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AFRICAN LEGAL EDUCATION: A MISSED OPPORTUNITY AND SUGGESTIONS FOR CHANGE: A CALL FOR RENEWED ATTENTION TO A NEGLECTED MEANS OF SECURING HUMAN RIGHTS AND LEGAL PREDICTABILITY

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I. Introduction

The creation and maintenance of a strong legal profession is thought in the United States to be a key element in promoting the efficient and fair administration of justice. Law schools and bar associations in the United States stress the importance of training ethical and socially responsible lawyers.

The mission statement of the Northwestern University School of Law reads as follows:

The mission of Northwestern University School of Law is to lead in advancing the understanding of law and legal institutions, in furthering justice under the rule of law, and in preparing students for productive leadership, professional success, and personal fulfillment in a complex and changing world.¹

The motto of the American Bar Association (“ABA”) is “Defending Liberty, Pursuing Justice.”² Prominent members of the legal profession in the United States urge that American law schools should do more to train future leaders of our society.³

The recent book *Educating Lawyers*, popularly known as the “Carnegie Report on Legal Education,” notes that in the United States, professional education is:

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¹ See THE STRATEGIC PLAN FOR NORTHWESTERN UNIVERSITY SCHOOL OF LAW, 2 (2001), available at http://www.law.northwestern.edu/difference/Strategic_Plan.pdf (last visited Feb. 25, 2008).

² See American Bar Association, <http://www.abanet.org> (last visited Feb. 25, 2008).

³ See Ben W. Heineman, Jr., *Lawyers as Leaders*, 116 Yale L.J. Pocket Part 266 (2007), available at <http://yalelawjournal.org/images/pdfs/102.pdf> (“... law schools should more candidly recognize the importance of leadership and should more directly prepare and inspire lawyers to seek roles of ultimate responsibility and accountability than they do today.”) (last visited Feb. 25, 2008).

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[I]nherently ethical education in the deep and broad sense. The distillation of the abilities and values that define a way of life is the original meaning of the term *ethics*. It comes from the Greek *ethos*, meaning 'custom,' which is the same meaning of the Latin *mos, mores*, which is the root of 'morals.' Both words refer to the daily habits and behaviors through which the spirit of a particular community is expressed and lived out. In this broad sense, professional education is 'ethical' through and through.⁴

As a consequence of the recognition that the quality of legal education is important to the quality of justice, substantial resources, both private and public, are devoted to legal education in the United States.

The question of what the role of African law schools should be in their countries is a more complex issue, one that cannot be resolved in a sentence, a paragraph, in an article, or by outsiders. Moreover, the state of legal education varies from country to country. This article focuses on the state of legal education in sub-Saharan Africa, excluding South Africa, where legal education is relatively well-supported.

In the 1960's and 1970's, it was thought by many legal educators in the United States that law schools in Africa could play a key role in developing a cadre of able, ethical, and effective leaders.⁵ As a consequence beginning in the 1960's, a great deal of time, effort, and money were spent on attempting to create African law schools in the image of Western, university-based legal education.⁶ This effort waned in the mid-1970's as the result of a number of factors, including political unrest in many African countries, as well as the prevalence of one-party states that were not supportive of higher education generally and legal education in particular.⁷ In addition, a debate emerged (still on-going) concerning whether

⁴ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 30-31 (Jossey-Bass 2007).

⁵ See generally, JOHN S. BAINBRIDGE, *THE STUDY AND TEACHING OF LAW IN AFRICA*, (Fred B. Rothman & Co., 1972); Quintin Johnstone, *American Assistance to African Legal Education*, 46 *TULANE L.R.* 657 (1972).

⁶ *Id.*; see also J. Donald Kingsley, *The Ford Foundation and Education in Africa*, *African Studies Bulletin*, Vol. 9, No. 3 (Dec., 1966); L. Michael Hager, *Legal Development and Foreign Aid: A Liberian Experience*, 29 *J. LEGAL EDUC.* 482 (1978).

⁷ See *TWENTY YEARS AFTER, A CONFERENCE OF LAW TEACHERS WHO WORKED IN AFRICA* (Compiled by John S. Bainbridge, 1986) [hereinafter *TWENTY YEARS AFTER*]. At this conference, Cliff F. Thompson, a leader in the movement to strengthen African law schools in the 1960's and 1970's remarked, "[w]e went to Africa in 1961, and we left our final job there in 1973. In 1983, I returned on a Fulbright grant to Sudan and Ethiopia. Political events in Sudan have washed away much of what was done, but the remnants of much able work by visitors and Sudanese remains, should the rule of law, whether Islamic or Sudanese common law, again be allowed to flower. Able faculty remain in the University of Khartoum and in government ministries, but the destruction of the legal and judicial system, which was carried on by General Numeiri even before his Islamization of the substantive law, was a serious blow to the work of two decades. Given the Marxist-Leninist regime in Ethiopia, I expected the situation there to be even worse, but was greatly surprised to find many direct ties to the early work of people who served there. In 1983, the law school was composed of those whom we had helped educate at the law school, and who had taken over as leading educators and senior government officials upon our departure." *Id.* at 18. More recently, one scholar has noted, "[t]he downturn in the continent's economic fortunes has taken a heavy toll on African universities and their law schools. Recruitment, and particularly retention, of able African law teachers by impoverished universities has become increasingly diffi-

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the “law and development” theory that underlay the early efforts to establish Western-style law schools in Africa was responsive to the needs of Africa.⁸ The participants in the 1986 conference, “Twenty Years After: A Conference of Law Teachers Who Worked in Africa,”⁹ convened by Professor John Bainbridge, a leader in efforts to support legal education, reached no consensus regarding the future of legal education in Africa or of the role of ex-patriot participants in that future.¹⁰

Since 1986, there has been no organized effort among American law teachers, in cooperation with their African colleagues, to again reassess the efforts of the 1960’s and 1970’s to provide assistance to legal educators in Africa, or to attempt to chart a new course that might address the concerns of the critics of the “law and development” movement. The time is now ripe for such a reassessment and for the development of new strategies for supporting legal education in Africa. We argue that this is an appropriate and, indeed, a critical time for such a reassessment, because of the importance of international human rights norms and practices in Africa, and because of the forces of globalization. New strategies must be the result of close collaboration with African law faculties, with our

cult, and that problem has affected the quality of some of today’s legal education.” Muna Ndulo, *Legal Education in Africa in the Era of Globalization and Structural Adjustment*, 20 PENN. ST. INT’L L. REV. 487, 502 (2002).

⁸ Another participant in the TWENTY YEARS AFTER conference remarked, “I have suggested that we were all moved by the spirit of the times, a Zeitgeist, when we set forth to build legal education and research in Africa. The times change, and with it their prevailing spirit. The years since . . . have been full of doubts and criticisms of what we tried to do. We have read and heard charges of legal imperialism and chauvinistic devotion to American law and legal education directed at efforts not only in Africa but all over the world. There was certainly naïveté and ignorance that was quickly recognized and led to the efforts to make law and development into a serious field of research. But I believe that the rise of criticism had less to do with errors and follies we may have committed than with a broad change in the Zeitgeist. The whole conception of development that guided us in the early years came to be seriously questioned or rejected by the turn of 1970’s. Governments were less benevolently regarded, planning was ‘in crisis’, and faith withered in the powers of foreign assistance to build national institutions. We came into a time of emphasis on equity and direct efforts to meet the basic needs of the poorest. University development was criticized as favoring national elites and foundation interests in law shifted toward legal aid to the poor and human rights.” Remarks of Francis X. Sutton, TWENTY YEARS AFTER, *supra* note 7, at 23-24.

