

Equipping Law School Graduates Face Transnational Challenges in Human Rights

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The Global Community is experiencing rapid change and development, affecting the well-being and ways of life of the entire humanity, involving radically new technologies and overall networking¹. Along with other developments, globalization has wrought about a radical change in the way in which law is practiced. Practices belonging to one legal system spill over into others resulting in the need to look into other legal systems for guidance². Hence, it is important to become aware of the makeup of other legal systems than ones own and to familiarize with them.

There is a need to adapt to the new environment. Consequently, the legal profession is required to rise to the challenges posed by economic and social restructuring. In other words, lawyers and the legal profession as a whole are faced with the task of standing up to the new challenges posed, which has resulted in the need for extra judicial legal remedies³. The legal profession is required to adopt itself to the diverse perspectives gleaned from the legal systems. They are called upon to adopt and equip themselves with the knowledge and skills necessarily to function successfully in contemporary society. Lawyers should be aware of real life effects of current legal rules and the expected outcomes under different legal systems. International lawyers are faced with the task of having to provide a more congenial arena for law, national and international to operate⁴, since users of legal services continue to face a bewildering lack of uniformity of laws, affecting cross-border transactions.

¹ www.hnluraipur.com

² Brochure, Utrecht University, The Netherlands, LL.M/MSC Faculty of Law 2004/2004 p 76

³ Peter Goldsmith, Globalization of Laws Tearing Down the Walls in J. Ross Harper ed Global Law in Practice, Kluwer Law International and International Bar Association p 140 (139-153)

⁴ Prof J. Ross Harper, Global Practice Now and In The Future in J. Ross Harper ed Global Law in Practice

Society has a right to lawyers who can render good and competent legal assistance, equipped to handle the intricacies and differences of the world's legal systems in a thoughtful and comprehensive way in order to accommodate the transnational delivery of legal services. Therefore, the future of lawyers very much depends on the legal professions ability to meet the demands and challenges posed. In fact, the ability to act effectively on a wider stage will be the primary determinant of success. Contemporary lawyers need to be more than just experts in law. Lawyers are often expected to perform as consultants and managers as well as specialists in other fields. Hence, there is a need for lawyers and would be lawyers who intend to start career as an international lawyer to engage in special training.

The paper attempts to highlight the effective role that law schools need to play in accomplishing the task, particularly in the field of human rights since transnational justice is considered to be currently one of the most critical issues in the field of human rights⁵. Specialization in human rights not only offers possibilities of a career in the United Nations, international organizations, courts and tribunal, regional groupings of sovereign states and nongovernmental organizations but also at the governmental level.

The cumulative effect of diverse application of human rights standards today create a clear perception of human rights representing a complete way of life which reflects valuable standards in all cultures and in all contexts of human activity. It is, therefore, essential to have an understanding of different international standards and procedures, which are of legal relevance to states, both domestically and internationally. Apart from established principles, there are now well-established normative standards in the human rights field that are sufficiently global and multi disciplinary to provide a legal basis for +directing corporate behavior in their social or political and economic persona.⁶

⁵ Center for Civil and Human rights, University of Notre Dame, www/humanrights.nd.edu

⁶ Michael K. Addo, Human Rights and Transnational Corporations, in Human Rights Standards and Transnational Corporations, m. K. Addo ed., Kluwer Law International, London, 1999 p23

