

INTRODUCING INTEGRITY TO LEGAL EDUCATION

A CONTRIBUTION TO THE TRUSTWORTHINESS OF THE LEGAL PROFESSION

INTRODUCTION

In my allocated time I will discuss the necessity to introduce integrity in legal education to restore citizens' trust to the legal profession¹. Is trust really necessary for the legal profession today? Undoubtedly few will risk their credibility by saying that public trust is not essential for the legal profession although too many legal practitioners are not concerned about the public trust as an important factor.

However, the current situation is disturbing due to the facts that in too many countries in Africa the erosion of the citizen's trust towards the legal profession, hence towards the justice institution, seems not appealing great attention of key stakeholders. I will not spend much time on telling you what many of you already know nor to remind you the multiple causes for this, although it is true that identifying the root causes of the problem leads halfway to appropriate solutions. Allow me to remind how ordinary citizens picture one of the prestigious legal profession, the lawyer. If there are lawyers in the room, I am sure that they have already heard that lawyers ironically are named "liars". If that is the caricature of our eminent jurists drawn by the street, some more objective data are even stubborn.

According to the Afrobarometer 4th Round on 20 countries, in average more than 39% of the interviewees confirm that they do not to have (i) *trust at all to the courts* or (ii) *just a little trust*. In spite of the small improvement since the first round in 1999 (42%), the rise of the percentage of distrust is quite important compared to the 3rd round of survey (34%)². This lack of public trust in the judiciary seems to correspond to the level of its legitimacy to act, to enforce rule of law. Only 70% of the interviewees felt that the courts have the right to make of the decisions to which people must abide. These data confirm existing fracture between the justice system and the citizens since decades and permit to qualify it of chronic trust "crisis". As a result, a majority of the citizens (especially the poor) seeks other means to settle their disputes, not always without human right violations³.

With regards to Kenya, studies carried out by civil society organizations are as alarming. According to FIDA, the status of service delivery in the courts constitutes some of the worst cases of human rights violations and puts a grim picture of the judiciary's ability to safeguard the rights for clients"⁴. From within, it is acknowledged that "...the Judiciary had a very bad name pre 2003 and therefore the Purge was conducted"⁵. It is also mentioned that "...in

¹ I include in this appellation all professions that regroup legal practitioners (especially the judges, the magistrates and the lawyers) and contribute in the administration of the justice and the realization of rule of law.

² The number of countries surveyed is almost the same (18 in 2005 and 20 in 2008/2009), compared to the previous rounds.

³ For example, the mob justices are unfortunately daily scenes in major cities in the region. <http://news.bbc.co.uk/2/hi/africa/4257267.stm>

⁴ Report of Baseline Survey on Court Integrity, Federation of Women Lawyers, 2010, p. 25. The findings of the survey covering 5 districts estimate the level of integrity at 15%.

⁵ Integrity Status Report, A Situational Analysis of the Integrity of the Kenyan Judiciary, ICJ Kenya, 2010, p.13

addition to the physical and financial constraints as far as access to the judiciary is concerned, frustration, bribery, lack of information, withholding of information, confusion and negligence characterize court services. As a result citizens' engagement with the judiciary is at best wary⁶. Although these studies focus on the courts, it is expected that people don't only stigmatize the magistrates but all stakeholders, including the lawyers.

What is intriguing about on these survey findings is that the trust level seems not to have a strong correlation with economic performance⁷ of the countries. If one supposes that economic performance also benefits the judicial institution, in terms of facilities, continuing education and wages (which is not probably the case everywhere) it would challenge the merit of spending scarce resources on reinforcing infrastructures and legal framework without focusing on integrity and public trust. It seems that despite the existence of a very well furnished menu concerning rule of law reform⁸, the impact to the level of the trust is not there yet. It suggests the need to re-examine the impact of reforms, and to explore whether it is necessary to consider different reforms including the increased focus on integrity in the higher legal education.

It is regrettable however to see that support to legal education in Africa would not seem listed among donors' priorities, international or national⁹. It contrasts with the sustainable development discourse if one concedes that our young and future legal practitioners are not and will not be prepared to face with serenity the growing trust challenges of the future. In spite of that unawareness, legal education is going to improve technical performance of the future practitioners, competition and immediate and short-term profitability oblige. To a certain extent, the substantial aspect of the education would be able to attract more attention of stakeholders, including legal academics. Conversely, a more efficient art of persuasion will be required to make the point that **integrity matters** and deserves to be considered as critical in the research of sustainable solutions to problems bound to the contemporary African justice.