⁹ *Id.*

¹⁰ In his remarks at the 1986 TWENTY YEARS AFTER conference, Jim Paul noted that the then Dean of the law School in Ethiopia had recently written him saying that “all who participated in the law school endeavor, ‘set a standard that we have never forgotten and that we only wish we could reproduce today,’ TWENTY YEARS AFTER, *supra* note 7, at 57. But this did not mean to Dean Paul that a new initiative should imitate the old: “. . . [A] more basic understanding has been occurring during recent years, and it is I think, a very important, very enduring perspective. People, including, I believe, people at the Ford Foundation. . . have become much more interested in ‘development’ as a process of helping the poor, not only to realize ‘basic needs’ but to realize self-reliance, dignity, and the kinds of empowerment and initiative which come when people enjoy rights. A big task of development, as conceived today, is to help self-help activities, to help people become legally empowered to shape their own futures and not be pawns for the state’s or someone else’s concept of ‘development.’” *Id.* at 59. Another participant at in the Conference noted that future initiatives should “focus on the need for material resources to be given to the African law faculties, a fairly easy thing to do. . . but I am frankly somewhat skeptical about the effectiveness of the role which can be played by Americans, and by Westerners in general in the political process that is going on in Africa today. Remarks by Gary E. Davis, United Nations Development Program, *Id.* at 74.

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African colleagues in the lead.¹¹ They and we should be cognizant of the need to support the training of lawyers and of other legal professionals who can expand access to justice efficiently and economically.¹²

African law schools have similar potential to produce the next generation of leaders committed to promoting human-rights through ethical and social responsibility.¹³ This critical potential remains unrealized and is in jeopardy due to a lack of resources. Despite legal educators and university administrators' best efforts in Africa, African law schools are starving.¹⁴ This means that young lawyers graduating from African law schools often lack meaningful training in key ethical, professional, commercial, and human rights-related subjects.¹⁵ These students also lack exposure to new teaching methodologies, and due to limited access to legal information, the most recent developments in national and international law.

Although there was once a recognition in the philanthropic community that support of legal education in Africa was a critical element in the support of humane, efficient, and predictable justice systems, external donors (non-African governments and foundations) have all but abandoned their support of African legal education.¹⁶ This article argues that despite the prevailing consensus in the

¹¹ The ABA announced in October 2007 that its Rule of Law Program had received a \$2.5 million grant from USAID to support legal education and judicial education in Ethiopia. *New Ethiopia Program Part of Growing Work in Africa*, ABA, Oct. 10, 2007, http://www.abanet.org/rol/news/news_ethiopia_new_aba_rol_office.shtml. This program should provide new information about effective approaches to providing support for legal education in countries in which law schools lack resources.

¹² See Malawi Prison Service: Paralegal Advisory Service, available at http://www.mps.gov.mw/para_legal.htm (last visited Feb. 25, 2008).

¹³ This does not mean, however, that the provision of justice at the grassroots level can or should always be provided by formally trained lawyers and judges. Indeed, many argue that the legal profession in resource-starved countries is not particularly inclined or particularly well-suited to deliver legal services to the poor or at the community level. See, e.g., Adam Stapleton, "Introduction and Overview of Legal Aid in Africa," in *ACCESS TO JUSTICE IN AFRICA AND BEYOND, MAKING THE RULE OF LAW A REALITY*, 1-35 (Eds. Penal Reform International and the Bluhm Legal Clinic of the Northwestern University School of Law, 2007). This being said, formal justice systems require well-trained lawyers to run them and to make informed policy decisions, as well as to act as advocates and judges in human rights and commercial cases that have far reaching effects on individuals, communities, governments, and businesses.

¹⁴ Laure-Helene Piron, *Time to Learn, Time to Act in Africa*, in *PROMOTING THE RULE OF LAW ABROAD*, 275, 276-78 (Thomas Carothers ed., 2006).

¹⁵ Indeed, one commentator has noted recently that the "Red Terror" trials in Ethiopia were hampered by lack of skilled personnel in both the Special Prosecutor's Office and in Ethiopia's Public Defender's Office. With respect to the services provided by public defenders to the defendants in the "Red Terror" trials, this commentator notes that, "[p]ublic defenders lacked formal skills to deal with the complex national and international concepts involved in the trials." Girmachew Alemu Aneme, *Apology and Trials: The Case of the Red Terror Trials in Ethiopia*, 6 *AFR. HUM. RTS. J.* 64, 79 (2006).

¹⁶ See Piron, *supra* note 14, at 276-78 (demonstrating the changed focus from legal education to a more generalized attention to the concept of rule of law in donor aid to Africa); Ndulo, *supra* note 7, at 493. ("In the 1960s and 1970s American legal scholars contributed a great deal to knowledge and skills to the growth of legal education in Africa. This source of law teachers has virtually ceased because of the economic difficulties that most African countries are experiencing and the lack of international support for funding for such law teachers."); The Partnership for Higher Education in Africa, launched in 2000 by the Carnegie Corporation, the Ford Foundation, the John D. and Catherine T. MacArthur Foundation, and the Rockefeller Foundation (which now includes the Kresge Foundation, the William and Flora Hewlett Foundation, and the Andrew Mellon Foundation) has not provided support for legal education in

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United States regarding the importance in educating future judges, legislators, and lawyers, the same consensus has not been evident in the external funding of justice initiatives in Africa. This situation demands change.¹⁷

Historically, the legal profession in Africa was seen primarily as an aid to the developmental efforts of the respective governments.¹⁸ Consequently, the overall objective of legal education at the inception of independence in African states was to train lawyers to serve the manpower needs of the newly formed countries.¹⁹ Over the years this objective has been maintained despite changes in the domestic and international circumstances of African countries.²⁰ As a matter of colonial policy, legal education was discouraged due to its potential for producing political agitators.²¹ Consequently, emphasis has been placed on the training of other professionals, such as engineers, doctors and agriculturalists, to the detriment of the legal profession.²²

The need of these nascent independent countries for lawyers was relatively acute.²³ Governments, in their desire to accelerate the growth of the legal community, funded legal education in the context of the overall development of higher education.²⁴ Scholarships for legal education were awarded dependent

Africa and appears to have no plans to do so. See The Partnership for Higher Education in Africa, <http://www.foundation-partnership.org/> (last visited Feb. 25, 2008).

¹⁷ See Mark K. Dietrich and Nicolas Mansfield, *Lessons Spurned: Legal Education in the Age of Democracy Promotion 1* (East West Management Institute's Occasional Papers Series, Spr. 2006), available at <http://www.ewmi.org/Pubs/EWMILegalEducationReform.pdf> (“...the failure of reformers and donors to emphasize legal education reform in their programs constitutes a major mistake, critically undermining the effort to establish the rule of law in the developing world. The inability or unwillingness of donor organizations in the United States to tackle legal education in meaningful way also tells us something about America's overall approach to promoting the rule of law; that we are often myopic, looking only for short-term results in an area where long-term vision and commitment is necessary, and where change is likely to be generational. As America tackles legal reform in the even more complex and daunting context of the Muslim world, this is an error that it cannot risk repeating.”) *Id.* at 2.

¹⁸ Dr. Kwame Nkrumah, Speech at the Opening of the Ghana Law School: Ghana Law in Africa, 6 J. AFR. L., 103, 107 (1962).

¹⁹ See *id.* at 107-108; see also Emmanuel Kwabena Quansah, *Educating Lawyers for Transnational Challenges: Perspectives of a Developing Country-Botswana*, 55 J. LEGAL EDUC. 528, 528-33 (2005) [hereinafter *Educating Lawyers*].