Human rights law is pervasive across all disciplines as to the ideal regime for the similarly pervasive activities of private corporations as well as public. International human rights law has forged some inroads that demonstrate the unexploited potential of indirect scrutiny of corporate activity through the network of treaties that constitute the bulwark of this area of international law. Issues to be addressed include the possibility of attributing extra territorial responsibility on the state for harm caused by a corporation in another state, when the corporation has a close connection with the first state. In *Casariago Vs. Uruguay* the Human Rights committee observed "...it does not imply that the state party concerned cannot be held accountable for violations of human rights under the Covenant which its agents commit upon the territory of another state, either with the acquiescence of the government of that state or in opposition to it... (Communication No 56/1979, *Lilian Celiberti de Casariago Vs. Uruguay*, yearbook of Human rights, 1981-82, vol. II, pp 327-329, at paras. 10.1-10.3) Two decades back in the unfortunate incident concerning the mishap in the UCIL, (known as the Bhopal case), killing thousands and crippling many more, it was held that a parent TNE company must submit to jurisdiction in a country where it had no legal presence and recognized the *de facto* precedent accepted by the settlement of acceptance by a TNE parent company of a liability of harm caused by a subsidiary. Issues such as how basic common law tort categories can be understood in terms of remedies for human rights violations without necessarily the need to develop specific human rights civil causes of action needs to be tackled by the students as well.

Apart from deepening the students understanding of the case law concerning the protection of human rights, they should be provided with a general insight and understanding of the well defined principles such as effectiveness, proportionality and the margin of appreciation⁷. The goal of legal educators has to be to provide knowledge and skills that contemporary lawyers need to serve their clients, governmental organizations, intergovernmental organizations, non governmental organizations as well as the United Nations .For inculcating the skills students are to be trained in critical analysis of current

⁷ Ibid p 30

developments in an international legal context⁸ besides developing insights into the theory and practices of international human rights law in an interdisciplinary and geographically focused context. So that students develop independent critical points of view, integrating a scientific temper and a justice component into human rights education should be considered.

In order to avoid any possible shortcomings, schools should adopt an interdisciplinary approach through integration of law with social sciences, economics and management as part of their legal studies.⁹ Interdisciplinary nature of the programme would facilitate not only the legal processes and institutions but also the social, economic and political contexts in which human rights are promoted, protected and violated. Such an approach would also enable focus on the links between globalization and international human rights law. Lack of cross-disciplinary knowledge hurts educationalists, lawyers and the legal infrastructure and system.¹⁰

The curriculum should provide for an overview of the current mechanisms for the international protection of human rights, with particular emphasis on the United Nations and its various organizations.¹¹ Such a course should examine the historical and jurisprudential basis of international human rights law; the normative framework of the principles of universal human rights treaties and of customary international law as well as the institutional mechanisms provided for interpreting, monitoring compliance and enforcing these norms. A foundational course in international human rights law focusing primarily on examples of United Nations human rights regimes has been included by the Center for Civil and Human Rights, University of Notre Dame.

Apart from the international perspective, it is considered imperative to provide for an in-depth study of the regional systems of human rights. Students should be required to make a comparative study of the procedures for enforcement provided for by the regional

⁸ www.ll.m-erasmus.org

⁹ *ibid*

¹⁰ Sarch E. Redfield, *The Convergence of Education and Law: A New class of Educators and Lawyers*, *Indiana Law Review* Vol. 36 No 3, 2003, p 262

¹¹ *supra* n. 8

instruments in Europe, Africa and the Americas. The contextual diversity and cultural specificity in the implementation of human rights need to be focused upon.

The curriculum should also provide for an examination of how human rights are implemented in practice since it would help reveal the extent to which the instruments have succeeded in promoting and protecting human rights. The system of human rights reporting and monitoring, the methods employed in fact-finding and advocacy, the use of statistics and the evolution of evidentiary rules and standards¹² if used effectively and understood properly would enable them to play an effective role in their professional careers.

Human rights violators should not be able to move about freely with impunity. They should be held accountable for their actions. The curriculum should facilitate the study of the provisions for accountability as laid down in different human rights instruments. Apart from making a comparative study, students should also be required to study incidents and reports on the extent to which past violations have been accounted for in order to highlight the positive aspects besides noting the shortcomings and the possible reasons for the same.

The functioning of international organizations, intergovernmental agencies, global and regional, including the international financial institutions should also be covered so that students can identify the various human rights related issues confronting these organizations. Students should also be imparted knowledge on international humanitarian laws and refugee laws and on their interrelationship with human rights.