One cannot blame the lack of focus on public trust and integrity only on the donors and the executives. The legal profession at all levels of the system have to re-evaluate their values, objectives and priorities. Each stakeholder has its own share of responsibility, on top of the list the members of the legal profession generally noticed by its passivity and unwillingness to change. It includes law schools that should wonder if the passivity of their former students does have something to do with the quality of education they provided them. The civil society will not be able to take refuge anymore in its watchdog role but will also have to strive bringing its contribution to improve the system. This paper subscribes therefore in an

⁶ Id, p.23

⁷ South Africa, Nigéria and Kenya (55%) are not the best rated and the last two record most distrusted people than Liberia (54%) and Tanzania (26%), Working Paper No. 108, The Quality Of Democracy And Governance In Africa: New Results From Afrobarometer Round 4, A Compendium of Public Opinion Findings from 20 African Countries, 2008-2009, by the Afrobarometer Network compiled by Eric Little, Tse-Hsin Chen and Carolyn Logan

⁸ The Rule-of-Law Revival, Thomas Carothers, p.7

⁹ 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, Thomas F. Geraghty, Emmanuel K. Quansah, Volume 5, Issue 1 Loyola University Chicago International Law Review, P. 87

advocacy movement that challenges and brings all possible support on the manner to advance integrity education of future leaders and here especially of future legal practitioners¹⁰.

Without minimizing the importance of continuing education, this paper will focus on integrity in higher legal education within some countries in Africa, in its necessity, approach, content and methodology.

TO CHANGE THE CULTURE OF PASSIVITY

The first issue to be addressed to know whether there is a real need to introduce a course dedicated to integrity in legal education curricula. First of all, it can appear that teaching integrity is not quite an innovation in itself. If one refers to the common understanding of the concept as honesty, one would agree that to some extent teaching of ethics takes in account integrity. In Africa a good majority of law schools do have such courses or at least modules addressing ethical issues¹¹. If that is the case, one would wonder then whether the present approach of ethics education and professional responsibility need to be improved facing the lack of public trust challenge? Or more direct, what needs to be improved to better prepare law graduates to face the challenges and try to align to the values related to integrity? In any case, to be able to answer these questions with clarity, it will be necessary, in the present context, to reach a common understanding of the term integrity and on its relation to the trust.

INTEGRITY AND TRUST

To define integrity appears to be both simple and complex. I am sure that the word is not among of those that rise intense curiosity and push naturally to open the dictionary, as one is accustomed to hear it in nearly all facets of our life (familial, private, religious, social and professional). It is simply understood as honesty, but seems to mean more. In any case, all seem to get along on its etymology. It originated from the Latin " integrare " or " integritas ." Most dictionaries agree of a certain idea of “wholeness” (physical or moral).

In practice, our own experiences through the various workshops, seminars and trainings give us the sensation that it is not however easy to get along on the exact content of the word. One can count as many definitions as the number of participants and I suppose that it would be the case if I would ask the question to this august audience. Even among the authors who dedicated time on the issue, the diversity of definition is also a reality. For my part, I will try to make it simple and to take account of the collective common sense that understands that a person of integrity is the one who “walks the talk”. Indeed, in my organization, one tends to

¹⁰ In order to contribute to the development process worldwide the Public Integrity Education Network (PIEN) was established in 2004. Unlike traditional education projects it is focused on building long term a community of knowledge and practice in mainstream institution in each of our partner countries. http://www.tiri.org/index.php?option=com_content&task=view&id=305&Itemid=

¹¹ As example, in Kenya, the University of Nairobi - Faculty of Law, the Kenyatta University School of Law and the Moi University School of Law have substantive course on Professional Ethics and Professional Responsibility

consider that what characterizes the most integrity is the notion of alignment¹², as backbone joining other peripheral notions as ethical behaviour, competence, accountability, anti-corruption and so on. Not to get lost in the world of concepts, I would simply propose to you that it would be for an individual a harmony of his behaviours and attitudes with her/his system of values and beliefs. For an institution, the values system is in narrow relation with its social finality and the effort of alignment and its outcomes determine therefore its level of integrity.

Although personal integrity is of high importance in legal education, the present paper prioritizes the teaching of institutional integrity for at least two reasons. *First* of all in terms of realism, a person's integrity is progressively formed since early childhood and it continues all along educational life. If it is cynical to affirm that it would be too late to teach the personal integrity, it will be necessary to recognize that in general it is very naive to believe that the very few years spent on the bench of the law school, as intense they are, can change much the values system built for more that twenty years. However, and it is the *second* reason, it would be more plausible to believe in the experiments that confirm that a person has tendency to conform to the expectation, culture and practices of her/his environment; and it is true for a person evolving within an organization¹³. Thus, it proves to be a lot more efficient to privilege the institutional approach to have an influence on the individual than the other way around¹⁴.

