Contested Conceptual Foundations and Practical Challenges: Shaping Law and Development Curriculum for Legal Education in Africa

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Abstract: This contribution serves as a primer, identifying critical challenges to the teaching of Law and Development in Africa. It details landmarks in the African development trajectory, highlighting the vacuum which its omission from the scope of law and development studies creates. Using the lens of law and development teaching at the Great Zimbabwe University, it explores how some of the identified challenges can be addressed and offers some ideas for the design of law and development courses in Africa.

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A. Introduction

This paper makes reference to the much-explored moments in law and development as its departure point and then describes the development trajectory of post-independence Africa, highlighting the spirited efforts at charting a developmental path, while juggling multifaceted challenges to nation-building. This is followed by a discussion of the value of law and development in the context of decolonisation. Somewhat like a primer, the paper then anchors on an exploratory reflection on the specific experience of teaching a course on law and economic development at the Great Zimbabwe University. What emerges is a sense of omission of the broader continental developmental plan, painstakingly negotiated, even if incomprehensively implemented. The discourse also reflects a disjuncture between the law and development curriculum and the multiple development pathways comprised in the environment in which students are located.

In describing the moments in law and development, Son traces its genealogy through different periods such as the 1960s and the early 1970s, the late 1980s and 1990s respectively.[1] In summary, the essential paradigm of the legal liberalism approach of the

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1 *Bui Ngoc Son*, Law and Development Theory: A Dialogical Engagement, The George Washington International Law Review 51 (2019), p. 66. Son's sentiments are based on *David Trubek*, Law and

1960s-1970s is that the state discharges its developmental duty by creating laws and enforcing them to bring about development, emancipation and progress. In other words, development is an implicit, integral and natural outcome of law, the premise being that: individuals voluntarily organize themselves into a state; law is the instrument for the state to exercise its control over individuals; law, the main means of social order, is a conscious and rational system of rules; law represents the majority's interests and is created through a pluralist and participatory law-making process and law is equally enforced; courts are the centre of the legal order because they are the main legal interpreters and enforcers; legal rules are absorbed by all social actors; and finally law is both a part of, and autonomous from the state.[2]

In the neoliberal approach of the 1980s-1990s, law and development intervention prioritized the free market, limited state interference and deployed the law as a tool to achieve these ends.[3] In the second moment therefore, the rule of law was initially directed towards the protection of private property rights, as well as contract enforcement implemented through a strong and independent judiciary.[4] As Ntephe observes, "the conception of the rule of law was a limited one that focused on tensions between the state and the individual, with the individual needing protection from the state."[5] The third moment, traced to the mid-1990s, saw the deployment of law by development practitioners towards the correction of market failures, with the process itself being part of development.[6]

As earlier indicated, these moments capture the background of the subject under review as a starting point for this contribution. However, while these time periods may reflect law and development epochs as conceptualised by the governments of the developed global north, implemented through their development agencies and studied in their institutions, it did not necessarily accurately correspond to actual development experience on the African continent. It may be that developments on the continent have not been neatly disaggregated within the "law and development moments" rubric. This would be understandable, given the differences in Africa's transplanted legal traditions which themselves cloak a multiplicity of permutations in diversity and layered pluralism, making generalisations difficult. Add the maze-like picture constituted by global north theorisation on law and development and it might well feel like sampling an unfamiliar export commodity from the global north, both for scholars and students. Indeed, the limitations of the 'moments' rubric in relation to

Development: Forty Years after Scholars in Self-Estrangement, University of Toronto Law Journal 66 (2016), p. 301.

2 Ibid.

3 *Trubek/Alvaro Santos*, Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice, in: Trubek/Santos (eds.), The New Law and Economic Development, Cambridge 2006, pp. 1–18 at 2-5.

4 Ibid. p. 6.

5 *Peter Ntephe,* Does Africa Need Another Kind Law? Alterity and the Rule of Law in Sub-Saharan Africa, London 2012, p. 43.

6 *Trubek/Santos*, note 3.

contemporary global economic governance and consequently, the need to move beyond it to explore other concepts for understanding law and development have been reiterated.[7] In this regard, Africa's co-operation trajectory may offer insights into the conceptualisations of development on the continent and the use of regional law to propel these goals forward, as is discussed next.