²⁰ For example, the minimum academic standards for legal education in Nigeria approved by the National University Commission states the main objective of legal training in Nigeria to be, *inter alia*, “specifically aimed at producing lawyers whose level of education would equip them properly to serve as advisers to governments and their agencies, companies, business firms etc. . .” See M.O. Adediran, *Transnational Curriculum for Tomorrow's Lawyers*, Written for the Association of American Law Schools conference on Educating Lawyers for Transnational Challenges at Oahu, Hawaii, U.S.A (May 26-29, 2004).

²¹ See W. A. Twining, *Legal Education within East Africa*, in Commonwealth Law Series No. 5 115, 116 (1966).

²² See *id.*; Piron, *supra* note 14. (Even in a post-colonial context, “justice programs have not benefited from the same rhetorical push that the [Millennium Development Goals] have provided for other sectors such as health or education.”); M. Ndulo *Legal Education, Internationalization and African Law School*, 2 J. OF COMMONWEALTH L. AND LEGAL EDUC., 22, 31 (2004).

²³ It has been pointed out that the situation was better in West Africa than in East Africa. See L.C.B. Gower, “The Legal Profession” in INDEPENDENT AFRICA – THE CHALLENGE TO THE LEGAL PROFESSION, 108, 116-117 (Cambridge, Harvard University Press 1967); see also Twining, *supra* note 21.

²⁴ John Seaman Bainbridge, THE STUDY AND TEACHING OF LAW IN AFRICA, 53, 68-69 (1972).

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upon the manpower needs of the country with some countries being more progressive than others.²⁵ Growing decline in the economic fortunes of African countries has forced funding for legal education to compete with other pressing national priorities, causing a considerable continental deterioration of legal education.²⁶ Accordingly, funding of universities, including law schools, has taken on an increasingly regional and international dimension.²⁷

Several international partners have been active in funding or implementing programs aimed at enhancing the transformation of the African education system, in general, and higher education, in particular.²⁸ The African Higher Education Activities in Development (AHEAD) database, developed by the Association of Commonwealth Universities (ACU), in support of the Association of African Universities (AAU), ACU, and the South African Universities' Vice-Chancellors Association (SAUVCA) ten year partnership program, has compiled data on 349 externally-funded projects in African higher education.²⁹ An analysis of the database shows that the main thematic areas that draw the highest funding are: (1) sector governance projects (by the World Bank); (2) human resource development projects (by the Canadian International Development Agency (CIDA) and the Japan International Cooperation Agency (JICA)); (3) institutional strengthening as well as HIV/AIDS projects (by Ford Foundation); and (4) quality enhancement/curriculum development, science and technology, and research collaboration (by The Norwegian Programme for Development, Research and Education (NUFU) and JICA).³⁰ In analyzing this database it becomes clear that legal education is not featured in any measure of importance.³¹

There have been several U.S. national organizations and private foundations engaged in funding higher education in Africa, but here again little funds are channeled specifically towards legal education.³² As a consequence, there is a

²⁵ See *id.* at 54-55 (detailing the different approaches taken by African nations to the issue of offering scholarships: Tanzania provided full scholarships, Malawi offered 9 out of 10 students scholarships, but Nigeria and Liberia offered none); see also Gower, *supra* note 23, at 140 (The first time the Nigerian Federal Government gave scholarships for law studies was in 1964. These were six out of the total of 606 scholarships granted to students to study various courses).

²⁶ See Akilagpa Sawyerr, *Challenges Facing African Universities: Selected Issues*, 1, 8, 36-37 (Feb. 2004) (unpublished paper, on file with the Association of African Universities (AAU)), available at <http://www.aau.org/english/documents/asa-challengesfigs.pdf> (last visited Feb. 25, 2008); see also David Court, *Financing Higher Education in Africa: Makerere, the Quiet Revolution* (The World Bank and Rockefeller Foundation, Working Paper No. 22883, 2000).

²⁷ See African Union [AU], *Record of Proceedings of the 2nd African Union Meeting of Experts*, (February 27-28, 2006), available at http://www.aau.org/au_experts/docs/after_conf/proceedings.pdf; see also AU, *Second Decade of Education for Africa (2006-2015) Plan of Action, Revised* (August 2006), available at http://www.education.nairobi-unesco.org/PDFs/Second%20Decade%20of%20Education%20in%20Africa_Plan%20of%20Action.pdf (last visited Feb. 25, 2008).

²⁸ See Joel Samoff & Bidemi Carrol, *The Promise of Partnership and Continuities of Dependence: External Support to Higher Education in Africa*, 47 AFR. STUD. REV. 67 (2004).

²⁹ JAY KUBLER, *AFRICAN HIGHER EDUCATION ACTIVITIES IN DEVELOPMENT: THE AHEAD DATABASE* (Association of Commonwealth Universities Sept. 2005), available at <http://www.acu.ac.uk/policyandresearch/publications/aheadpaper.pdf> (last visited Feb. 25, 2008).

³⁰ *Id.* at 18.

³¹ *Id.*

³² *Id.*; see also Samoff & Carrol, *supra* note 28.

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need to push legal education to the forefront of international aid to higher education in Africa. The overarching goal of this effort is to attract the requisite funding necessary to sustain reform and modernization of legal education in Africa.

This debate raises many questions. For instance, has African legal education been ignored by western governments and foundations that favor other means of promoting the rule of law? If so, why have African law schools failed to receive the extent of funding that supports other Rule of Law initiatives? Should African legal education receive more support from external sources? Finally, what types of initiatives and collaboration should characterize on-going support for legal education in Africa? Before we suggest answers to these questions, we shall provide a brief history of external aid to legal education in Africa.

II. Brief History of Western Partnerships with English Speaking African Law Schools

Since the mid-twentieth century there have been various modes of interactions among Western lawyers and law professors and their African counterparts. The “Law and Development” movement of the 1960’s and early 1970’s was an attempt by American law professors and foundations to teach and import Western legal codes, educational, and legal systems to Africa to support economic development.³³ This movement has been criticized for its perceived insensitivity to the particular political, economic, and social needs of African communities.³⁴

³³ JULIO FAUNDEZ, LEGAL REFORM IN DEVELOPING AND TRANSITION COUNTRIES—MAKING HASTE SLOWLY, (Law, Social Justice and Global Development (LGD) Jan. 8, 2001), available at http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2000_1/faundez/ (“The role of lawyers in the process of development was a matter of great concern for the group of American law professors who in the 1960s launched the well-known, but short-lived law and development movement. In their view, legal education in developing countries was inadequate as it placed excessive emphasis on rote learning of legal rules and doctrine, a method which, apart from dull, did not enable the students properly to understand social and economic reality. . . . As these law professors believed that lawyers had a major role to play in the development process they set out to help a select number of developing countries reform legal education. As we know, the enterprise was cut short because funds dried up and the professors became aware that it was futile to attempt to export legal liberalism.” *Id.* at 8.5.; see also Leah Wortham, *Aiding Clinical Education Abroad: What Can be Gained and the Learning Curve on How to do so Effectively*, 12 CLINICAL L. REV. 615, 632-644 (2006) [hereinafter *Aiding Clinical Educations Abroad*].