Non-governmental organizations have been performing a significant role in the promotion and protection of human rights. The curriculum should also include study on the role of non-governmental organizations.

¹² supra n.5

Human rights education programmes should address particular vulnerable groups, women, children, indigenous peoples, minorities, refugees and displaced persons among others. In addition students should be engaged in community research, outreach and advocacy aimed at strengthening mechanisms of accountability

Importance to courtroom exercises and practical aspects of learning should find place in the curriculum. Moot courts on human rights issues should not only be held in law schools, but teams should be encouraged to participate at various levels. Other methods like mocking client interviews, sessions at negotiations and oral arguments, if provided, would enable students developing skills to succeed. Besides, law schools should make arrangements for empirical studies of courts and legal agencies and processes.

Other possibilities that merit consideration include, providing placements for a limited period every year with human rights institutions, organizations, governmental as well as non governmental organizations, arrangements for summer studies and internship programmes suited to individual needs, wherever feasible. Such activities call for networking and close collaboration and cooperation with foreign universities, the United Nations and regional bodies. If meticulously planned and implemented it will help facilitate respond to external challenges and changes. Law schools should conclude agreements with institutions abroad with a view to exchanging students and consider the possibility of establishing joint programmes as is presently being done by a few schools, leading to award of a joint degree.¹³ Law faculties may also enter into formal and informal agreements, thereby extending cooperation in developing countries.

In spite of the significant benefits such facilities could provide, the limitations in respect of the majority of the law schools are apparent. In order to counter such limitations, the feasibility of establishment of visiting fellowship programmes could be considered so that students are in a position to avail the services of experiences professors and other professionals. Such measures could also facilitate integration of other disciplines into research and teaching.

¹³ supra n.2 p 85

Various measures of experimental learning would not only introduce students directly to human rights procedures of intergovernmental and non-governmental organizations but also contribute directly in furthering human rights protections.

Apart from making provisions for holding of regular moot courts, teams should be sent to compete in moot court competitions on a regional and international basis. The African moot court competition has provided an opportunity to debate some of the crucial issues of our time in the exciting and challenging atmosphere of a court room where they contest their argument skills against one another in a spirit of fierce competition¹⁴. That apart, it has achieved its objectives of increasing knowledge of the African regional human rights system and international human rights law; ensuring that international human rights law, and, in particular, the African regional system, is part of the curriculum of the law faculties in Africa; in creating a network of young African human right lawyers, and ensuring contact between African law faculties; contributing towards the development of an indigenous African human rights jurisprudence. The competition has succeeded in considering the following international instruments among others, African Charter of Human and Peoples Rights; other OAU instruments; the Protocol to the African Charter of the Court; UN human rights instruments and treaties; the instruments from the jurisprudence of their countries and other African jurisdictions. The competition has succeeded in emphasizing and symbolizing the need for and ability of Africans to confront the shared problems on the continent on the basis of human rights¹⁵.

Moreover, law schools should consider establishment of practical training programmes. Law schools should provide for clinics- the law offices within the law schools, staffed by new cadres of clinical human rights teachers, where students could learn not just to think, like lawyers but to represent real clients in law schools under the supervision of

¹⁴ Speech by Nelson Mandela, Pretoria, 1995

¹⁵ Brochure, African Human Rights Moot Court Competition, University of Pretoria, 2003

practicing lawyers and clinical teachers.¹⁶ Such activity would also support the case method with live client clinics.

The quality, status, independence and professionalism of the legal profession are matters of fundamental importance. The above measures, if undertaken should lead to developing skills of delivering justice- economically efficient, structurally communicable and effective. Moreover, the schools should be able to develop its theory of justice looking at social context and complexity, apart from developing the clinical and training courses to replace the walls that divide with bridges that link. Young lawyers would be confident to effectively deliver justice in a transnational society.

¹⁶ Robert w. Gordon, Legal Education in the US: Origins and development, *Issues of Democracy*, August 2002 p3