

**AALS CONFERENCE ON EDUCATING LAWYERS
FOR TRANSNATIONAL CHALLENGES**

NON- GOVERNMENTAL ORGANIZATIONS

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Introduction

Why should the world's leading legal educators, representing over 50 countries and all of the world's major legal systems, concern themselves with Non-Governmental Organisations?

We are gathered here to engage in a dialogue about the education of graduates for transactional law practice. We are agreed that the rapid cross-border flow of capital, goods, people, services and ideas translates into a growth industry for extra-jurisdictional legal services and remedies. The lawyer of the 21st century must be empowered to face these challenges.

It seems to me therefore that, in the nature of their organisation, the reach of their work, in their growing reputation as champions of human rights and of democratic governance, in their success (in the developing world at least) as agents of development aid delivery, NGOs are a fantastic tool for the study of transactional legal practice in almost all of its manifestations. That is why NGOs must engage our attention at this conference.

Non-Governmental Organizations (hereinafter NGOs) have become ubiquitous at least in the developing world. In the developing world, some say they act as "supplementary governments", and others cynically call them an "alternative government".

I believe a more accurate description of NGOs in the developing world is provided by Dr Michael Williams who says " NGOs today form part of the 'development machine', a vast institutional and

disciplinary nexus of official agencies, practitioners, consultants, scholars and other miscellaneous experts producing and consuming knowledge about the ‘developing world’.”¹

The World Bank has referred to Non-Governmental Organization as any group or institution that is independent from government, and that has humanitarian or co-operative, rather than commercial, objectives. Specifically, the Bank focuses on NGOs that work in areas of development, relief or environmental protection, or that represent poor or vulnerable people.²

It is estimated that there are now some six thousand international NGOs plus millions of national and local NGOs worldwide.

Types of NGOs differ markedly. They range from large International NGOs like Amnesty International, the International Committees of the Red Cross and Red Crescent, Greenpeace, the World Wildlife Fund, Medicins Sans Frontieres and Oxfam, Save the Children, through a myriad community-based operations to “charlatans, known locally [in Ghana] as ‘husband-and-wife’ NGOs operating out of bedrooms writing letters requesting funds on fake letter-headed paper”.³

Brief Historical Sketch

Williams⁴ tells us that already in the nineteenth century, NGOs were actively influencing global governance issues. The Anti-Slavery Society was formed in 1839; the International Committee of the Red Cross was formed in 1863; the International Congress of Weights, Measures and Moneys in 1867 (the forerunner of the Metric Union); the International Law Association in 1873, the Inter-Parliamentary Union in 1889, the International Chamber of Commerce in 1919.

Many others, international and domestic, were to follow. Amnesty International, the human rights NGO, was born in 1961; Medecins Sans Frontieres came into being in 1971; Oxfam was founded in 1942.

¹ Williams, M “*Introductory Paper*” 21st Century Trust Conference on Global Civil Society: *Expectations, Capacities and the Accountability of International NGOs* Merton College, Oxford 28 March – 5 April 2003

²(World Bank, 1996)

³ (“Ghana to Blacklist NGO’s”, *BBC Radio Africa Live*, 25 February, 2004).

⁴ Ibid n1 above

But the explosion in numbers and variety came in the latter part of the last century, with exponential growth being recorded in the last three decades of that century. This latter phenomenon can be traced to a number of factors including the following:

- the development of areas of social exclusion and neglect which governments, even in the developed world, could not tackle.
- The slow movement of governments and traditional political parties in addressing the environmental, economic and human rights concerns of their electorates.
- The clear disjuncture between resources available to developing countries and the magnitude of development problems they have to tackle.
- The growth in developing countries of the 'soft state', which accentuated the inability of their governments to address structural inefficiencies.
- The endemic conditions of ignorance, illiteracy, disease, and poverty in the developing world.
- The catastrophic levels of poverty worldwide and the need for poverty alleviation.
- The scientific community's discovery of, and focus on, global climatic change and environmental degradation.
- The rise of globalization.
- The impact of the ICT revolution, which has made it possible to move ideas and resources across national boundaries with ease and speed.
- The recent inclination of donor governments, and of both international and bilateral agencies, to contract out much of their fieldwork.
- The trend towards democratization of government in the developing world.