B. Law and Development Trajectory in Africa's Post-Independence History

The evolution of Africa's thinking on development was significantly shaped by its attempts to determine parameters by reference to which economic development in the newly independent states could proceed. This necessitated the forging of intra-African partnerships through various co-operation efforts. Africa's development trajectory post-independence has therefore been mostly state-led, as this section elaborates.[8] Achieving self-reliance was the dominant norm, with the aim being to reduce dependence on resources external to the continent and protect sovereignty. This made it necessary for the governments of the newly independent states to lead development planning and policy in their respective countries.

Generally, country alliances crystallised around two distinct iterations of pan-African development, one being development as a unified political entity (known as the Casablanca bloc) and the other preferring co-operation (the Monrovia Group).[9] Eventually, these two groups merged in 1963 to form the Organisation of African Unity – an intergovernmental body which had its main goals as unity, economic co-operation, defence and security, independence and international co-operation.[10] The OAU would go on to initiate development frameworks up until its dissolution in 2001, to pave the way for a more integration-friendly structure, as recounted in this segment.[11]

While the OAU was not the first framework for cooperation in the region, it was the most significant one at the dawn of statehood in Africa to address issues perceived as important to the majority of African countries, such as the fragmentation of the continent,

7 See for example, *Celine Tan*, Beyond the 'Moments' of Law and Development: Critical Reflections on Law and Development Scholarship in a Globalized Economy, The Law and Development Review 12 (2019), pp. 285-321.

8 See for example, *James Gathii*, African Regional Trade Agreements as Legal Regimes, Cambridge 2011; *Richard Oppong*, Legal Aspects of Economic Integration in Africa, Cambridge 2011; *Richard Mshomba*, Economic Integration in Africa: The East African Community in Comparative Perspective, Cambridge 2017, *Jonathan Bashi Rudahindwa*, Regional Developmentalism Through International Law: Establishing an African Economic Community, London 2018.

9 An earlier Francophone formation, the Brazzaville group, was absorbed in the Monrovia Bloc with its leader (President Leopold Sedar Senghor of Senegal) becoming the leader of the Monrovia Bloc.

10 Charter of the Organisation of African Unity (OAU), Article 2.

11 Following the adoption of the Constitutive Act of the African Union in 2000, the New Partnership for Africa's Development was adopted at the last summit of the OAU in Lusaka in 2001.

state structural deficiencies and the protection of hard-won sovereignty and independence.[12] However, with the focus on immediate post-independence exigencies, including continuing liberation struggles and simmering domestic conflicts, the development discourse languished. Only in the 1970s did it begin to resurface with progressive plans for endogenous, self-sustaining development, enhanced economic and technical co-operation, and the establishment of continental institutions, articulated in various events and documents.[13]

Following the design of a framework for collective self-sufficiency at the Monrovia Symposium in February 1979, a decision was taken at the 5th ECA African Ministers Conference in Rabat in March 1979, to create the first comprehensive African development strategy, which was subsequently captured in the Lagos Plan of Action adopted in 1980.[14]

The Lagos Plan of Action (LPA), which largely ushered in the second era in Africa's development trajectory, was the most extensive expression of an integrated African agenda for development in a single policy text.[15] The LPA responded to the development question in two ways at least. First, it acknowledged the limited attention paid to economic development in the OAU Charter and the consequent false start occasioned by this omission.[16] Secondly, it proposed a regional, rather than national, approach to development and emphasised external support and collective self-reliance. The LPA pushed the frontiers of intra-OAU cooperation by proffering a strategy directed at the realisation of sub-regional and regional internally located industrial development; co-operation in the field of natural resources control, exploration, extraction and use for the development of country economies for the benefit of their peoples. This was coupled with a plan to establish appropriate institutions to achieve these purposes and to develop indigenous entrepreneurship.[17]

It is the view of some scholars that in spite of its coherence, African leaders found the Lagos Plan of Action too ambitious to implement and it therefore only received their token attention.[18] As a remedial measure, post the LPA, many struggling African economies turned to international organizations for assistance, following which the Bretton woods

12 See *Rene Kouassi*, The Itinerary of the African Integration Process: An Overview of Historical Landmarks, African Integration Review 1 (2007), p. 1. See also *Walter Kennes*, "African Regional Economic Integration and the European Union" in D.C. Bach (ed) *Regionalization in Africa: Integration and Disintegration* (Oxford: James Curry, 1999) p. 27. See also *Rudahindwa,* note 8, p. 25.

