independent and enhance confidence[33].

Solutions

A law school can best achieve excellence and have the most effective academic program when it possess a clear mission, a solid plan to achieve that mission and the capacity and willingness to measure its success or failure. Absent a defined

[30] Ibid @ p31
[31] Ibid @ P7
[32] Karen Hinett " Developing Reflective Practice in Legal Education" UK Center for Legal Education, University of Warwick, 2002
[33] Ibid @ P54

mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discreet activities without coherence. Although, most of the law schools have on paper, a clear mission, they in most cases lack the yardstick of measuring their successes and failures.

Similarly, if a law school does not review its performance, it can easily be deluded about its success; the effectiveness of its pedagogical methods, the relevance of its curriculum and the value of its services to its constituencies[34]. Therefore, a law school that fails to review students' performance or its performance as an institution or that uses the wrong measures in doing so has no real evidence that it is achieving any goals or objectives. And a law school that lacks evidence of achievement invites demands for accountability from all the stakeholders and well-wishers.

Recommendations

African legal education should be reform to focus on local challenges, beginning with extensive reform of domestic law schools, curricula and administration in order to meet domestic developmental needs; stimulate vibrant interest in perspectives on African law as it relates to the global legal order and fix basic structural problems. Critical to reform are perspectives on African law as it relates to the present global order. Do international politics and international law have an African angle? Do African value system drive African legal education? Is African legal education influenced by a peculiar African demand for ordered change and development?

Whereas law curricula should seek to adapt indigenous philosophical jurisprudence and values to African needs, the global economy and international issues, it is imperative for Africa to develop institutions that enhance indigenous values and facilitate democratization, good governance, development, modernity and rule of law.[35]

In a developing continent like Africa, any system of legal education should aim at producing lawyers Africa needs, well trained lawyers who are alive to demands of globalization with a globally competitive posture and who are in touch with local

[34] Roy Stuckyet'al "Best Practices for Legal Education" A Vision and A Road Map" Published by Clinical Legal Education Association. United States, 2007
[35] Samuel O. Manteaw supra p938

realities, needs and aspirations[36]. The Ghana example should be emulated where the World Bank, Ghana Judicial Service and the National House of Chiefs have initiated a project that seeks to re-empower the chiefs to settle domestic disputes.[37]

Given the need to train African lawyers, the African legal education system must deal with crucial policy issues regarding curricula reform. Such issues might include specialization, acquiring practical skills, using legal clinics to teach skills and sensitizing students to local needs and aspirations reducing over-reliance on lectures, increasing public interest sensitivity, changing the litigation and provide practice focus of African legal education, increasing the number of courses offered, addressing geopolitical needs, pupilage inadequacies, dysfunctional institutions for globalization needs, stimulating a vibrant interest in perspective on African law as it relate to the global legal order and improving learning resources.[38]

Conclusion

Traditional African justice systems in the post-independence Africa have contributed immensely in the dispensation of justice. A clear strength of customary law system is that they represent laws that originate from and with the people in the most direct sense. The tribunals are accessible and familiar with the local populace. The remedies they offer are often restorative and they encourage mediation and reconciliation as opposed to the largely adversarial approach of the formal judicial system.[39]

What we need in Africa are not courts of law but courts of justice. Therefore, the main concern should be which system provides the most appropriate solutions in what type of cases and how each system's comparative advantages can be enhanced and disadvantages minimized rather than whether a predilection for things old or new, borrowed or home grown can be exposed.[40]

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[36] Ibid p939
[37] See Ghana News Agency, September 23, 2005
[38] Samuel O. Manteaw supra p940
[39] Minneh Kane et. al supra @ p27
[40] Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems- Penal Reform International, November 2000 @ pg5

Conclusively, if those concerned with justice reform in Africa wish to have any real impact on improving access to justice for the majority, then the vital role played by traditional and informal mechanisms in providing justice for the majority of people living outside town centres needs to be acknowledged. They will also need to seek to broaden understanding of how and where these forums operate and to pursue policies which take full account of their existence.[41]

[41] Ibid