

A Focus On The Role Of Lawyers In Non-Governmental Organisations: Implications For The Law School Curriculum

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INTRODUCTION

In this paper I seek to draw out some of the challenges unearthed in various studies I have undertaken in the provision of legal services within the African context.¹ My own experience as a lawyer who worked for a non-governmental organization engaged in the provision of legal services for five years, before joining the Law Faculty, has also influenced my perception of strengths and weaknesses of what may be termed alternative and trans-national lawyering.²

My overall framework for analysis is the recognition that an increasing number of lawyers within the African context work for non-governmental organizations and are engaged in activities which present specific challenges, primarily because the training they have received has not always equipped them to deal with the lived realities on the ground. Law in action has therefore been instrumental in providing insight into the relevance of what lawyers are taught and some guidance into the way that the law school curriculum could be revamped or expanded to address certain core themes that are of relevance to the challenges of alternative and transnational lawyering.

It is important to appreciate that because the remarkable growth across Africa in the number of organizations carrying out legal services for disadvantaged communities, owes itself to a combination of national, regional, as well as global forces, lawyers working in non-governmental organizations often share a lot more common ground than may appear to be the case at first glance. In reality, what have often started off as initiatives at a national level in one country have often found speedy replication in neighboring

¹ The primary source for this synopsis is empirical data from a study on the provision of legal services in 16 selected African countries, which I carried out with a team on behalf of the ICJ (Geneva) and the Legal Resources Foundation (Zimbabwe) in 1997. I also draw on feedback from lawyers working with NGOs in Zimbabwe in particular, on what they deem to be the shortcomings of the law degree.

² I worked with the Harare Legal Projects Centre, an operative arm of the Legal Resources Foundation, Zimbabwe from 1988- 1992.

countries and across regions as a result of the common legacy of dual or plural legal systems and also the overlap in social, economic, cultural and political realities. Dominant global ideologies particularly on issues such as gender, human rights, democracy and good governance have often strongly influenced the ideological outlook in the work of non-governmental organizations in their provision of legal services. There is also the global link in terms of the funding of such initiatives.

In summary this paper summarizes 1) the core issues, objectives and target groups that are being addressed by lawyers in Non-governmental organizations within the African context, 2) the strategies they adopt in carrying out their objectives and 3) the challenges they encounter that have implications for the further development of the law school curriculum. Some issues are summarized for possible incorporation into the law school curriculum.

ISSUES AND OBJECTIVES

The issues being focused on under the rubric of legal services can be said to fall into four broad, though overlapping, and categories. These are:

- a) Human rights issues mainly founded on constitutionalism, the declaration of rights and civil and political rights.
- b) General legal rights; encompassing the overall nature of the legal system, criminal and civil law, and the procedural aspects related thereto.
- c) Rights of disadvantaged groups such as women, workers, children, and prisoners to mention a few
- d) Civic education, canvassing issues such as voter education, participation in decision-making, democracy and good governance.

The focus on these issues has been influenced by specific social, cultural, legal, political and economic realities in the different countries. For instance, the dual nature of the legal system, which exists in most African countries, has largely resulted in people not being aware of their rights under the national law as compared to their knowledge of customary or religious law. Further, limited state resources for legal aid programmes have

exacerbated the problem of lack of awareness. This reality has therefore led to the concern with raising people's awareness about their rights. In a context where the majority of Africa's population lives in the rural areas and continue to be largely governed by customary law, people are often unaware of legislative changes, which affect them because of the general absence of state programmes aimed at creating rights awareness amongst citizens. It is in this context NGOs have found themselves with an important role to play in bridging the gap between the law and the people. The basic aims of these organisations can be said to be to promote, advocate and defend legal rights through public awareness initiatives.

The concern with women's issues has to be understood in the general context of broad social practices and the patriarchal nature of most societies, which sanction the subordinate position of women. The priority being accorded women's issues at the global level also explains the predominant concern with this issue.

The focus on human rights and civic education has to be understood within the context of the quest for democracy and citizen participation in governance as well as the quest for state accountability in its interaction with citizens – often problematic arenas within the context of most African countries.

