

THE ROLE OF LEGAL ETHICS AND JURISPRUDENCE IN NATION BUILDING.

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The role of the legal profession in national development in Africa

This paper prepared by ICJ-Kenya dwells on legal ethics and nation building in the African context. It will of necessity enquire into the role the legal profession plays in development.

Like other professionals, society has placed its trust in lawyers to guide them on matters of law and general development. Owing to their special skills and knowledge, they are imbued with a fiduciary responsibility to society to guide its development in a positive manner. ICJ – (K) posits that lawyers have a role to play in the maintenance of order in society. Advocates on admission take an oath, which binds them to protect the Constitution and the rule of law. Through this, a lawyer’s work includes the curbing of abuse and misuse of power and the executive isn’t excluded from this. Lawyers believe that *all* social activity including politics has rules and limits.

The legal profession, in so far as curbing the violation of Constitutional rights is concerned, may do so through judicial review. Under judicial review, as a means of promoting rights of individuals and/or groups, various remedies are available: *certiorari* (used to quash the decisions of inferior courts, local authorities, public bodies, and government ministries etc on ground of illegality, irrationality and procedural impropriety and where there is an error of law), *prohibition* (used to restrain a tribunal, minister or other public body from exceeding in excess of jurisdiction e.g. *ultra vires*), *mandamus* (an order commanding a person or body to perform a public duty), *declaration* (used to obtain a statement of the legal relationship between parties) and *injunction* (a court-order either prohibiting a party from doing a particular act or requiring a party to perform a particular act).

Under S.4 of the L.S.K. Act, Cap 18 one of the roles of lawyers is to protect and assist the public in Kenya in all matters touching on the law. For this reason it’s absolutely imperative that lawyers participate in public interest litigation. This involves litigation on matters touching or benefiting the general public at large (such as the Constitution). The ethics of the legal profession requires this of lawyers and indeed it’s widely expected of them to rise to and meet this demand such as through the pro-bono work (i.e. provision of one’s legal services to members of the general public at no fee).

However, the lawyer’s role transcends the client-lawyer relationship: the whole concept of democracy is embodied in the principle of the rule of law - everything must be done in accordance with the law and lawyers are needed to interpret and enforce the law. For this reason, the legal profession itself should be seen as a public service because it is expected to provide leadership in the management of human affairs. Justice Simmons of the U.S.A once said that “the lawyer must continue to furnish the public with leadership in matters of government so that the country may continue to be a nation governed by law.” Lawyers are therefore encouraged to hold public debates, seminars and conferences for the purposes of imparting knowledge of the law to the public at large. Production and distribution of books,

pamphlets, articles and journals on various legal issues can also be made for the purposes of educating the public.

That aside, lawyers should also aim at promoting sustainable development in Kenya through reviewing areas of law in need of reform and making the appropriate recommendations to Parliament.

The rights of poor people are constantly being infringed upon either because they do not know their rights or they cannot afford to hire lawyers. In the same way a doctor would stop at an accident scene to help the injured without first thinking about any monetary reward he may get, lawyers should also help people in need who cannot afford to pay them.

Economic development, the rule of law and upholding of fundamental rights and freedom go together. One cannot be present without the other. Economic development will be enhanced when a country's civil political, cultural economic rights are secured. Thus it is upon the legal profession to ensure the taking root of a culture that protects human rights and adherence to the rule of law.

From time immemorial, the legal profession has been a pool for providing leaders in public administration. They possess vast knowledge and experience to be able to contribute to national development a quality that in turn imposes on them a fiduciary responsibility to society, to guide its development in a positive manner. Take the examples of Mr. Kalonzo Musyoka, the Speaker of Kenya's National Assembly, Mr. Francis Ole Kaparo, Mr. Robinson Githae, Prof. Kivutha Kibwana and Mr. Danston Mungatana; most Local Authority clerks are lawyers as are the District Registrars of Titles. In the Legislative process, in Government contracts – lawyers are needed to draft the laws and contracts, in the required manner and procedure and interpret them on behalf of the Government.

At this point we wish to learn a lesson or two from the South African experience including mobilising the populace to clamour for positive changes in the governance systems, persistence and focus on their cause and accepting personal suffering for the greater good of the Republic – Mandela (a lawyer by training) was imprisoned for many years as have many lawyers in Kenya in relation with their struggle for better governance and respect for human rights, leading dialogue in building national consensus on issues of importance for Kenyans, for instance the Constitution review process. Of particular importance in the South African experiences is the role played by the lawyers during and after the transition from apartheid to democracy. They played a pivotal role in the establishment of the Truth Justice and Reconciliation Commission. Human Rights violations by the former regime have been ventilated without any effect on the economy. South Africa's economy has continued to develop even when the political field heats up. For Kenya the reverse is true: political crises have major effects on the economy and development, which should not be the case. Lawyers should help the country devise mechanisms of addressing political issues without having the economy suffer slumps, perhaps the Truth, Justice and Reconciliation Commission coupled with consensus building and negotiations strategies should be pursued.

In conclusion we reiterate that the legal profession plays a major role in national development and the lawyers make significant contributions to society outside fulfilling their professional obligations.