³⁴ FAUNDEZ, *supra* note 33, at 6.2. (“In addition to the immediate political impact that any technical assistance project is bound to have, legal reform projects also generate resentment as they are often depicted as tools designed to impose alien legal regulatory schemes which undermine the indigenous legal culture.”); see also Laura Nader, *Promise or Plunder? A Past and Future Look at Law and Development*, Global Jurist: Frontiers Vol. 7: Iss. 2, Art. 1. (2007), available at <http://www.bepress.com/gj/vol7/iss2/art1/>. *But see*, Hon. J. Clifford J. Wallace, *Globalization of Judicial Education*, 28 YALE J. INT’L L. 355 (2003) (“A globalized judicial education would supplement, not replace, existing local education efforts. Despite countries’ differences, judicial education principles are generic, and a globalized judicial education system based on those universal principles will improve and enhance court systems, irrespective of the country’s legal system, size, wealth, or age.”) *Id.* at 358; see also Bryant G. Garth, *Building Strong and Independent Judiciaries Through The New Law and Development: Behind The Paradox of Consensus Programs And Perpetually Disappointing Results*, 52 DEPAUL L. REV. 383 (2002) (“The setting for today’s law and development is quite different. . . the consensus is far stronger in favor of reform and the legal approaches identified with the United States, including the core idea of a strong and independent judiciary. Lawyers do not have to fight for their role this time. Economists have come to see the importance of legal institutions to the markets that they now promote [footnote omitted].” *Id.* at 385. Garth also notes that the character of proposed legal reform initiatives has a lot to do with the political and economic philosophies of the U.S. power elite: “. . . the process is a hegemonic one

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During the period from 1975 to 1990, attention shifted to support of legal infrastructure, particularly the training of judges and legal officers, and attention to community-based programs, particularly those that made legal services available to the poor.³⁵ Since 1990, a new movement devoted to the support of legal system improvement, dubbed “Development Law,” has emerged.³⁶ The movement is primarily supported by multilateral and bilateral institutions.³⁷ Recently, the US government has been active through the United States Agency for International Development (USAID) in supporting Rule of Law programs in Africa, with a heavy focus on the training of judges.³⁸

The ABA’s African Law Initiative Sister Law Program sought to establish a framework for cooperative relationships by achieving a number of goals.³⁹ These goals included gaining an overview of legal education in Africa and the United States, exploring areas of mutual and special interest such as educational programs, libraries, and responsibilities to the bar and the public, and developing

that focuses on the business of exporting and importing on debates and issues that have salience in the north (here in the United States) at a particular time and place. We export our own palace wars.” *Id.* at 395-96).

³⁵ See, e.g., MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEEES AROUND THE WORLD (Mary McClymont & Stephen Golub eds. 2000) [hereinafter MANY ROADS TO JUSTICE]; Open Society Justice Initiative, *Clinical Legal Education in Africa*, available at http://www.justiceinitiative.org/activities/lcd/cle/cle_africa (last visited Feb. 25, 2008). Prof. Geraghty has participated in U.S. Dept. of State/American Bar Association programs, including a program in Ethiopia designed to provide information about clinical legal education and a State Department/ABA project designed to provide American and African children’s rights advocates opportunities to learn from each other about children’s rights, juvenile court, and child protection systems, and the implementation of the UN Convention on the Rights of the Child. Each of these programs involved exchanges between African and American law faculties. Professor Cynthia Bowman of the Northwestern University School of Law led a State Department funded program which was a collaboration between Northwestern Law School and the Faculty of Law at the University of Ghana, Legon. A product of this collaboration is a book on women’s rights co-authored by Prof. Bowman and Prof. Akua Kuenyehia, a former Dean of the Faculty of Law, Ghana and currently a judge of the International Criminal Court at The Hague, Netherlands. The Northwestern Law School has also worked with Ghanaian faculty to develop a clinical program and a children’s law curriculum. Northwestern Law librarian Chris Simoni has traveled twice to Ethiopia to consult regarding law library development and to the Law Faculty at Legon, Ghana for the same purpose. Northwestern Law School has provided opportunities for our colleagues from Ghana to pursue their research in our library.

³⁶ Grady Jessup, *Symbiotic Relations: Clinical Methodology—Fostering New Paradigms in African Legal Education*, 8 CLINICAL L. REV. 377, 397 (2002) [hereinafter *Symbiotic Relations*] (citing Lan Cao, *Law and Development: A New Beginning?* 32 TEX. INT’L L.J. 545 (1977)) (“The emergence of Development Law provides a new construct following the demise of the law and development movement which was attributable to deficiencies in modernization and dependency theories of law reform. [footnote omitted]. Development Law is a fresh approach to evaluating the impact of existing national laws governing political and economic development of developing nations by adapting laws, policies or customs to meet the unique national needs without the baggage of imposed laws and norms of the modernization theory or exploitation of natural and human resources of the dependency theory.”); see also Richard Bilder & Brian Z. Tamanaha, *Law and Development, Law and Crisis in the Third World*, 89 AM. J. INT’L L. 470, 472 (Apr. 1995).

³⁷ See Thomas Carothers, *The Rule of Law Revival*, in PROMOTING THE RULE OF LAW ABROAD, 10-11 (ed. Thomas Carothers, 2006); see also, FAUNDEZ, *supra* note 33.

³⁸ See Office of Democracy and Governance Bureau for Democracy, Conflict, and Humanitarian Assistance, U. S. Agency for International Development, *Guidance for Promoting Judicial Independence and Impartiality* (rev. ed. Jan. 2002), available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm007.pdf.

³⁹ Steven Keeva, *To Africa, With Law*, 81 A.B.A. J. 89 (Feb. 1995).

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an action plan for the future.⁴⁰ However, this program is no longer in existence.⁴¹ The ABA's Africa-related projects are now managed by its Rule of Law Initiative.⁴² The initiative's webpage references the ABA's support of various projects, such as the Louis Arthur Grimes Law School in Liberia and support for the Liberian National Bar Association.⁴³ Likewise, the British Commonwealth Legal Education Association (CLEA), through its West African and Southern African chapters, has sponsored law paper competitions, moot courts, and a legal research center in Cameroon.⁴⁴

The World Bank has also taken the lead in promoting judicial reform with the objective of improving conditions for sustainable development.⁴⁵ World Bank programs supporting the improvement of legal infrastructures are likely to continue to take center stage with a growing recognition that such programs must walk the fine line between supporting "reform" and being sensitive to African cultural, social, and legal norms and expectations.⁴⁶ The legal and judicial sector studies that precede large scale funding of legal and judicial reform projects contribute to the overall understanding of the African justice system's strengths and weaknesses.⁴⁷ The support for these programs will inevitably be substantial due to the comprehensiveness of World Bank-funded projects, and the perceived and actual links between a stable and predictable legal system and economic progress.

⁴⁰ *Id.*

⁴¹ See M. Wolf, *Summary of Proceedings, 2, American Bar Association Section of Legal Education and Admission To The Bar, African Law Initiative Sister Law School Program* (1997).

⁴² See American Bar Association, Promoting the Rule of Law, <http://www.abanet.org/rol/> (last visited Feb. 25, 2008).

⁴³ See American Bar Association, Current Events/Updates, <http://www.abanet.org/aba-africa/eventsupdates.shtml> (last visited Feb. 25, 2008).

⁴⁴ Commonwealth Legal Education Center, *Developing the CLEA Legal Resource Centre in Cameroon*, available at <http://web.archive.org/web/20040205210350/http://www.ukcle.ac.uk/clea/newsletter/87/cameroon.html> (last visited Feb. 25, 2008); see also Commonwealth Legal Education Centre, *Developing Legal Education in the Commonwealth: Some Current Issues* ("Developing Legal Education"), available at <http://ltfiledown.qut.edu.au/download.asp?rNum=3384545&pNum=2522503&fac=law&OLTWebSiteID=CLEA&dir=gen&CFID=579781&CFTOKEN=38933363> (last visited Feb. 25, 2008) [hereinafter *Developing Legal Education*].

⁴⁵ See Swithin J. Munyantwali, T. Mpoy-Kamulayi, & Paati Oforu-Amaah, *Legal and Judicial Reforms Activities in Africa: Experience to Date and Prospects for Further Improvement* (Feb. 2003) (unpublished manuscript presented at the All Africa Conference on Law, Justice, and Development, Abuja, Nigeria, on file with authors).