With regard to the relation of integrity and trust, it seems that most people will not confide their properties to person whose integrity is questionable. Concerning the judicial institution¹⁵, if given the choice no one will be going to confide her/his life, liberties and goods to a judge or a court lacking integrity, except maybe if this person is also deprived of a moral rectitude and can take advantage of the transaction. Even in that case, the full trust is not surely present. Such distrust is also legitimate towards a lawyer or a law firm because of the contractual nature of the relation with the potential client. Even not empirically proven, trust level also plays a significant role in the issue of access to justice since it is also about acceptability¹⁶.

Even though other factors contribute to the construction of trust, the reputation of integrity plays a fundamental role. Technical expertise appears like a necessary condition but not sufficient to acquire a good reputation. A judicial decision even legally irreproachable does not incite to good faith execution if pronounced by a judge whose integrity reputation is perceived to be low. However, for the practicality of the reform, also having an impact on the education, it will be necessary to nuance. We all know that trust is subjective and depends on other variables inherent to personality. One's trust is hardly to be controlled by another person who demands it. The best the latter can do is to make an effort to earn that trust he expected from the former. It is then proposed to focus on the notion of "trustworthiness"¹⁷ that,

¹² **Alignment** denotes consistency between what your organisation intends and/or says it is going to do (e.g. your vision, mission and goals) and what it actually does. It also denotes consistency between the behaviours that your organisation considers to be important (e.g. your values) and the way it actually behaves. Integrity Guidance Manual (IGM), AKDN and Tiri, 2009, p.31

¹³ Luban, David, "Integrity: Its Causes and Cures" (2003). Georgetown Law Faculty Publications and Other Works. Paper 149. <http://scholarship.law.georgetown.edu/facpub/149>, p.284

¹⁴ Giugni M., Ancien et nouvel institutionnalisme dans l'étude de la politique contestataire, *Politique et Sociétés*, vol. 21, no 3, 2002, p.74

¹⁵ I include in the expression *judicial institution* the structures and procedures that in general have for finality the administration of the justice.

¹⁶ On this notion, see for example Access To Justice And The Rule Of Law In Kenya, A Paper Developed For The Commission For The Empowerment Of The Poor, Connie Ngondi-Houghton, November 2006, p.34

¹⁷ IGM, p.41

intrinsic, corresponds more logically to the real performance of the institution concerning integrity and is much situated in the domain of controllable. The utility of the trust for the integrity reform remains nevertheless in measuring impact on citizens and other institutions.

Having said that, pragmatism challenges us to know whether integrity is profitable and therefore is worthwhile to invest in. Indeed, integrity seems not to resist before the aggressiveness of corruption and other dishonest practices, if one only considers the short term. A lawyer who practices shortcuts seems to detain serious odds to always win before a crooked judge or dealing with a court of low integrity. Besides he would be seen to be better considered by her/his familial and social environment because of her/his material success. And it seems to be the same for a judge who gives primacy of her/his personal interests before justice. But, here when one speaks of long term and durability, investment in integrity seems to pay more in return. One of the main features of good reputation and trust is that these are laborious in construction but delicate in maintenance. In this era of information, a crack to reputation can be very prejudicial and is difficult to restore for an organization or an institution. The financial scandals concerning huge multinationals in the United States tinted of conflict of interests are even more recent to caution us¹⁸.

THE INSTITUTIONAL PASSIVITY, AN INTEGRITY ISSUE,

To come back to the question that preoccupies us, it is now to look at the value integrity education can add to the ethical teaching as it is proposed in law schools. For that, it will be necessary to describe, as an illustration, an important aspect of integrity shortcomings related to judicial institution. The major shortcoming is about the indifference and tolerance, meaning the passivity of the legal profession facing two situations that seriously hurt its public image: (i) *the lack of the independence of judiciary* and (ii) *the exclusion of the poor*. This constitutes a serious issue of institutional integrity as independence and equality are formalized values within the judicial institution¹⁹. However, the legal profession seems to fail in taking appropriate measures to translate the key values into reality. They actually remain at the stage of good intentions.

