

UNIVERSITY EDUCATION & SUSTAINABLE DEVELOPMENT

A Forum

Edited & Introduced By
UDO ETUK

© PROF. UDO ETUK

First Published 2006

All Right Reserved:

No part of this book may be reproduced, stored in a retrieval system or transmitted in any form or by any means Electronic, Mechanical, photocopy, recording or otherwise without the written permission of the Author and Publishers.

ISBN: 978-8097-44-8

Published by:

Minder International Publishers

A subsidiary of:

Robertminder International Limited

2 Ibiam Street, Uyo

Akwa Ibom State

E-mail: robertminder@yahoo.com

GSM: 0802 343 9761

Chapter Ten

LEGAL EDUCATION AND SUSTAINABLE DEVELOPMENT IN DEVELOPING COUNTRIES

By

**PROF. ENEFIOK E. ESSIEN &
BAR. U .E UDOK**

INTRODUCTION

The key phrases in here are, “legal education”, “sustainable development”, and “developing nations”. Unlike Alice in Lewis Carroll's “Alice in Wonderland”, we will not start from the beginning and get to the end. We will start from the end and get to the beginning. We will start with developing countries, then sustainable development and finally, legal education. We will then consider the impact of legal education on sustainable development.

We know which countries are “developed” and which nations are normally classified as “developing”. The distinction is basically on the level of economic growth, per capita annual income and literacy rate. The economic growth of course has a bearing on the standard of living of the citizenry. The term “developing countries” is used interchangeably and synonymously with “third world countries” or “less developed countries”. Afro-Asian and Latin American countries are generally classified as less developed, though even among the less developed countries some are more less developed than others. Western countries are said to be “developed”, so that if you ask them what “development” means they would tell you that it means “to be like us”¹; and if you go further to ask them what “less developed” or “developing” means they would most probably tell you, and perhaps rightly so, that it is

a euphemism for underdevelopment a--phrase often abhorred and avoided because of its derogatory connotation.

Development as a word has no generally agreed definition and the definitions that abound only reflect the intuitive value-sets of their authors.² The word is at times used interchangeably with "modernization"³. What can safely be said however is that "development" embraces both individual and national betterment, and cuts across the mental, physical, educational, health, social and commercial sectors. Development thus includes better education, enlightened creative populace, better road networks, constant electricity supply, better and constant water supply,⁴ better health care, better clothing, adequate housing, ownership of automobiles, radios, television and telephone sets and in this era of information technology and globalization, internet connectivity and computer literacy. To be added to this list is better and adequate food. It may be said that today, the nutritional status of many people is desperate, or in crisis, in the sense that they suffer the "daily terrorism of hunger". No doubt, food security is squarely (also) in the legal domain. The law can do a great deal to lay down parameters and determine priorities for social and economic policy formulation and thus shape and control the different legal and non-legal power relations that determine access to food. It is in this sense that law "stands between food availability and food entitlement - it can mediate between availability and entitlement"⁵.

It has for long been internationally recognized that the right to development is an inalienable human right, and so countries have been saddled with the primary responsibility of creating conditions favourable to the development of peoples and individuals.⁶ The right to development is recognized as a "Third generation right". The Objectives and Directive Principles of the Nigerian Constitution 1999, also regards national prosperity, economic development and happiness of every citizen as its State Policy.⁷ The statutory and constitutional emphasis on development of the citizenry is not misplaced. The rationale is that national development is rooted in the people whose material condition expresses the nation's degree of sustainable development. A country develops at the speed of its citizens' individual development. What

this means is that the individual is central to the country's development question. This is why legal education must be such as would guarantee the proper intellectual, scientific, economic, attitudinal and socio-political climate for sustainable development.

'Sustainable' development simply means continued,⁸ unceasing development. In some sense, it may sound somewhat paradoxical to talk of sustaining development in an underdeveloped country. Perhaps what should be sustained is what the country presently has, that is, underdevelopment, rather than development, which is as yet a desideratum.

The question then is, how can developing countries become "less developed" or more developed? We had noted earlier that even among the less developed countries, some are more "less developed" than others. How can developing countries add to their development? There is here the implied understanding that the developed countries can keep on adding to their development, so that they become more developed. Indeed, the United Nations Resolution recognizes that development "aims at constant improvement of well-being..."⁹, so that no matter how developed a country may be, there is always room for improvement.