⁴⁶ *Id.*

⁴⁷ Legal Vice Presidency, The World Bank, *Legal and Judicial Reform: Strategic Directions* (Jan. 2003), available at http://www-wds.worldbank.org/servlet/WDSContentServer/WDS/IB/2003/10/24/000160016_20031024092948/Rendered/PDF/269160Legal0101e0also0250780SCODE09.pdf (last visited Feb. 25, 2008) [hereinafter *Legal and Judicial Reform*]; see e.g. Linn Hammergren, The World Bank, *Diagnosing Judicial Performance: Toward a Tool to Help Guide Judicial Reform Programs* (Nov. 1999), available at <http://www1.worldbank.org/publicsector/legal/HammergrenJudicialPerf.doc> (last visited Feb. 25, 2008); see also *Order in the Jungle*, THE ECONOMIST, Mar. 13, 2008, available at http://www.economist.com/displaystory.cfm?story_id=10849115.

III. Observations

It is interesting to note that African legal education has been largely left out of the mix as far as large-scale funding from foreign governments, foundations, and banks are concerned.⁴⁸ Presently, Rule of Law projects say little about initiatives to support legal education in Africa.⁴⁹ In part, this lack of attention may be the result of the belief that American initiatives to support legal education in the late 1960's and early 1970's were a futile attempt to "export legal liberalism."⁵⁰ However, this belief alone could not have prevented those who wished to support legal education in Africa from continuing with programs that sought to improve the quality of Africa's legal education. There must have been other reasons why the outreach of the 1970's did not continue.

These reasons could include a lack of faith in the political environments in which many African law schools and universities operated, the notion that Westerners had "shown the way" and that it was time to let African law schools sink or swim on their own, or that African law faculties rightly wanted to Africanize their institutions to the extent that large scale foreign presence was incompatible with the goal of developing autonomous, truly African law schools.⁵¹ Indeed, the African Union's plan for higher education states that, "[i]t is the wish of the African Union that the Plan will be largely self-funded, from the internal resources of the member states. It is also expected that intra-continental support for the poorest countries by wealthier African countries will become institutionalized as regular practice."⁵²

Although support for legal reform in Africa was aggressively pursued by governments, foundations, and banks, the question remains why different means of support for African law schools were not pursued. For example, governments, foundations, and banks could have reached out to African law schools with the same sensitivity that characterized the new approaches to undertaking Rule of Law initiatives in the late 1980's and 1990's.⁵³ Significant resources could have

⁴⁸ *Legal and Judicial Reform*, *supra* note 47. (focus of "Legal Training" is not centered around the education of lawyers but is focused on development of civil society and the knowledge of the citizenry). The World Bank does acknowledge the importance of legal education but does draw attention to the need for additional or increased funding. *Id.*

⁴⁹ See e.g. FAUNDEZ, *supra* note 33, at 17. ("[T]he quality of legal education in developing countries has not significantly improved since the mid-1970's. Although it is self-evident that a well-trained legal profession is essential for ensuring the long-term sustainability of legal reforms, the issue of legal education is notoriously absent from current debates on legal reform.")

⁵⁰ *Id.* (citing John Henry Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457 (1977); see also, Peter Severeid, TWENTY YEARS AFTER, *supra* note 7, at 107-08.

⁵¹ See Wortham, *supra* note 33, at 637-40 (citing Brian Z. Tamanaha, *The Lessons of Law-and-Development Studies*, 89 AM. J. INT'L. L. 470 (1995) (arguing that many of the failures of the Law and Development movement stemmed from failure to meet the specific needs of the respective African nations – whether specific to ethnic or tribal concerns or the unsettled political climate).

⁵² *Second Decade of Education for Africa (2006-2015)*, *supra* note 27, at 2.

⁵³ Richard J. Wilson, *The New Legal Education in North and South America*, 2 STAN. J. INT'L L. 375 (1989) (demonstrating the changed focus of legal education in South America in the 1980s towards increased efforts to assist the poor with knowledge of their legal rights and increased access to justice programs).

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been devoted to collaborations that would have supported curriculum design, consideration of new teaching methodologies including clinical education, and faculty development.⁵⁴ Such initiatives could arguably have made law schools at African universities more significant players in promoting the rule of law than they have been in recent years.⁵⁵ After all, many of the leaders of the judicial systems, which outsiders sought and still seek to reform, are graduates of African law schools. However, it seems that a collective decision was made that African law schools did not have as much to contribute to the promotion of the rule of law as did already existing judicial systems, provided that those systems could be reformed.⁵⁶

If, indeed, this decision was made, we argue that it was a bad decision. African law schools and African legal systems would be relatively better off today if substantial funding had been committed with proper sensitivity to indigenous culture and values. The impact of effective legal education upon emerging African lawyers and political leaders could be substantial. Despite the energy and commitment of Africans and Americans who have continued to work to support legal education in Africa,⁵⁷ African law facilities continue to be under funded. This

⁵⁴ See Wortham, *supra* note 33, at 640-44 (citing the examples of financial assistance to clinical education programs in Vietnam, South America, and South Africa that proved successful).

⁵⁵ One commentator has observed, “[t]he lawyers produced by the present system of legal education in Africa are trained to become legal technicians. They are encouraged to have little or no interest or comprehension of policy issues inherent in the law. They are generally reluctant to criticize current law. Even as technicians, they have limits, for few are competent to represent national and commercial interests in international business transactions, involving complexities of taxation and international finance.” Ndulo, *supra* note 7, at 500.

⁵⁶ It should be noted, however, that there has been government and foundation support for a number of collaborations between American clinical faculty and African law schools. USAID and the Fulbright Program have sent American clinical faculty to Botswana, Eritrea, Mozambique, Kenya, and Nigeria. American law schools have granted sabbaticals to faculty who have taught in South Africa. The U.S. Information Service (U.S.I.S) (now part of the U.S. Department of State International Information Programs) has funded American law school clinical faculty to teach in Ethiopia, South Africa, Malawi, and in Kenya. The Ford Foundation has funded clinical teachers in South Africa. An author of this paper, Prof. Geraghty, was one such teacher. In 1968, as part of a Ford Foundation initiative, he traveled to the Addis Ababa University School of Law under the supervision of a law professor studying the court system in Ethiopia. In 1996, he returned to that law school as part of a U.S. State Department/ABA funded program to collaborate on a clinical curriculum for that law school. Through the Northwestern University School of Law’s International Team Project program, he has traveled with law students to visit Botswana, Namibia, Malawi, Tanzania, and Uganda; See generally Roy Stuckey, *Compilation of Clinical Law Teachers with International Teaching or Consulting Experience*, available at <http://law.sc.edu/clinic/docs/internationalsurvey2005.pdf> (last visited Feb. 25, 2008).

⁵⁷ MANY ROADS TO JUSTICE, *supra* note 35, at 3. The University of Addis Ababa School of Law, under the leadership of Acting Dean Taddese Lencho, has drafted an ambitious strategic plan for its law faculty. This plan includes upgrading law school facilities, professional development opportunities for its faculty (including access to PhD programs), and renewed emphasis on the production of scholarship. *Draft Strategic Plan*, June 2007 (on file with author). This program will be supported in part by the international law firm DLA Piper and by the Northwestern University School of Law. Prof. Norman Singer of the University of Alabama School of Law has obtained funding to send young lawyers and law teachers to teach in Ethiopian law schools. There are now several American lawyers teaching full-time in law schools in Ethiopia.