13 These include the Addis Ababa Declaration 1973, the UNECA Nairobi Conference 1975, the Kinshasa Declaration 1976, the UNECA Rabat Conference 1979 and the Monrovia Declaration 1979.

14 See *Kouassi*, note 12.

15 The Lagos Plan of Action for the Economic Development of Africa 1980-2000.

16 Preamble, Lagos Plan of Action for the Economic Development of Africa*,* 1980.

17 *Rudahindwa*, note 8, p. 41. See also Article 3 of the Lagos Plan of Action.

18 *Daniel C. Bach*, Regionalism in Africa: Genealogies, institutions and trans-State networks, London 2016, pp. 75-79.

institutions recommended structural adjustment programmes (SAP) that were based on free market principles which *inter alia* emphasised privatisation and fiscal austerity.[19]

This would ultimately contribute to the disruption of Africa's developmental cooperation trajectory and the stultification of the endogenous, self-sustaining goals of the LPA. SAPs emphasis on unilateral trade reform, liberalisation, and deregulation meant that development co-operation was sacrificed for neo-liberal economic fundamentals.[20]

Nonetheless, the aspirations and influence of the LPA remained, leading to the negotiation and adoption in 1991 of the Treaty Establishing the African Economic Community (more commonly known as the Abuja Treaty), which set even more detailed implementation plans for intra-African co-operation.[21] The Treaty encapsulated the resolve of the OAU to utilise its progressive regional groupings as pillars to deliver a clearly articulated, albeit linear, economic development programme.

It presented an integrated articulation of the concept of development, linking economic objectives (expressed in quantitative outcomes from the deployment of factors of production) with broader objectives reflecting political, social, cultural, environmental and institutional goals.[22] Its appeal was not only in its utilisation of existing regional structures, but in its holistic and well-defined implementation strategy.[23] In this way, it placed a stamp on the value of regionalism for development – a value which underpins development efforts on the continent to date.[24] It might also be argued that the attempt to implement the well-defined, albeit ambitious blueprint set out in the Abuja Treaty from the mid-1990s revealed the shortcomings of the OAU to bring the vision of an African economic community to fruition. This seems evident in the resolve and swift progression with which African heads of state deliberated, drafted and adopted the Constitutive Act of the African Union to succeed the OAU between 1998 and 2000.

With the inception of the African Union, following the adoption of its founding instrument in 2000, Africa's development paradigm perceptively shifted into what may be regarded as its third season. While the terms of engagement under the OAU were state led, shaped by the cold war, directed at the core political issues of decolonialisation and regional stability and economically driven by neo-functionalist assumptions, the terms of cooperation under the African Union were more development focused and accommodated

19 *Faizel Ismail*, Transformative industrialisation and trade in the context of the CFTA: opportunities and challenges, Addis Ababa 2018, p. 35; See also *Rob Davis*, The Politics of Trade in the Era of Hyperglobalisation: A Southern African Perspective, Geneva 2019, p. 31.

20 *Sam K. B. Asante*, Regionalism and Africa's Development: Expectations, Reality, and Challenges Basingstoke 1997, pp. 111, 129-134; see also *Robert Davies*, Approaches to Regional Integration in the Southern African Context, Africa Insight 24 (1994) p. 13.

21 *Ismail*, note 19, pp. 20-21.

22 Article 4, Treaty Establishing the African Economic Community 1991.

23 *Asante*, note 20, p. 92.