The independence of the judiciary rests primarily upon the independence of each and every judge and magistrate in their judicial activities but it is as important that each and every actor in the judicial system accepts and contributes to its credibility and effectiveness. It is a principle universally recognized as essential condition to ensure rule of law and to guarantee the effective protection of rights and liberties of the citizens²⁰. For development, the independence of judiciary ensures the security of contracts that determines investors' trust, an important factor for economic growth. However, the notion of independence remains problematic for many African countries if one only relies on the citizens' perception. Let us take the case of Kenya, according to comments outlined in the last Global Integrity Report (2009), while the Constitution provides for such independence, judicial appointments are

¹⁸ Healy, Paul M.; Krishna G. Palepu (Spring 2003). "The Fall of Enron". *Journal of Economic Perspectives* 17 (2): 13

¹⁹ Bangalore Principles for Judicial Conduct 2002 (http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) and UN Basic Principles on the Independence of the Judiciary, 1985 (<http://www2.ohchr.org/english/law/indjudiciary.htm>)

²⁰ UN Basic Principles on the Independence of the Judiciary, 1985

highly politicized, a factor which can, and has been perceived, to influence judgments. Historically, the International Commission of Jurists-Kenya Chapter has argued, "the Executive arm of the government has dominated the Judiciary in Kenya and this "has deeply damaged the separation of powers and the role of the Judiciary as a democratic check and balance on Executive action. It has also gravely undermined the integrity of the Judiciary itself." For Malawi, which gets the best score from this report, it is commented that in spite of favourable constitutional and legal provisions to the independence of the judiciary, since the President is the ultimate appointing authority, some Judges stretches to owe their loyalty to the President²¹.

Facing this situation²², what one can note is that too often, there is a diffusion of responsibility of this lack of independence, and notably between the three arms of the government. The Judiciary complains and persuades itself, with reason or not, that there is hegemony of the Executive that holds it in leash by legal, administrative and financial means, for political motives. The Executive is pleased reciting that the members of the Judiciary are far below the profession's integrity standard and, as a result, to grant them complete independence is a huge risk. All these arguments probably have their part of merit but certainly also a substantive part of self-justification of the inability to really improve the situation. The true question is: why a community of eminent judges and lawyers, sometimes serving in the two other arms of the government, collectively tolerates this unacceptable situation. Is this by impotence in front of the omnipotence of the Executive, with the complicity of the Legislative?

More than one could advance that, not without reason, people of the profession stay indifferent and do not worry about the fate of the majority of their fellow citizens that consequently are denied justice and induced to make justice themselves. Instead, they are concerned about their personal or so-called professional status²³. If this argument can be plausible from an individual viewpoint²⁴, it won't be able to stand from an institutional perspective. Indeed, is it difficult to believe that a whole community of persons so highly cultivated, at least from a legal viewpoint, is proved to be passive on such fundamental questions to their institution?

In fact, there have been some reactions against flagrant attacks on the independence of the judiciary perpetuated by the Executive. The strike of the judges and magistrates of Swaziland in 2002²⁵ and of Uganda in 2007²⁶ of illustrates this point. If it effectively constitutes an answer against an attack to their independence, it can also be qualified as weaknesses facing the omnipotence of the Executive. In most cases, a strike in the public sector is always the sign of a failure of a negotiation during an institutional disagreement between a claimant feeling ill-treated and a power holder. Here, concerning independence, the legal profession is apparently again in position of beggar.

²¹ <http://report.globalintegrity.org/globalIndex.cfm>

²² of which the present paper will not have here the ambition to objectively debate the deep reasons

²³ See for example the strike of the judges in Malawi in 2005, of Mali in 2009 and of Madagascar this year, with regard to demands of material advantages (respectively for prestigious 4x4 car and for consequent indemnities).

²⁴ One of the questions that preoccupy a number of judges in Kenya is the appointment of a judge as members of various commissions and for which she/he receives best financial honorarium than their usual emolument. During the last Kenya Judicial Colloquium in August 2010, this practice has been unanimously qualified as delicate not only for the judge's personal integrity but also on the relation between the Executive and the Judiciary.

²⁵ For a media coverage of this event, please visit <http://news.bbc.co.uk/2/hi/africa/2542003.stm>

²⁶ For a media coverage of this event, please visit <http://news.bbc.co.uk/2/hi/africa/6418943.stm>

What is irrefutable is that in almost everywhere on the African continent, people of the profession didn't manage to strategically take charge and to improve their institutional situation. Apart the cited strong actions against flagrant acts breaching the independence of the judiciary, to our knowledge, the autonomy and the sufficiency of the judiciary's budget did not have so far caused a collective reaction of the profession. If one takes the recurrent budget granted to the judiciary of any country in sub-Saharan Africa, one realizes with desolation that it is a figure hardly passing the 0,5%²⁷ of the total recurrent budget of the government whereas primacy of law and democracy are shouted *urbi* and *orbi*²⁸. The indigence of the judiciary indisputably constitutes the main reason of (auto -) subordination towards the two other powers.