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reality means law teachers in Africa simply cannot afford to devote their full-time to teaching and scholarship.⁵⁸

African law faculties cannot afford to implement new teaching methodologies because they do not have access to new materials and technologies.⁵⁹ The Commonwealth Legal Education Association (CLEA) has identified the following constraints, among others, facing a number of Law Schools in the Commonwealth: (1) resource constraints; (2) staffing constraints; (3) retention of professors; (4) lack of local legal materials; (5) lack of access to electronic resources; and (6) outdated law curricula.⁶⁰ These constraints are relative and they are more acute in Commonwealth African countries than in other parts of the Commonwealth.⁶¹ In some African countries, such as Liberia, law schools do not have access to any materials because of civil strife.⁶²

The time has come to design a new program of massive aid to African law schools. This program should follow an in-depth study of the needs of law schools in Africa in order to ensure the design and implementation of appropriate initiatives. However, even before such a study is undertaken, it is possible to predict some of the serious problems that such a study would identify.

IV. A Study of Legal Education in Africa: Expected Results

A. Faculty Salaries

After a study is completed we predict that a consensus will emerge, stating that one key problem is the inadequate amount of money allotted for faculty salaries. Interactions with faculty members in Ethiopia, Tanzania, Uganda, Malawi, and Ghana reveal that the average professors' salary ranges from \$400.00 to \$500.00 per month.⁶³ At the same time, members of African law faculties are highly sought after by governments, corporations, and by private

⁵⁸ Professor Ndulo observes, "Few really able people want to work for long in situations that offer no rewards in either money or prestige—and such is the case with law teaching in Africa today." Ndulo, *supra* note 7, at 502.

⁵⁹ *Id.* at 492-495 (describing the general state of African legal education in former British colonies as one focusing on the learning of general holdings of British law and the marked absence of law reports detailing recent rulings in African courts as well as the dearth of practical experience); *see also* KUBLER, *supra* note 29.

⁶⁰ *See*, CLEA, *Developing Legal Education*, *supra* note 44, at 21-31; *see also* Addis Ababa University Faculty of Law, *Reform on Legal Education & Training in Ethiopia* (Draft) (on file with authors).

⁶¹ *See* CLEA, *Developing Legal Education*, *supra* note 44, at 21-31.

⁶² *U.F. Law Students Act to Replace Legal Texts Destroyed by Liberia Civil War*, Press Release, University of Florida, Levin College of Law (on file with the authors).

⁶³ It must be noted that the structure of academic posts in African Law Schools differ from that of American Law Schools. In Botswana, for instance, the structure starts from Lecturer to Senior Lecturer, to Associate Professor and ending with full professor. In Nigeria the structure starts with Lecturer II and goes on to Lecturer I, Senior Lecturer, Associate Professor, and Professor. Salaries attached to these academic positions vary considerably. In Ethiopia, full professors are paid about \$350 per month. Boston College Ctr for Int'l Higher Educ., Int'l Network for Higher Educ. in Africa, available at http://www.bc.edu/bc_org/avp/soe/cihe/inhea/profiles/Ethiopia.htm.

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law firms.⁶⁴ The consequence of this dynamic is that many law faculty members in Africa find it impossible to devote their full-time to teaching.⁶⁵ We concede that we do not know how to solve this problem other than by providing support for research and program initiatives that would augment the salaries of the African law faculty engaged in such projects. However, subsidies from outside sources that single out law professors might be politically unacceptable to African universities.⁶⁶ This is especially true due to the peculiar salary structure of faculty members at African universities. African universities pay equal salaries to professors of all disciplines, and singling out law professors for additional subsidy may lead to upheaval among staff unions in the universities.⁶⁷ However, increasing the resources available to these faculty members and generating enthusiasm about the process and importance of legal education may have some impact on the situation. Additionally, giving frequent opportunities to African law professors to undertake short research and teaching visits (or what has been dubbed “Cooks Tours”)⁶⁸ to American law schools, for which they may be given a stipend, could also have a positive impact.

B. Law Libraries

We argue that funds to support law teachers in Africa in a scholarly capacity should be a high priority at African universities. Law libraries in many African law schools are in a sad state. This knowledge is borne out of experience in connection with Northwestern University School of Law’s collaborations with the libraries in Ghana, Ethiopia, and Uganda.⁶⁹ In order to accomplish effective scholarship, African legal academics must often leave their countries for law schools in Europe or the US.⁷⁰ Law students in these and other African countries have little access to the most recent developments in the laws of their own country, and virtually no access to current news concerning international law and human rights.⁷¹ Creating and maintaining highly developed and innovative libraries in African law schools could make those schools models for the establishment of consensus based legal systems.

⁶⁴ See Akilagpa Sawyerr, *Challenges Facing African Universities – Selected Issues*, at 23-25, available at <http://www.aau.org/english/documents/asa-challengesfigs.pdf> (last visited January 16, 2008) (noting the general challenges of African universities of maintaining faculty because of the lure of private sector professors).

⁶⁵ See Ndulo, *supra* note 7, at 502.

⁶⁶ Professor Quansah makes this observation based on his experience in teaching at universities in Ghana, Nigeria, and Botswana.

⁶⁷ *Id.*

⁶⁸ See D. GUSTAFSON, *MANAGING ECONOMIC DEVELOPMENT IN AFRICA* 224 (Warren H. Hausmen ed., M.I.T. Press 1963).

⁶⁹ Information regarding these collaborations is on file with the authors.

⁷⁰ See Sawyerr, *supra* note 64, at 23-26 (since faculty salaries have dried up African professors do not have sufficient time to research and use sabbatical opportunities as both a means to engage in research and help subsidize their minimal salary); see also Ndulo, *supra* note 7, at 502 (noting the lack of resources available within Africa to law scholars as well as the lack of critical thinking about the law).

⁷¹ Ndulo, *supra* note 7, at 492-493 (describing lack of access to law reports of recently decided cases in African courts as well).

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C. Teaching Methodologies

New teaching methodologies, particularly those based on the clinical education model, might also invigorate legal education in Africa. Initially, it would be necessary to explore the extent to which African legal educators share this view. Preliminary conclusions based upon work that Northwestern University School of Law has done in Ethiopia, Ghana, Tanzania, and Malawi suggest that interactive teaching methodologies are well-received by students.⁷² However, we must be cautious not to confuse the pervasive politeness of African law students with enthusiasm for our presentations. Many African law students complain that the teaching in African law schools is mechanical in the larger classes.⁷³ Smaller classes employing a more interactive model might generate more enthusiasm for the learning process. This method of teaching requires resources, for instance more classrooms, a higher degree of support for faculty members, technological improvements for the multimedia presentations, student performances for review, and access to information on the internet.⁷⁴

A clinical method of teaching could take the law student outside of the classroom and into the field. The model would involve carefully supervised student externships in government agencies, non-governmental organizations (NGO's), and human rights organizations. In these placements, students would receive first-hand experience of the shortcomings of the justice system in relation to under-served populations, as well as government and human rights organizations' responses to those needs. Law school-sponsored clinics could also be developed, allowing students and faculty to work together representing individuals and groups.⁷⁵ Such "clinics" now exist in many countries (Botswana, Ghana, Nigeria, South Africa, Sierra Leone, Uganda, Tanzania, Malawi, Kenya); however, the majority of these clinics are not formally affiliated with any law schools.⁷⁶

⁷² Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux): A History of Clinical Education at Northwestern*, 100 Nw. U. L. Rev. 231, 240, 251 (2006) [hereinafter *Legal Clinics and the Better Trained Lawyer (Redux)*]; see also Jessup, *Symbiotic Relations*, *supra* note 36, at 379-80 (citing >Michael Wolf, Summary of Proceedings, 2, American Bar Association Section of Legal Education and Admission To The Bar, African Law Initiative Sister Law School Program (1997)) ("The reports prepared by American and African law professors participating in the ABA African Law Initiative Sister Law School," Program provide strong evidence that Clinical Legal Education as part of the curriculum at an African Law School is an enriching and significant component of the law school experience.").