24 See *Joseph Atta-Mensah,* "Africa's Regional Integration Architecture" in *Existential Priorities for the African Continental Free Trade Area* (UNECA, 2022) pp 13-30.

a combination of state and non-state actors. No doubt reinforced by developments on the global scene, the norms of democracy, good governance, rule of law, institution-building and law reform began to feature in conversations on the role of the state in engendering development.[25]

These concepts were reflected in reforms made to regional economic communities such as the Economic Community of West African States (ECOWAS) and the Organisation for the Harmonisation of Business Law in Africa (OHADA), which introduced reforms on good governance and law reform and legal harmonisation respectively.[26]

The AU adopted as its rallying strategy the New Partnership for Africa's Development (NEPAD), which was initially launched as the New Africa Initiative (NAI) in 2001 as an integral part of the economic agenda of the newly formed AU.[27] The NAI, led by then South African President Thabo Mbeki, was itself the product of a merger of two African economic draft strategies, namely the Millennium Partnership for the African Recovery Programme (MAP) and the OMEGA plan.[28] Both economic strategies were attempts to redirect the OAU to meaningfully engage with concerns related to peace, security, poverty and underdevelopment.[29] The "NAI-to-NEPAD" framework emphasised inclusive aims such as poverty alleviation, integration, women empowerment and the establishing of a stable environment conducive to peace.[30] Furthermore, it propelled the adoption of regional and sub-regional priorities, the involvement of non-state stakeholders and the formation of global partnerships.[31]

The NEPAD agenda has been described as balancing outward and market-centred type of development (advocating economic growth through external funding) with the need to pay attention to the developmental concepts of economic self-determination, self-sufficien-

25 See *David Craig*/*Doug Porter*, Development Beyond Neoliberalism? Governance, Poverty Reduction and Political Economy, London 2006, p. 13.; See also *Olabisi D. Akinkugbe*, Theorizing Developmental Regionalism in Narratives of African Regional Trade Agreement, African Journal of International Economic Law 1 (2020), pp. 317-319.

26 See for example ECOWAS Protocol on Good Governance and Democracy (A/SP1/12/01), Treaty on the Harmonization of Business Law in Africa (OHADA); see also *Frederick Cowell*, The impact of the ECOWAS Protocol on Good Governance and Democracy, African Journal of International and Comparative Law 19 (2011), pp. 331-342. See further, *Salvatore Mancuso*, Trends on the Harmonization of Contract Law in Africa, Annual Survey of International and Comparative Law 13 (2007), p. 157.

27 *Gathii*, note 8, pp. 368-370.

28 The New African Initiative, A Merger of the Millennium African Renaissance Partnership Programme (MAP) and The Omega Plan, https://repository.uneca.org/ds2/stream/?#/documents/2d316573-6181-54d3-9a3e-d28608f800d4/page/4 (last accessed on 26 April 2022).

29 *Gathii*, note 8, pp. 368-370.

30 See NEPAD Framework 2001, Articles 67-71; see also *Rene Kouassi*, note 12.

31 NEPAD Framework, Articles 93-98, 166-167 and 174-183.

cy and collective self-reliance.[32] NEPAD therefore combined the idea of self-sufficiency with the necessity of foreign funding in its approach to development.[33] This period saw the launch of several trade arrangements on the continent, many of which reflect the NEPAD development ethos, including the Southern African Development Community (SADC) Free Trade Area which was launched in 2001 (operationalised in 2008); the East African Community (EAC) Customs Union which was signed in 2004 (operationalised in 2005).The implementation of the SADC Free Trade Area was guided by the Regional Indicative Strategic Development Plan (RISDP), which was adopted in 2003. The RISDP contains detailed sustainable development milestones reflecting NEPAD Framework ideals. Similarly, the East African Community created a detailed Development Strategy to guide the implementation of its Customs Union.[34]

The third era in Africa's development trajectory (which was also NEPAD's first decade), had the most profound effect on economic growth, with countries like Ethiopia consistently recording double-digit growth levels year on year for a decade. While there were many reasons for these growth levels (such as the commodity super cycle and China's significant investments), it became clear that meaningful development was possible. To consolidate on the growth trends, the AU developed a 50-year development plan known as Agenda 2063.

Agenda 2063 consolidated key aspects of previous development agendas. By reprioritising sustainable and inclusive socio-economic development, it reiterated the vision of the Lagos Plan of Action. In its emphasis on democratic governance, peace and security and its articulation of steps towards regional and continental integration, it reinforced NEPAD values.