- The perception that NGOs are an important part of a vibrant democracy.
- The perception that the vindication of individual human rights by most of the world's poor and vulnerable is possible only through the medium of NGOs

The Work of NGOs

NGOs are engaged in a plethora of activities and causes which are bound to engage the attention of the 21st Century Lawyer.

On the international plane, one has to agree with Williams' observation⁵ that NGOs have exerted significant influence by pioneering global governance through international conferences, agreements and pressure for state action. In addition to the British and Foreign Anti-Slavery Society, we can cite the work of the International Committee of the Red Cross in promoting the Geneva Conventions of 1864, 1906, 1929 and 1949; the work of the International Maritime Committee in promoting conventions on safety at sea in 1914 and 1929; the work of the International Law Association, the Inter Parliamentary Union, the International Chamber of Commerce, and Save the Children.

NGOs have led in pushing environmental issues up the international agenda, in putting debt cancellation for the world's poorest people high on the world agenda, and in pressurizing the majority of states to create the International Criminal Court. They are also to be credited with leading global campaigns on issues such as regulation of the pharmaceutical industry, and control of the arms trade.

At the domestic level, the activities of NGOs reflect the corollary of the factors listed above which aided their exponential growth in the last quarter of the last century. Many NGOs in the developing world are "devoted to the alleviation of poverty", a concept so wide that NGOs are known to be active in health, education, community-based income-generating activities, self-help projects, care of the aged, agriculture and rural development, human rights education and advocacy, the care of street children, environmental protection and management, preservation and development of indigenous

⁵ See n1 above

knowledge systems, food security, micro-finance, population management and demography, small-enterprise development, water and sanitation, renewable energy, HIV/Aids education prevention treatment and care, agriculture and agro-industry, local governance, local development initiatives, etc. In addition, an increasing volume of donor aid budgets and aid transfer is distributed through NGOs, with the US Government, for example, transferring approximately 40% of its aid programme through NGOs.⁶

Educating the Lawyer for Transnational Practice: NGOs

A few postulates bear repeating here. In the first place, the future transnational lawyer must be made aware of the tremendous significance of NGOs and the variety of their roles and activities in a globalized environment.

Secondly, the transnational lawyer must develop a sophisticated awareness of the different legal systems and cultures in which NGOs operate. This means that she/he must accept that the world is not monolithic and that people can, and do, do things differently; and that there is nothing inherently bad in diversity.

NGOs have become important players on the international plane. Consequently, their capacity as international persons needs accommodation in the Law School syllabus.

The student would need to be exposed to the various points of contact between the NGO and the national jurisdiction of the state in which it operates. These include, but are not limited to, the following legal issues:

- Legal status within the jurisdiction
- Prior legal constraints imposed by the host state
- Legal protection by the host state, if any, for personnel working for the NGO

⁶ id

- Legal protection, if any, for property of the NGO in the host state
- Legal requirements in respect of financial reporting
- Legal requirements in respect of periodic reporting of activities within the jurisdiction
- International legal (including treaty) obligations of the host state in respect of human rights
- The host state's legal regime respecting emergencies and disaster relief
- Conflict of Laws issues impacting on operations of the NGO, especially choice of governing law and mechanisms for dispute resolution
- International litigation, including avenues available for individual vindication of human rights, for instance

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BRIEF BIOGRAPHY

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Professor **John Kaburise** is the Vice-Chancellor of the University For Development Studies, Tamale, Ghana.

He came to that office in April 2002 from VISTA University in South Africa where he had served as Chief Academic Administrator. Professor John Kaburise used to be Professor of Public Law and Head of the Department of Public Law at the University of Durban-Westville. He was, for 8 months in 1997, Acting Vice-Chancellor of that University, having served first as Deputy Vice-Chancellor (Academic & Research) and then as Deputy Vice-Chancellor(Finance & Administration). Professor Kaburise has been Dean of Law at the Universities of Durban-Westville, Papua New Guinea, and Venda; and has been Deputy Dean of Law at the University of Lesotho and at Waikato University in New Zealand.

Professor John Kaburise was born in 1949 in Ghana and was educated there, matriculating at Achimota School in 1969 and obtaining an Honours degree in Law (Magna Cum Laude) from the University of Ghana in 1972. In 1973, he obtained his LLM degree from the University of Pennsylvania, and subsequently studied at Lincoln College, Oxford University. He is, inter alia, a Barrister of the Middle Temple(UK).

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