With regard to the exclusion, it seems to testify the collective indifference of the legal profession to a real wound, the inaccessibility of the justice by the huge majority of fellow citizens. In a rural community the majority of African lives, nearly everybody feels impoverished but it is the degree of poverty that differs. The likeliest point of meeting of those excluded with the justice is the criminal proceedings, most of the time as defendants. My personal experiences as former investigating magistrate allowed me to note that the prison population is mostly composed of economically weak people. Some cynical tongues would quickly say that only those who cannot pay their way out would remain in jail. In fact, they not only cannot afford themselves the services of lawyer but when the justice is for sale, it is certainly not the poor who can buy it. Put aside these examples that rather look like symptoms, the flagrant discrimination seems once again "acceptable and/or tolerated" for/by the profession. It is not about pointing the finger to colleagues but to recognize the truth and to expose the root causes of the problems.

The available data are even worse on this point and somehow they indeed incite to think on the acceptability of the so-called modern justice system inherited from the recent past. Again, according to the 2009 Global Integrity Report, Kenya score 36% and Uganda 61% when it comes about knowing if citizens have equal access to the justice system²⁹. Another measurement, the World Justice Project 2009 Rule of Law Index , Kenya score 0,4/1,00 which is below of the sub-Saharan Africa average with regard to the access to legal adviser and the access to and affordability of the civil justice³⁰. One has to subscribe to the commentary on the access to justice in Uganda as follows: "many citizens, particularly those who live in the farming areas, do not utilize the courts.", which I believe summarizes the access to justice status in sub-Saharan Africa. But the access to justice does not solely concern access to courts; it is also about knowledge of rights and accessibility of alternative dispute resolution mechanism. In short, the situation is not gleaming in Africa.

²⁷ A comparison with the established democracies seems not helpful, where the judiciary budget percentage can be similar, since the priorities in term of rule of law are not the same. The UK justice budget is around 2,5% of the

²⁸ For Kenya, the recurring expenses of the Judiciary until 2012 are estimated to 0,6% while for the Legislative they are to 1,8% of the total recurring expenses of the government. Source: website of the Kenya Ministry of Finance

²⁹ The difference between the performances of the two countries could also be explained by the impact of the questions related to ethnicity, gender and financial means on the access to the courts.

³⁰ [http://worldjusticeproject.com/sites/default/files/Kenya\[1\].pdf](http://worldjusticeproject.com/sites/default/files/Kenya[1].pdf)

If the issue of access to justice begins to preoccupy law society³¹, it doesn't seem to constitute a topic of concern for judges and magistrates. The latter would assert that even with the clientele they currently have, they are overwhelmed and that situation constitutes the first reason of the legendary backlogs. Besides, among them there are certainly those who think that the role of the judiciary is confined to adjudicating the cases that are presented to them. To incite citizens to bring their legal problems to the court is the role of other justice actors such as the police, the attorneys, the lawyers, the civil society... With regard to the law societies, if some timid actions are recorded the problem is located to the level of the objective of the measures taken and the ethical aspect of their implementation³². The current scheme of legal aid is much more oriented on assistance to the poor to resolve punctual legal problems instead of empowering them to sustainably take their legal issues in hands.

Finally, the passivity of the legal profession that has just been illustrated by the two well known situations is certainly due to several reasons and we shall recognize that several actors strive themselves to bring their contributions. For sustainability, it seems that education remains the most efficient solution because in itself it is in line with long term impact. In any case, as concerning complex problem as the integrity of the legal profession, also a complex response would probably be necessary, meaning the good combination of an array of solutions.

MAKING INTEGRITY EDUCATION WORK

The issue of institutional passivity can find an appropriate answer by the introduction of the integrity in the legal education. In effect, from good analysis, the problem seems to find its roots by the status of organizational or institutional culture since it is about a collective capacity of reaction against serious threats to the legitimacy of their institution. And when one knows that such culture is forged mainly by formal and/or non formal education³³, there is a ground to consider the possible improvements in the current ethics education in relation to what the proposed integrity education can bring and how to make it effective.