A key milestone recorded so far in this period was the adoption of the African Continental Free Trade Agreement (AfCFTA) in 2018, which came into effect in 2019.[35] The agreement has initiated a gradual commencement of trading in 2021, following the negotiation of legally implementable and reciprocal schedules of tariff concessions on agreed Rules of Origin and customs documentation, concluded in 2021. As the name

32 *Gathii*, note 8, pp. 368- 370; see also, *Gathii*, A Critical Appraisal of the NEPAD Agenda in Light of Africa's Place in the World Trade Regime in an Era of Market Centered Development, Transnational Law & Contemporary Problems 13 (2003), p. 179.

33 President Thabo Mbeki, Address of the President of South Africa to the Joint Session of the Parliament of Namibia, 30th October 2007, https://www.sahistory.org.za/archive/address-president-south-africa-thabo-mbeki-joint-session-parliament-namibia-windhoek (last accessed on 26 April 2022).

34 See Chapter 4, SADC Regional Indicative Strategic Development Plan (RISDP), https://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (last accessed on 26 April 2022); See East African Community, The East African Community Development Strategy 2006–2010 Deepening and Accelerating Integration (2006), pp. 4-12, http://repository.eac.int/bitstream/handle/11671/214/3rd-EAC-Development-Strategy.pdf?sequence=1&isAllowed=y (last accessed on 26 April 2022).

35 Agreement establishing the African Continental Free Trade Area (AfCFTA), 2018.

implies, this is a continent-wide free trade agreement so far signed by 53 of 54 African countries, the aim of which is to grow intra-African trade by leveraging the synergies and complementarities of their economies and optimising economies of scale for economic growth.[36]

Another highlight is that Africa's development institutions, the private business sector and civil society groups began to play a more active role in enabling development in this period. For example, the African Development Bank which was birthed in the first development era collaborated with development partners to launch the Programme for Infrastructure Development in Africa (PIDA) in 2010. PIDA provides a common framework for African stakeholders to build the infrastructure necessary for more integrated transport, energy, information and communication technology as well as trans-boundary water networks. PIDA builds on the NEPAD Medium to Long Term Strategic Framework.

The trajectory of Africa's development agenda reveals three distinct epochs, including that of the immediate post-independence era from the 1960s to the 1970, the Lagos Plan of Action from the 1980s-1990s and the African Union NEPAD era from the 2000s to the 2010s. There was therefore a parallel development track reflecting a plurality of development agendas. In summary, it may be argued that the developmental regionalism paradigm does for Africa, what the law and development construct does for global law and development scholarship.[37] In other words, a comprehensive study of law and development in Africa needs to engage with the definitive role which regional co-operation frameworks have played and still play in providing platforms within which various development efforts are structured.[38] However, what is served in the few places where it is offered is the traditional law and development diet, which typically does not go down well with students, for a number of reasons which are progressively discussed in this paper.

C. The Value of Law and Development (L and D) in Legal Education and the Decolonisation Call

An important departure from the dominant methods of law and development research is demonstrated in the study and scoping of the field through teaching approaches as well as the recognition of the importance of contextualising its content, while drawing from both

36 AfCFTA, Articles 3 and 4; see also *Ismail*, The African Continental Free Trade Area and Developmental Regionalism: A Handbook, Pretoria 2021; see further *Katrin Kuhlmann*, The African Continental Free Trade Area: Toward a New Legal Model for Trade and Development, Georgetown Journal of International Law 51 (2020), pp. 5-7.

37 For more on developmental regionalism, see *Rudahindwa*, note 8; see also *Akinkugbe*, note 24.

38 Some of the more recent of such frameworks include the Proposed Action Plan for Boosting Intra-African Trade (BIAT) and the Programme for Infrastructure Development in Africa (PIDA), both adopted in 2012, the AU Agenda 2063 initiated in 2013, and the African Continental Free Trade Agreement (AfCFTA) signed in 2018.