In what way does (or would?) legal education contribute to sustainable development in Nigeria? Note had earlier been taken that the countries in Africa, Asia, and Latin America are generally classified as developing countries. In discussing the role of legal education, we shall use Nigeria as a microcosm, though reference would be made to other countries as may be necessary.

Legal Education in Nigeria

Legal education is the process of imparting legal knowledge to the people either in a formal or informal setting. It is the training of people to acquire legal knowledge and skills. Thus, at the formal level, it is a professional training to acquire legal skills in an institutionalized setting. To this end, we have law faculties in universities, where students train and graduate with law degrees, and thereafter are called to the Nigerian Bar after a successful practical training at the Nigerian Law School. We will return to this shortly. Informal legal education is comparatively more recent in

Nigeria and indeed worldwide. It involves taking legal education to the streets, communities, colleges and to the markets by way of legal awareness campaigns by individuals, groups and non-governmental organizations.

Formal legal education in Nigeria started in 1961 when the University of Nigeria started its law degree programme. This was later followed by the University of Lagos, Ahmadu Bello University and the then University of Ife (now Obafemi Awolowo University) in 1962. Almost every University in Nigeria now runs a law degree programme, leading to the award of the Bachelor of Law (LLB) degree. Of recent, private universities have joined in the provision of formal legal education, the first of them being the Igbinedion University, Okada, in Edo State.

After the university legal education, a second (and final) formal setting is the Nigerian Law School ("The Law School"). The Law School was not always there. It was set up by the Council of Legal Education, which itself was established by Legal Education Act 1962, and charged with the general responsibility for the legal education of persons seeking to become members of the legal profession.¹⁰ The Nigerian Law School has till today been running a one-year¹¹ course of practical legal training for persons who possess a law degree from recognized Nigerian or foreign universities. Before 1963, i.e. before the establishment of the Nigerian Law School, persons who were trained in England and thereafter called to the English Bar returned home and simply had their names enrolled as legal practitioners in Nigeria without any further legal training. This was in line with the Supreme Court Ordinance of 1876, which empowered the Chief Justice to approve, admit and enroll to practise as barristers and solicitors in the court, such persons as possess the legal qualifications normally obtainable from the Council of Legal Education in England through membership of one of four Inns of Court, namely, Lincoln Inn, Grays Inn, Inner Temple and Middle temple. Those who possessed qualifications awarded by the Scottish, Irish or Commonwealth country's Bar were also eligible for enrolment at the Nigerian Bar. The ordinance further provided that a barrister could practise not just as a barrister but as a barrister and solicitor, and *vice versa*.¹² Also, the ordinance gave power to the Chief

Justice to prescribe some form of examination as a condition precedent to enrolment either in addition to or in substitution for one of the qualifications stated above. However, there is no record of an instance where the Chief Justice exercised this power.¹³ The establishment of the Nigerian Law School came to "indigenize" foreign-trained Nigerian lawyers by ensuring that their legal knowledge, mentality and education is re-oriented and formally adapted to the Nigerian environment and circumstance. The Law School thus ensures the contemporary relevance of law to societal needs and its contribution to sustainable development.

Legal Education and Sustainable Development

Sustainable development can only thrive where there is social justice. One serious obstacle to social justice in Africa is what is generally the crisis of state in developing countries. This crisis consists of the inability of developing countries to provide a sense of justice and good enough social goods, including personal and human security for its citizens. This crisis is often rooted in the cultural and structural formation of the countries, and manifests mainly as ethnic, communal, or religious conflicts. Law is one of the important tools of the required institutional social and cultural re-ordering and development. And legal education has been programmed to better enlighten the citizenry and expose both lawyers and would-be lawyers to the theoretical and political bases of the re-ordering. To this end, legal education is tailored towards developing reflective and self-critiquing skills, which will promote proactive public lawyering. This has manifested in many ways.