⁷³ Ndulo, *supra* note 7, at 500-01 (noting that African law professors are essentially legal technicians and the classes are quite rigid in nature and arguing for more imaginative degree programs and critique).

⁷⁴ See, e.g., Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux)*, *supra* note 72, at 249 (from the inception of clinical programs to their expansion the programs require increased funding to ensure sufficient educators and resources for effective teaching).

⁷⁵ We acknowledge the political problems that would be posed to universities in some countries by the existence of such clinical programs.

⁷⁶ African legal clinics not formally associated with a law school: MBDHP's Legal Clinics Section (Burkina Faso), Centre for Practical Legal Studies (Mozambique), Legal Aid Clinic (Namibia), Legal Clinic (Butare, Rwanda), Legal Clinic (Saint Louis, Senegal), Legal Clinic (Somaliland), and Kampala Law Development Centre Legal Aid Clinic (Uganda). African legal clinics associated with law schools in Africa: Legal Aid Clinic (University of Mekelle, Ethiopia), University of Nairobi Clinical Program (Kenya), Akungba Law Clinic (Adekunle Ajasin University – Nigeria), University of Ibadan Law Clinic (Nigeria), University of Maiduguri Law Clinic (Nigeria), Abia State University Law Clinic (Nigeria), University of Uyo Campus Law Clinic (Nigeria), Rhodes University Legal Aid Clinic (Rhodesia),

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Predominately, the law students who work in these clinics do so without receiving academic credit.⁷⁷ In addition, student practice rules should be developed, allowing students to practice law under the supervision of clinical faculty.⁷⁸ However, this idea poses political problems, especially with local bar associations.⁷⁹ Regulations governing the implementation of this rule are now being considered by the Ugandan Law Commission.⁸⁰

A major advantage of funding programs in the “clinical legal education” category is that such programs can respond to the critique of African legal education that it has been too much taken with Western values and the domestic debate that law schools provide no practical training.⁸¹ Additionally, the clinical method of teaching is able to counter the debate over “legal imperialism” in that, if properly managed, the clinical method will always be responsive to the “real world” of legal practice and social needs.⁸² This “real world” technique, whether it is brought into the classroom, into a government agency or NGO, or into a law school sponsored legal clinic, will inform and control the subject matter taught and learned.⁸³ In this way the clinical method most appropriately ensures that the legal education received by law students is culturally relevant and sensitive.⁸⁴

Human Rights Clinic Fourah Bay College (Sierra Leone), University of KwaZulu-Natal Law Clinic (Durban, South Africa), Wits Law Clinic (Johannesburg, South Africa), Community Law Centre (Mmabtho, South Africa), University of Pretoria Law Clinic (Pretoria, South Africa), and University Legal Aid Centre (Tanzania). The preceding information was provided by Ms. Mariana Berbec of the Open Society Institute and is on file with the author.

⁷⁷ In Botswana, clinical work forms part of the Clinical Legal Education courses which are compulsory for all fourth and fifth year students and for which a total of 12 credits are awarded. In South Africa, legal clinics are a well established part of the curricula of law schools, for example Universities of Natal and Witswatersrand, to name a few. See M. Wolf, *Summary of Proceedings, Workshop on Clinical Legal Education in Africa 1*, ABA SEC. ON LEGAL EDUC. AFR. LAW INITIATIVE SISTER LAW SCHOOL PROGRAM (July 8-12, 1996) at 9 (1996).

⁷⁸ The following countries lack student practice rules as confirmed with professors at African Law Schools: Nigeria (email response provided by Prof. Oke-Samuel on February 2nd, 2008, on file with authors), Zambia (email response proved by Dr. Patrick Matibini on February 6th, 2008, on file with authors), and Namibia (email response provided by Prof. Amoo on February 11th, 2008, on file with authors). While students at the Akungba Law Clinic at Adekunle Ajasin University in Nigeria can receive academic credits for clinical work, they are not allowed to practice in courts and can only observe with a supervising attorney. See email response provided by Professor Oke-Samuel, Feb. 2, 2008 (on file with authors).

⁷⁹ See email response by Professor Ndubisi, Jan. 30, 2008 (on file with authors). In Nigeria, students have “limited opportunity to observe trial advocacy under the supervision of a qualified lawyer”, but only after they have completed a law degree. *Id.* But, “[e]fforts are underway by university law clinics and NGOs to persuade the Bar and judicial authorities to expand opportunities for student practice.” *Id.*

⁸⁰ In Botswana, clinical students are typically permitted to appear in the Industrial Court.

⁸¹ Jessup, *supra* note 36, at 387-388; see, e.g. *Vanguard, Nigeria: Critical Reform Considerations for Preparing a Well Fit Lawyer of the Future*, AFRICA NEWS, Jul. 11, 2003.

⁸² See Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN. ST. INT’L L. REV. 421, 422- 24 (2004).

⁸³ *Id.* at 423-24, 428.

⁸⁴ Wortham has put forward three requisites for support of clinics abroad. These are (1) clinic programs should be based on students’ live experience providing legal services to poor people or underserved interests, (2) law school faculty must play a significant role in the design, administration, and teaching of the program and (3) the funder should assess the competence and sincerity of those seeking to implement the program and make a subsequent assessment of the clinic’s operation. Wortham, *supra* note 33, at 655-70.

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There is a tendency in African law schools to use textbooks that usually reflect the state of the law in England.⁸⁵ In this realm, a program providing assistance in formulating local content material for teaching may be useful. For instance, in Botswana there is an inordinate reliance on South African and English textbooks.⁸⁶ While these textbooks tend to reflect the common law of Botswana, they do not reflect the statutory law to the same extent.⁸⁷ This is likely because the statutory laws inherited from the country's historical political association with South Africa and England have remained substantially unchanged, while conversely there have been tremendous legislative reforms in the two countries over the years which are not reflected in the current editions of relevant textbooks.⁸⁸ Students therefore find themselves being lectured about Botswana law, and then reading about a different law in the textbook. Whilst there has been a spirited attempt to produce local legal texts, publishers have not shown the required enthusiasm to publish them due the smallness of the Botswana's education market.⁸⁹ Thus, funding to produce local legal text is of current importance.

Clinical education is faculty intensive, labor intensive, time consuming, and exhausting.⁹⁰ Only the law schools in the United States with relatively substantial resources can support large programs in clinical education. If this is so, how can we expect African law schools to make substantial investments in clinical education? One answer is to look back on the history of the establishment of clinical programs in the United States in the late 1960's and early 1970's.⁹¹ The Ford Foundation, through a spin-off foundation called The Council on Legal Education for Professional Responsibility, urged law schools to create clinical programs and provided substantial seed money for those clinical programs it helped

⁸⁵ "Legal education in Nigeria is modeled on that of England and Wales." Information provided by Professor Ndubisi of the University of Ibadan, Nigeria. For more information on Nigerian Legal Education see <http://www.nigeria-law.org/Legal%20Practitioners%20Act.htm> and <http://www.nigeria-law.org/Legal%20Education.htm>. See also, Nkrumah University of Science & Technology in Ghana, www.knust.edu.gh/law/books.php (last visited Feb. 25, 2008) (In the Faculty of Law, for example, the recommended textbook for the course on Ghana Legal System is a book on the English Legal system).