global north and south paradigms and methodology.[39] Perhaps in so doing, scholars may more accurately distil what is comprised in the field, thereby more clearly defining its value in legal education. In relation to Africa, the value of the study of law and development as presently constituted needs to be teased out from its traditional packaging as a suite of interventions expected to achieve certain predetermined outcomes. As useful as training in law and development is for building negotiating and transactional capacity in developing country institutions and professionals for bilateral and multilateral engagement, it is only part of the picture, which reflects the perspective of the importation of development into the developing world. The other component is the role played by multiple normative systems in charting alternative development pathways in societies characterised by deep legal pluralism, exemplified by African communities. These pathways, which are complementary or supplemental to existing paths, often emerge in communities, growing out of the interactive dynamics between different sources and strata of social ordering. This makes the teaching of law and development in Africa imperative, as it presents a continuing opportunity to reflect on development pathways that are created by people's lived experiences, evolving in response to economic and political shifts. The law and development paradigm and pedagogy shaped by this approach will then necessarily be located in the bigger picture, which in summary, is that development occurs at the intersection of multiple pulls and influences. These push-pull dynamics and influences determine what is understood as development at any point in the continuum of human society, what works as development intervention or facilitation and ultimately what is taught as law and development. Perhaps it is the omission or disconnect from this reality that informs the instinctive perception of traditional law and development content by students as neo-colonial in relation to Africa, belying the value of the discipline and inviting the call for decolonisation.

If by decolonisation is meant the study of how law, in its plural forms, has shaped or been shaped by development processes in post-independent Africa, then it is submitted that this process must be underway, as evidenced in relatively recent works that traverse a spectrum of issues which include customary law, comparative methodology, regional integration, innovation and development studies in general.[40] Futhermore, Mpofu and

39 See *Siddharth Peter de Souza*/*Thomas Dollmaier*, The Teaching of Law and Development: towards inclusiveness and reflexivity across time zones, International Journal of Law in Context 17 (2021), pp. 1-17. https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/teaching-of-law-and-development-towards-inclusiveness-and-reflexivity-across-time-zones/322E392FFB71C75D0AB1F290D029C4F2

40 See for example, *Gathii*, note 8; *Mshomba*, note 8; *Thandabantou Nhlapo*/*Chuma Himonga*, African customary law in South Africa: post-apartheid and living law perspectives: private law, Cape Town 2014, *Charles Fombad*, "Africanisation of Legal Education Programmes: Need for Comparative Legal Studies" in: Salvatore Mancuso/Charles Fombad (eds.), Comparative Law in Africa: Methodologies and Concepts, Cape Town 2015; *Christian Okeke*, "Methodological Approaches to Comparative Legal Studies in Africa" in: ibid.; *Busani Mpofu/Sabelo J Ndlovu-Gatsheni* (eds.), Rethinking and Unthinking Development: Perspectives on Inequality and Poverty in South Africa and Zimbabwe, New York 2019; *Caroline Ncube*, Science, Technology & Innovation

Ndlovu-Gatsheni identify a web of paradoxes with which African scholarship is immediately confronted.[41]

These include the rich and complex cultural diversity, with the ever- simmering ethno-religious politics that underlie contemporary conflicts; underdevelopment amidst resources; brain drain in the face of limited capacity and illicit financial flows; nascent democratic and governance institutions to anchor sustainable development as well as longstanding tensions between tradition and modernity. Add to these, the further complications of centrifugal and centripetal political and economic forces, long standing contradictions between the sacred and the secular, an ever-widening gap between rich and poor, and the quest for homegrown solutions to African problems, while relying heavily on foreign aid, foreign direct investment and imported goods and services.[42] Clearly this invites multifocal lenses beyond traditional L and D scholarship.

In relation to international development, scholars such as Gumede note that the current trajectory is characterised by the emergence of new powers (presumably China and its allies), with their associated impact on development.[43] Other features include calls for the reform of international financial institutions (IFIs), debates around the growth-development nexus, the varied implications for Africa of recurrent global economic crises; and the origins, contexts, complexities and contradictions of the lopsided global order and their effect on, as well as implications for Africa's development.[44] So what does all this mean for the teaching of law and development in Africa? While these observations may have been made in relation to development studies generally, a similar dimension of enquiry and reflection may be required for the field of law and development in Africa, where the challenge has been to develop clear theories which draw linkages between the law and development. Clear links will no doubt define the value of the subject for its growing cohort of students in Africa.

Non-contextualisation of content in relation to Africa, as earlier mentioned, constitutes a problematic disjuncture which leaves students struggling to reconcile the misfit between law and development content and their preceding law studies, especially when placed against their societal realities, thereby making them question the value of such a 'disruptive' course.