1. By **Clinical Legal Education**: This involves experimental, hands-on education and has both the Street Law Programme and Law Clinic as its components. This is of special significance in developing countries where there is a prevalence of illiteracy among much of the populace and so most people are unaware of their rights. By the Street Law Programme, both lawyers and would-be lawyers take the law to every nook and cranny of the country, enlightening the citizenry on at least their basic constitutional rights and guarantees. They go to secondary schools

and colleges, markets, prisons, police stations, roadside, etc. Participants also engage in human rights awareness campaigns and sensitise the poor, the ignorant and the disadvantaged of their rights in matters which affect almost every day of their lives.¹⁴ The truth is that if people do not know their right under the law they cannot stand up against tyranny, embezzlement, abuse of office and power, and social injustice. They would just not know that they should be better treated and so they would neither demand, insist nor complain. Street Law aims at societal enlightenment and betterment. It aims at human, mental development, which will in turn bring about individual, collective and national development.

The law realizes that knowing your right, and knowing that the right has been infringed, is one thing. It is an entirely different thing to be able to vent your grievance or seek redress so as to right the wrongs. It is here that the legal (or law) Clinics come into play. Law Clinics principally involve would-be lawyers, but who later qualify as lawyer to serve the society. This develops the society, through public interest lawyering. The goals of clinical legal education

“...are to supplement and complement other indigent legal services; to improve legal education by providing practical skills and experience; to encourage students to pursue public interest careers, thereby enlarging and strengthening the public bar...”¹⁵

Incidentally, both the Street Law model and the Legal Clinics started in America and have been in practice for many years now. It emerged as a discipline when law educators became aware of the need to prepare and equip students with the lawyering skills necessary for the practice of law.¹⁶ A commission was set up in the United States of America in the 1970s through the funding provided by the Council of Legal Education for Professional Responsibility (CLERP). Following its recommendations law Clinics spread throughout the United States. Today the Legal Clinic has spread to Africa, Asia, and Latin America. It is seen as a tool for creation of

public-interest, proactive lawyers for the overall betterment of the society. In Africa, South Africa, Botswana, Lesotho, Ghana, etc have embraced it. The major achievement of the Clinical Legal Education is its potential for attainment of development and open society through enhanced access to justice even to men or women “on the street”. Street lawyering is significantly proactive and developmental because it not only makes people aware of how the present legal system can protect them, but also encourages them to think about the type of legal system they would like in the future. This inculcates the positive thinking habit, which again is necessary for development. Also, the programme encourages and propagates the use of alternative dispute resolution such as mediation, arbitration, and negotiation to discourage people from resorting to violence by taking law into their own hands

2. Pro bono legal aid work also enhances social justice and development. *Pro bono* schemes are cheap and, if supported by legal profession, can encourage public service by legal practitioners. Since August, 1998, the Nigerian Bar Association has taken a number of decisions on *pro bono* work by its members. It approved the establishment of civic rights centres throughout the country. Citizens who cannot afford to employ the services of lawyers to enforce their constitutional rights may approach a civic rights centre to obtain legal assistance and advise from a solicitor. Over the years a number of lawyers on the legal Aid Council's judicare (or referral to private lawyers) panel have rendered *pro bono* legal aid services.¹⁷ Some lawyers on the panel have done legal aid work *pro bono* because it has not been worth their while to claim the nominal fee. Between its inception in 1976 and April 2000, the Legal Aid Council received 50,100 applications, of which 42,515 were granted.¹⁸ There is no denying that the effect of denying justice to people who cannot afford a lawyer produces a sense of helplessness, which progresses to bitterness and then to contempt for law, disloyalty to government, and anarchy. This has been the rationale for *pro bono* and legal aid schemes, quite apart from the sense of justice and fairness

3. **Developmental Lawyering**, which focuses on the role of a lawyer in community development and empowerment. Legal education has thus shifted from traditional to rebellious and then to developmental layering. Law is now called upon to play a social engineering role for the transformation of the society in order that justice and equity for all can be ensured. This role of law places greater responsibility on judges, lawyers, legal scientists, law educators and students and prompts one to take a fresh view of his proposal functions. This immediately shifts attention to the type of legal education which law faculties provide to future lawyer. The developmental lawyer must be well equipped and disposed to participate, albeit in varying degrees, in community organization, project planning, development and implementation. She must be aware of and participate in the social, political, and economic aspects of community action. Indeed, a developmental lawyer's ultimate objective is to identify and train community organizers and leaders from within the community.