TO COMPLETE THE EDUCATION IN ETHICS

In spite of a quite long period of legal ethics education in Africa, the trust level toward legal profession and the judicial institution could not stop from deteriorating. However, one can

³¹ The Law Society of Kenya has as one of his core values the Commitment to access to justice for all. According to the strategic plan 2009-2010, it runs an Annual Legal Aid Week and partners with the Ministry of Justice and Constitutional Affairs in the conceptualization and implementation of a National Legal Aid Scheme. In Uganda, for example, the Law Society runs Legal Aid Project (LAP) which was established by the Uganda Law Society in 1992, with assistance from the Norwegian Bar Association to provide legal assistance to indigent and vulnerable people in Uganda.

³² During an interview on the pro bono scheme in Uganda, the Chairman of the Uganda Law Society said that the pro bono scheme will aim at popularizing the provision of free legal services amongst lawyers since though it is a legal requirement for all lawyers to provide pro bono services, the idea has not been widely accepted and embraced in Uganda's legal fraternity. He said currently Pro bono services are being provided in an uncoordinated manner with no clear mechanisms for monitoring the nature of cases handled and how they are handled by the lawyers. <http://www.weinformers.net/2010/08/02/uganda-law-society-to-roll-out-new-national-pro-bono-scheme/>

In Malawi for example, an observation of 91 capital trials, observers found 'in almost every case', the lawyer met his/her client at court for the first time minutes before the trial began and that out of the seven lawyers in the legal aid department, three had been just recruited from university and their first trials were capital cases. Trial observations of Capital Cases conducted by the Paralegal Advisory Service, Malawi, 2001

³³ Cao, Lan, Culture Change (June 2006). Available at SSRN: <http://ssrn.com/abstract=906767>, p.64

never affirm that law schools didn't produce enough ethical and trustworthy legal practitioners. The less that can be said is that in itself individuals' performance in ethics seems not powerful enough to substantially change the image of an institution.

If it is however conceded that performance in integrity plays a major role in improving public trust, this is a good argument for considering its introduction in the education of young jurists. As mentioned in the beginning, it is not at all about constructing from scratch, ethics being one of the main elements of integrity. The experiences acquired in ethics education would constitute a valuable asset, especially because many universities the continent have already introduced this course and their experiences should be assessed to improve the courses accordingly. What also seems to be important is to build on the existing ethics course by the other key elements of integrity: alignment and competence.

The ethics education has well evolved under some clouds, as in the United States and in Europe³⁴. It is even considered as the most important in the curriculum. In the United States, the studies led by the American Bar Association concluded that one of the essential skills that the law school graduates should have is to recognize and to solve the ethical dilemmas³⁵. Ethics in legal education recorded an evolution in the time and seemed currently to reach a certain maturity in the sense that from the knowledge of the professional rules the teaching is now much oriented toward the competence of the students in the judgment approach³⁶. Although there is a warning that the legal education in Africa missed another opportunity, it seems quite possible with the easiness of exchange between academics to improve and to valorise the ethics education.

The precaution principle should constantly remind us that in spite of globalization trends, every culture has its own values system. The leniency to adopt values and their acquisition methodologies, even proven to be successful elsewhere, can be prejudicial. It is well established that the contemporary African society is characterized by the coexistence of two types of communities: in the one hand the urban that tends to give more importance to the individual and the pertaining values and in the other the rural that keeps the values of life in community. However, non formal education still values the community ascendance over the individual in most culture. It can generate terrifying conflicts of values for the individual, the young lawyer or magistrate, if the ethics education instilled to him the exported professional values at the expense of the local values, without discernment.

Indeed, ethics education is much centred on the individual, the legal practitioner in first place, and her/his relations with the other stakeholders in the system as the court users, the peers, the other professionals and more and more the society. Such education can give conclusive results in countries where institutions of governance are in good equilibrium. In such countries, an active lawyer or a judge has good chance to provoke a change in a very established system since the other pillars of integrity are functional and can support the action if it is found legitimate. In most countries in Africa, where institutions are in balance search yet, an education solely centred on the individual would not contribute efficiently to that dynamics. It

³⁴ J Moliterno (2001) "Experience and Legal Ethics Teaching" 12 Legal Education Review 3 at 9

³⁵ Am. Bar Ass'n Section Of Legal Educ. And Admissions To The Bar, Legal Education And Professional Development—An Educational Continuum: Report Of The Task Force On Law Schools And The Profession: Narrowing The Gap (1992), 138-40

³⁶ Renewing A Focus On Ethics In Legal Education? Michael Robertson, aw.anu.edu.au/alsc/MikeRobertson.pdf

is too often noted in isolated activist cases consecration of hero or even of martyr. It is exactly there that the (institutional) integrity education would draw its added value. It is about educating future legal practitioners who not only should excel in the legal art to solve legal problems but indeed as agents of change that build their institution and collectively contribute to its good integrity performance.