⁸⁶ For instance, in Botswana there is an inordinate reliance on South African and English textbooks. (For example, in the University of Botswana in teaching Delict (Tort), reliance is placed on the South African Text book, Burchell, *Principles of Delict*. In Succession, the South African text book by Corbett, *The Law of Succession in South Africa*, is used as a basic text and the English text of *Cross on Evidence* is required reading for the law of Evidence; see also G. van Niekerk, *The Application of South African Law in the Courts of Botswana*, 38 COMP. INT'L L. J. S. AFR. 312 (2004).

⁸⁷ For example, the English Divorce Reform Act 1969, on which the Botswana Matrimonial Causes Act 1973 was based, has since been replaced by the Family Law Act 1996. Current English divorce textbooks, such as Cretney & Masson *Principles of Family Law*, discuss the latter Act with passing references to the former. In teaching divorce law therefore, reliance had to be placed on the repealed law of England.

⁸⁸ *Id.*; see Prof. Ndubisi's comments, *supra* note 85.

⁸⁹ Prof. Quansah is relating his and his colleagues' efforts at the Department of Law, University of Botswana in trying to interest local publishers to no avail in publishing manuscripts that have been prepared on various aspects of Botswana Law.

⁹⁰ See, e.g., Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux)*, *supra* note 72, at 249 (noting the need for increased clinical professors and space); see also George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162,182-83 (1974).

⁹¹ See, e.g., Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux)*, *supra* note 72, at 238-44.

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to develop.⁹² The faculty members who populated those early clinical programs were young and relatively “inexpensive” recent graduates of law schools, who were enthusiastic about the opportunities that those programs offered to teach and to provide service.⁹³ Thus, the initial cost of setting up the early clinics in the United States was relatively modest. Reliance upon recent graduates was key not only to the financial viability of these early programs, but to generating enthusiasm among law students as well. These students and faculty shared common ideals and formed communities of learning, scholarship, and service.⁹⁴

The clinical movement in American legal education has evolved to the extent that clinical education is now evident in every law school in the country.⁹⁵ Almost every American law student is exposed to the “real world” of lawyering through clinical legal education.⁹⁶ The “inexpensive” beginnings of clinical education in the United States are evident in some African countries. In Botswana, for example, the legal clinic was conceived as part of the Department of Law in implementing its mandate to provide academic as well as practical skills training in its L.L.B. program.⁹⁷ The administrator and the teaching staff of the clinic are part of the Department of Law.⁹⁸ Clinical responsibilities are part of the job description of Department staff, and as such there is no need to recruit staff specifically to operate and maintain the clinic.⁹⁹ The drawback of this arrangement is that the clinic does not have a separate budget from the Department of Law, and as a result it is severely handicapped in its operations.¹⁰⁰ There is also a marked reluctance on the part of staff to undertake clinical duties due to its inherent time-consuming nature.¹⁰¹ In such a circumstance, funding to augment the budget of the Department, and perhaps to recruit staff specifically for the legal clinic, will help to improve and enhance the teaching of practical legal skills.

⁹² See Clinical Education for the Law Student CLEPR Conference Proceedings, Buck Hill Falls, June, 1973; see also, Selected Readings in Clinical Education, Council on Legal Education for Professional Responsibility, the International Legal Center, 1973. For the most comprehensive list of readings in clinical legal education, see J.P. Ogilvy and Karen Czapansky, CLINICAL EDUCATION, AN ANNOTATED BIBLIOGRAPHY (Revised, 2005) available at <http://faculty.cua.edu/ogilvy/Biblio05clr.htm>.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Wilson, *supra* note 82, at 421.

⁹⁶ *Id.* at 421-24.

⁹⁷ A very important part of the program at the University of Botswana is the Clinical Legal Education courses which were introduced in the 1986/87 academic year. The courses which are compulsory for all students are taken over a two-year period – the 4th and 5th years of the program. It consists of: (1) an eight week long internship within legal establishments during the long vacation at the end of the fourth year; (2) participation in at least one moot or mock trial session each academic year; (3) attendance at clinical seminars for a minimum of two hours a week; and (4) attending to clients and files in the legal clinic on a regular basis.

⁹⁸ Quansah, *Educating Lawyers*, *supra* note 19, at 530-31.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Observation of Professor Quansah based on teaching experience in Nigeria and Botswana.

V. A Call to Action

This call to action is easy to make. However, it is quite another matter to figure out how to make the call effective and to follow through with a program that will produce tangible, measurable results. The difficult questions that must be addressed include how a new program of massive aid to African legal education should be structured to ensure true collaboration between Western law schools and NGO's, and how Western governments, foundations, and universities might be convinced to participate. We have some modest suggestions.

A first step might be to generate support among Americans who have taught in African law schools and who sympathize with the views expressed in this article. There are substantial numbers of law teachers, judges, and ABA members who have this experience and many African law teachers who have worked with law schools and foundations in the United States and Europe.¹⁰² Many of this core group remain deeply engaged in and committed to finding the most effective ways of supporting legal education in Africa.¹⁰³ One example of this continuing interest and commitment is a group of law professors who taught in Ethiopia in the 1970's and 1980's, under the leadership of Professor James C.N. Paul. Professor Paul, together with these law professors, has established a foundation to support legal education in Africa.¹⁰⁴ Professor Norman Singer of the University of Alabama, and a former Professor of Law at Addis Ababa University School of Law, has obtained funding for a project that provides support for young American lawyers to teach in Ethiopian law schools.¹⁰⁵ The collective experiences of Americans who have taught recently in African law schools would be well worth documenting. In addition, African law schools should be surveyed in order to describe their needs, existing resources, and their suggestions for how collaborations between lawyers in the United States and lawyers in Africa in support of legal education should be structured.

With this collective knowledge, these American lawyers could approach the US government, its foundations, and law schools to see if substantial support could be generated. Then a planning process with the participation of African law deans, law teachers, judges, and practitioners should be convened to create programs supporting legal education.

VI. Conclusion

We conclude by issuing a warning to ourselves and others who run the risk of being perceived as telling African legal educators what to do. This must be especially galling to African colleagues who struggle everyday to maintain academic

¹⁰² See TWENTY YEARS AFTER, *supra* note 7, at 43, 51, 52.

¹⁰³ *Id.*; see also Addis Ababa School Project, a joint project between DLA Piper and Northwestern University School of Law to assist Addis Ababa University in developing and expanding its legal curriculum and resources. For more information see: http://www.newperimeter.com/projects/addis_ababa_law_school/.

¹⁰⁴ Documents describing this fund are on file with Professor Geraghty.

¹⁰⁵ See MANY ROADS TO JUSTICE, *supra* note 35; see also Resume, Norman J. Singer, available at <http://www.law.ua.edu/bio/nsingerresume.html>.

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programs in their law schools without adequate resources. The time has come for American legal educators and members of the American bar who are concerned about African legal education to shift from describing what they view as desirable changes to active participation with our African colleagues to design a process and to secure resources to support what African legal educators need. As was pointed out some 39 years ago, and that sentiment still rings true today, it is in the interest of United States (and all developed countries for that matter) to do what they can to help and support the rule of law and democratic institutions in Africa.¹⁰⁶ It is trite to observe that today the world is one, indivisible "global village." Instability anywhere affects stability everywhere. Africa is already one of the storm centers. If a strong legal profession is needed in Africa to preserve stability there, it is evident that it is in the interest of the United States and the rest of the developed world to ensure that Africa has such a profession.¹⁰⁷ We hope this appeal will not fall on deaf ears, but rather that what we have set out above will generate a renewal of interest with regard to funding of legal education in Africa.

¹⁰⁶ L.C.B. Gower, *supra* note 23, at 134.

¹⁰⁷ *Id.*