Conclusion

The point has been made that "development" is a multi-faceted concept. However, as applied to national or a country's development, it generally means "a happier people". Not happier in ignorance - because, as the adage has it, ignorance is bliss! But happier because their mental horizon has been broadened and widened, their mind and body have been liberated, and their conditions of life significantly improved, not by its own isolated, local standard, but by comparative international standard.

Some developing countries have attempted to achieve sustainable development through generous assistance from developed countries, instead of local capacity-building, which includes legal education. This has not been helpful because such assistance and loans often have conditionalities attached to them, which, in the local circumstances, might be anti-development. In any case, prolonged foreign assistance can in fact cause additional problems by creating dependencies and by undermining indigenous self-help capacities.

Again, some developing countries have sought to sustain

development by privatization, so that the private sector gains more visibility and greater role. This is a laudable thing to do. The problem however is that, as the Nigerian experience has shown, extensive privatization of state assets and services, a neo-liberal approach often favoured by Western donors, can end up in favouritism or "grab-it-ism" and lead to considerable social and political tensions in the country, which ultimately is anti-development. The solution therefore lies ultimately with proper legal education, which will improve the people's vigilance because they know their rights under the law and they go by the law.

NOTES

E.E. Essien, PHD (Birmingham), Professor of Law and Dean, Faculty of Law, and U. E. Udok, LL.M (Lagos) Lecturer in Law, both of the University of Uyo, Nigeria.

¹Nettl, J.P, "Strategies in the Study of Political Development" in Leys, C. (Ed) *Politics and Change*, p. 13; Higgins, B. *Economic Development: Principles and Policies*, New York 1959.

²Sedman, R. B. *The State, Law and Development*, Croom Helm, London (1978) at p. 55

³Scer, D. "The Meaning of Development" (1969) Vol.11 , *International development Review* at p. 2

⁴The World Health Organization (WHO) links about four million deaths each year and almost five billion sickness incidents to the lack of adequate sanitation and drinking water: Jaap De Visser, Cottle & Mettler, "Realizing the right of access to water : Pipe dream or watershed?" In *Law, Democracy & Development: Vol.7* (2003) 1, LexisNexis Butterworths, Western Cape, at p. 27.

⁵Danie Brand, " Between availability and entitlement: The Constitution, Groot boom and the right to food", in *Law, Democracy & Development, op cit.* pp. 1,3.

⁶See Preamble to the United Nations Declaration on the Right to Development, adopted by UN General Assembly Resolution 14/128 of December 4, 1986.

- ⁷See chapter II (Section 16) of the 1999 Constitution, now in Vol.3 Cap C23 Laws of Federation of Nigeria, 2004.
- ⁸See, *Oxford Advanced Learner's Dictionary*, 6th edn (2000) p. 1209.
- ⁹Preamble to the UN Declaration on the Right to Development, *op.cit.*
- ¹⁰Section 1 (1) of the Legal Education Act 1962, Cap 206 Vol. xi LFN 1990. See now Vol. 8 cap L10 LFN 2004.
- ¹¹There have been speculations that the duration of the course of study may soon be increased to two years.
- ¹²It is not clear whether the two were fused, whereas in England from which formal legal Education emanated, the practice was (and still is) diffused, i.e. One can only practice as barrister or as solicitor, though there is now an emergence of "solicitor Advocates"
- ¹³Elias, T. O. "Legal Education in Nigeria" (1962) 6 JAL 116
- ¹⁴F.F. Iya: 'Fighting Africa's Poverty and Ignorance Through clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century' (2000) 1 *Inter J. Of Clinical Legal Education* 13, 30
- ¹⁵Stephen Golub, "Battling Apartheid, Building a New South Africa" in *Many Roads to Justice* (2000), p.38
- ¹⁶D. Bamhiezer, "The University ideal and clinical legal Education" (1990) p.35 *New York Law School L.R.*87
- ¹⁷Legal Aid Council 2000 at p.4
- ¹⁸Legal Aid Council 2000 at p.3