To the point where it is currently, the reform of the judicial institution as guardian of the rule of law could only be done effectively with all stakeholders involved. However, considering the experience of the Executive hegemony, the members of the legal professional should not expect of the voluntarism of others. The only likely solution, unless they wait (in vain) the passage of the Good Samaritan to raise the institution, is for the legal profession to know how to react. It will especially be about acquiring a strong competence that allows influencing other decision-makers and stakeholders. In a word, it is about suitable leadership competence to initiate and sustain the change in a non propitious environment.

It will also be about giving the law students the capacity of strategic analysis of needs and power relation as well as the expertise to conceive and to put in work of change strategies. In that, the questions concerning resources are crucial and it is very important that the future practitioners have knowledge of the potentialities and the means to mobilize them. In fact, during a certain time again, most African countries and especially their ambitious legal and judicial reforms will still need of external funds, and at least the knowledge of the mobilization mechanisms of these assistance seems necessary to acquire at law school. Since these external funds are not donated or lent without desires of influence, it proves to be beneficial to initiate law students in the game of influences.

It is not rare to see important funds allocated to projects which opportunity, effectiveness and especially impact on the legal and judicial institution and on the true beneficiaries are questionable. I have in mind for example the construction of sumptuous Court of Law premises that are supposed to attract the citizens but give them on the contrary a feeling of apprehension. Without knowing how to identify and analyze the real needs and the priorities, to differentiate urgent from important, it is likely for the practitioners when in the field to swallow all proposed reforms to them. I remember here the genesis of the setting up of the Judicial Integrity Group³⁷, constituted of chief justices known for their personal integrity. They complained that the external funds granted to the reform of the judiciary, by the politics of some donors, are channelled through the Executive who therefore masters it. Justly, there is a question of independence since the use of funds was often issue of politician game and no of justice needs. It goes without saying that the credibility of the institution plays an important role however to secure the trust of the financial partners.

Still in this case, since it is about bargaining power and advocacy competence, in view of influencing legislation and politics, it is important that the students acquire the related capacity. This capacity, very different from those requisite for litigation, also require another mindset³⁸. For example, it is striking to see association of judges or lawyers that only make propositions of modification of bill or regulation during terminal phase of its adoption, where

³⁷ For details, please visit <http://www.unodc.org/unodc/en/corruption/judiciary.html>

³⁸ Morisey, Muriel, *Liberating Legal Education from the Judicial Model*. Seton Hall Legislative Journal, Vol. 27, No. 2, 2003. Available at SSRN: <http://ssrn.com/abstract=1024472>, pp.246 et s.

it is almost impossible to get any change³⁹. In the case of judiciary reform here in Kenya, following the adoption of the new constitution, the activism of some associations of jurists and lawyers forces the admiration, but it is also salient the tendency to get change by confrontation. Advocacy avoids most of the time to see others having opposed political or ideological position as adversary⁴⁰. What imports is the advancement toward the objective that requires dialogues and compromises. Such an attitude can be well cultivated since law school with in addition the ethical aspect that guides the relation with the customer and the integrity aspect that consists in maintaining the harmony between the values system and the positioning.

SOME IMPLEMENTATION HINTS

Like all introduction of new subject in a curriculum, the process of introducing integrity in legal education has to pass technical and administrative stages that are not without difficulties. This paper will not detail those stages of preparation as it is context specific. It would want to share a few findings from the rare experiences in facilitating the starting up of the integrity education in higher education and particularly for law students⁴¹. The objectives are to ensure effectiveness and impact. I am going to be inspired especially by the first experience of the Legal Integrity Education Network (LIEN) at the Faculty of Law of the Uganda Christian University⁴² all along this last part. Definitely, securing the essential conditions is key concerning preparation, implementation and follow-up.

As indicated right at the beginning of this paper, to get the idea of having an integrity education accepted needs an excellent art of persuasion. It is going to be necessary for the champion (academic) of the initiative to know how to mobilize not only within her/his own camp but especially from the camp of the legal profession that is supposed to be the immediate beneficiary of the initiative. A participating diagnosis of the needs and the available resources proves to be crucial for success. Having appropriate information concerning integrity challenges in the institution and solutions is crucial to prepare the course but it is not that easy to find. Access to information about disciplinary cases in the legal and judicial profession is not a reality. Learning from the similar initiatives can help otherwise. The first experience initiated since last year in Uganda has the tendency to confirm that inclusiveness in the process is decisive, which means the implication of all stakeholders in the administration of the justice. If possible, a combined action of all or the major law schools in the country will facilitates the process.