In general the services are aimed at various categories of people such as women and men, school children, prisoners, law enforcement agencies, church leaders, and community groups to mention a few. In most cases, rural communities emerge as priority targets in an effort to address the problems rural communities encounter in accessing more formal means of justice.

INTERVENTIONIST STRATEGIES

Although the nature of the lawyer's intervention differs from organisations to organisation, there are certain core strategies that are adopted which essentially incorporate training of various intermediaries, community legal education including

lobbying and advocacy and legal aid provision. Most organizations adopt multiple strategies. For instance, training is at the centre of both legal aid and information dissemination.

a) Legal information dissemination

To facilitate the process of information dissemination, organizations produce a wide range of range of educational materials such as pamphlets, flyers, posters and audiovisual cassettes. However, there is unevenness in the extent to which organizations have managed to come up with educational materials. Consequently, the area of materials production is often cited as one for networking and co-operation.

In those instances where materials have been produced, lawyers are largely responsible for writing the materials, albeit increasingly with input from the target group. Illustrators and translators also play a part in the process. Consequently some of the written materials are user-friendly in language and have been translated for the different target groups.

Legal aid

Whilst information dissemination generally serves the purpose of enhancing knowledge of the law on various aspects impinging on people's lives, legal aid permits individuals and groups to assert their rights and to practically respond to difficulties so that in the end the rule of law prevails. Legal aid programmes are also a way of informing people about their rights. A striking feature in the provision of legal aid is the role played by paralegals alongside lawyers who either work for non-governmental organizations or volunteer their services outside their other commitments. Legal aid is generally provided through variously named centers such legal aid centers, legal information centers; legal advice centers, legal project centers or legal clinics. Legal aid is often provided on a gratuitous basis although in some cases beneficiaries are asked to pay a small sum towards the filing of court process and incidental administrative costs. Legal aid provision often incorporates counselling, negotiation and mediation.

Training

Organisations engaged in training generally provide in house training for paralegals or field workers. These in turn are expected to carry out awareness meetings at which they disseminate legal information. In addition to training of paralegals and field workers, lawyers working in NGOs also find themselves responsible for advocacy and lobbying, media campaigns, and production of educational materials.

CHALLENGES ENCOUNTERED BY LAWYERS

It is the grounded experiences of lawyers who carry out such programmes that have brought out the specific ways in which the teaching of law could be structured in a way that would provide such lawyers with the necessary skills to grapple with the contextual realities that they encounter.

Most lawyers have no direct skills in imparting information to ordinary people. Therefore despite legal education being a core component of the programmes on offer, for most lawyers, learning has had to take place on the job. A critical analysis also reveals that quite often people's survival and material needs are viewed as having priority over their need for traditional legal services. The challenge posed is that of developing legal services to deal with pressing collective problems that are presented by African realities. These are often problems which lawyers with orthodox training have not been trained to handle, although lawyers who have been working with grassroots communities, increasingly recognize the challenges posed by the contextual realities of their target groups. A lawyer from the African Committee on Law and Development (CADD) Senegal, rightly emphasized the need to take cognizance of these realities in the development of legal services programmes when he says:

“It is difficult to mobilize people only around traditional legal problems. Problems of development and of survival have to be integrated into programmes of this nature.

The challenges confronting lawyers working for non-governmental organizations in the provision of various aspects of legal services can be summarised as follows

- Limited skills to carry out training programmes.
- Lack of emphasis on negotiation and mediation and counselling skills in law school yet these ultimately form the basis for the provision of legal aid in most organizations.
- Lack of skills to deal with issues, which do not automatically fit with traditional categories.
- Lack of skills to address social and economic rights as test case issues. (Rights to health, education, food, water etc).
- The fact that in most countries the law is divorced from other disciplines thereby giving lawyers a rather limited legalistic view of things.
- Lack of skills to produce legal materials for popular education.

Generally, indications are that improving their exposure to the changing dynamics of lawyering whilst they are still at law school could significantly enhance the role of lawyers within the NGO setting.