After the mobilization and diagnosis phase comes the actual implementation including work on the content, the manuals, the methodology and the lecturers. It is about translating into educational tools the information collected in the previous phase and to build the capacity and

³⁹ For illustration, please see for example the case of the Syndicat de la Magistrature of Madagascar that probably of good faith suggested a change in the draft constitution already submitted to referendum. www.madagascar-tribune.com/Le-SMM-continue-ses-revendications,14912.html

⁴⁰ Morisey, Muriel, id.

⁴¹ Please see some experiences of the Public Integrity Education Network (http://www.tiri.org/index.php?option=com_content&task=view&id=305&Itemid=)

⁴² <http://ucu.ac.ug/index.php>

the motivation of the trainers. The experience of the previous curricula development workshops gives a good example of innovation of the participants to meet the needs of their own context. To cite one example, discussing on the psychology and behaviour that an integrity teacher should have, a facilitator during one workshop in Uganda made a parallel between teaching integrity with teaching somebody to swim. Among other qualities of pedagogue and animator, the swimming teacher must be an excellent swimmer to inspire confidence and good learning condition. Based on this, the master of integrity should also be a role model personal integrity to their students. Another method used elsewhere consists for example in allowing the law students to start working on the integrity performance of the university and/or the Law school before going outdoor.

Moreover, it will be necessary to know how to cultivate the moral courage. I remember from a neighbouring country a training of high-level investigators concerning illegal assets tracking and repatriation from abroad. In spite of the excellence of the training and the trainers who are among the cream on the subject elsewhere, combined with the follow up assistance offered by them, there were no significant results afterwards. What was missing after analysis was a practical exercise of such operations in a difficult environment as an initiation that could empower the investigators. This example illustrates that integrity education can not succeed without the contribution of active role model.

With regard to the access to justice, experience shows us that the use of learning by practicing method is critical. It is not necessary to extend on the content and the methods of this aspect of the education as this seems now well adopted by some law schools in the region and in particular here in Kenya. I am thinking about the clinical legal education that allows law students to be exposed to different practical aspects of legal aid. Besides, the research in pedagogy seems to indicate that the best manner to acquire the knowledge and capacity is to transmit them. The success of the street law in South Africa can be convincing⁴³. In Uganda, the LIEN project associates the students for example in the training of the local council court members and local monitors who are intended to watch the former, from the conception until the implementation.

Last but not the least in term of importance, the preparation of the environment where the law graduates is going to evolve should not be minimized. It has been judged irresponsible by many of the workshop participants for the law school to instil at the young jurist all of the good values, to equip them for their applications and thereafter to let them navigate by themselves in a hostile and non-cooperative environment. In Uganda, as it has been remarked by a participant, when a lawyer stood against malpractices in a court, everywhere in the country he will be known and watched by court staff. You will conclude that standing up against other very established political or economic powers is even more demanding. It has been recommended then to construct a network of integrity to which the young practitioner can resource and find support when in front of a tough situation. The networking can be started during the years at law school.

⁴³ <http://www.streetlaw.org.za/>

CONCLUSION

Far from being a panacea, the introduction of the integrity in the curriculum of law schools could make the difference in terms of reputation and long reconstruction of the trust in the legal profession. It can be seen as an opportunity for legal academics to contribute significantly in the justice reform, critical for introduction of rule of law and development in Africa. Education at law school is of course an initiation, but it is the duty of the faculty to insure that the future practitioners once out of the school's walls are knowledgeable, capable and competent to contribute to the integrity challenges of their new profession and the legal and judicial institution.

For sure, it remains a lot of outstanding questions like the training of trainers, the materials and especially the question of financial resources that will permit African universities to make their law schools more attractive to law students dedicated to integrity. One will legitimately wonder of the impact of the integrity education so far. Well, as it is the first experience in Uganda with regard to the legal education, critiques and commentaries will help to improve and are welcomed with gratitude.

I thank you.

Rafolisy Patrick

Docteur en Droit

Head of Integrity Africa, Tiri⁴⁴

⁴⁴ Opinions expressed in this paper are not to be deemed to represent the views of Tiri (www.tiri.org)