Giving voice to the lawyers

The voices and experiences of lawyers from different organizations and different countries across Africa countries speak to the above challenges.

For example, the responsibilities of a lawyer working for the Zimbabwe Council of Churches (ZCC) under the peace and justice programme, include consultation and accountability with governance structures, responsibility for advice in the law making process as well as defining space for civil society as a whole. The lawyer's role is seen as increasing space for popular enjoyment of human rights especially in a context such as Zimbabwe where the issue of human rights has become central.

Asked whether the law degree as taught has been useful in enabling the lawyer to address the multiple challenges posed by the tasks, her response was that the major weakness of the law degree appears to be its poor linkages with the social science disciplines. In terms of impact, the biggest impact has been made not so much by law in isolation, but in working together with other disciplines. For instance the Zimbabwe Council of Churches,

as a church body felt that it had been highly instrumental in bringing the Constitutional debate to the public agenda resulting in the formation of the National Constitutional Assembly.

With regard to the challenges confronting lawyers in carrying in carrying out training programmes, a lawyer with the Federation of Women Lawyers (FIDA/Kenya) explained her experience as follows:

“The major lessons learnt have been that there is a need to be guided by a clear curriculum. We generally started from the unknown. Whilst some of the staff members had attended a workshop on paralegal training which was hoisted by the International Commission of Jurists in 1992, and found it extremely useful and inspiring in how to carry out this work, much has had to be learnt in the process of doing the work. The basic problem stems from the fact that whilst lawyers know the law, they often do not know how to impart it to different categories of people outside the framework of those whom they are trained to serve. Another challenge is how to develop a sustainable programme. There is a need for resource persons on the continent who can help with the training for trainers.”

Another staff lawyer working with Kituo Cha Sheria in Kenya explained thus

“The experience of lawyers as trainers has been borne more out trial and error than any real training. The biggest challenge had to tone down the lawyer's training to the level of the participants.”

In speaking to the problems of lack of negotiation, mediation, and counselling skills the Director of the Legal Aid Project in Uganda noted as follows:

“Most people go to court because they are forced by lawyers. Often what people are seeking is an impartial person. We are taught to talk and write like lawyers. The way letters are written is very important in getting people to come to the negotiating table. Threatening letters do not help. In reality lawyers often play the

role of social workers and yet they often do not know much about counselling, which in most cases is a more effective tool than the court process.

Perceptions on perceived strengths and weakness of the law school curriculum seem to be primarily determined by the actual nature of activities that lawyers find themselves doing. This is to say lawyers working in organisations with a wider social and economic mandate tend to emphasise the weaknesses of the law degree as operating in isolation from other disciplines such as political science and economics for instance. There is also a perception that subjects such as human rights, democracy and good governance should certainly be part of the law school curriculum. Skills in test case litigation, which are also deemed as essential in building a culture of challenging human rights violations, are currently deemed to be marginal.

Lawyers in organisations with a leaning towards service provision tend to emphasise the weakness of the law degree from the perspective of lacking emphasis on negotiation skills, advocacy, lobbying and investigative skills although aspects of these can be found in certain law school subjects. Clearly the call is more emphasis. In Zimbabwe, a lawyer who found herself working for an organisation engaged in investigating politically motivated human rights abuses, highlighted how the training of lawyers does not really equip them to address the challenges of investigating human rights violations. Lawyers also feel that the law degree does not equip them with skills to use remedies that are not legal and as such they tend to see their intervention from a very legalistic perspective.

Another limitation is that issues of monitoring and evaluation and budget planning, which are in fact core to NGO activities where some lawyers find themselves, generally do not form part of the law school curriculum.

Summary of skills that could be improved through the law school curriculum

1) Litigating test cases on social and economic rights 2) Litigating test cases on gender issues 3) Community legal education skills, 4) Legal materials production, 5) Training of

trainers for lawyers, 6) Lobbying and advocacy skills 7) Data collection on human rights issues. 8) Mediation and negotiation skills.