The value of law and development will therefore have to be demonstrated in its inclusivity of various related disciplines as well as in the experience of lawyers who work in a variety of contexts. Therefore, lawyers and other professionals in private practice, public service, corporate practice, the nonprofit sector, development agencies and international

and Intellectual Property: Leveraging Openness for Sustainable Development in Africa, Cape Town 2021.

41 *Mpofu*/ *Ndlovu-Gatsheni* note 39, p. 1.

42 Ibid.

43 *Vusi Gumede* (ed.), Inclusive Development in Africa: Transformation of Global Relations, Pretoria 2018, p. 2.

44 Ibid.

fora as much as community-based civil society networks, have much to contribute to the academic discourse on law and development. Casting the net deep and wide for relevant experiential input and resources is a key early step in creating comprehensive content. Indeed, grappling with course design upfront increases the prospects of compatibility between law and development course content and students' previous learning. By extension, this affects the value which students perceive from it, shapes their experience of it and ultimately influences their perception of it.

D. Teaching Law and Development

At this point, the second author's experience of teaching a law and development course at Herbert Chitepo Law School, Great Zimbabwe University (GZU) is drawn on to demonstrate some of the practical and theoretical challenges relating to the teaching of law and development in Africa and beyond. The Herbert Chitepo Law School is one of four law schools in Zimbabwe. At the time of writing, the University of Zimbabwe, Midlands State University, Great Zimbabwe University and Ezekiel Guti University were the only universities offering an LLB degree in Zimbabwe. GZU offers a five-year Bachelor of Laws degree programme, with law courses, electives and non-law courses, like most law schools in Zimbabwe and elsewhere.

In the fifth and final year of the LLB programme, GZU offers a compulsory final year[45] course specifically entitled *Law and Economic Development*. The option to confine the module to economic development suggests that the curriculum development process for this course found it necessary to delimit its scope. The fact that it was not simply couched as Law and Development, with economic development constituting a component of it indicates the necessity of locating the course within identifiable parameters, rather than taking on its many facets all at once.

The inclusion of such a course in the final year LLB curriculum is indicative of the growing awareness in academic study and practice of the interconnectedness between the purpose of law and the environment to which it applies. At GZU, the Law and Economic development module introduces students to the genealogy of the law and development field, describes the multifaceted concept of development and highlights the role of lawyers in development. In an attempt to contextualise it to its local economic realities, the course features a somewhat unwieldy range of topics such as: law and agricultural development, incentives for private investments, industrial property and economic development, export processing zones, international aid and conditionalities, the role of multilateral financial institutions (such as the World Bank, International Monetary Fund, African Development Bank etc) in economic development, international commercial arbitration and challenges to economic development. Challenges are identified to include a shortage of legal expertise, inadequate or ineffective laws, lack of resources, bureaucratic inefficiencies, conflicts of

45 Level (Year) 5: Semester 2.

interest, lack of community participation in development, collusive tendering, bribery and corruption.

Even while circumscribed to economic development, the GZU module still manages to display the eclectic nature of law and development as a field of study. At the same time, it clearly reflects key components of Lee's Analytical Model of Law and Development which is explicitly an economic development model.[46] Analysing this model, Hubbard identifies two legs as follows: "one must assess empirically which laws and institutions promote economic development," and the second dimension implies that "one must determine which socio-economic conditions are required before one can implement these laws and institutions that are, in fact, favourable to development".[47]

Observations from students of the law and economic development module at GZU reflect a number of issues as follows: (1) concerns that the module is incomprehensible since the concepts are amorphous and difficult to grasp at their level, (2) the dearth of local literature on Law and Development in Africa, (3) confusion relating to the 'murky disciplinary parameters' and 'regulatory impact mechanisms' of the field, (4) questions as to why the Law School opted for an economic development orientation contrary to contemporary developments in the field calling for a holistic and integrated approach to development, (5) the positioning or timing of the module in the final year of LLB studies, thereby placing an undue burden on students who are working on research projects (dissertations) and other heavy law courses, (6) Its semesterisation and location in what is typically a short semester, within which time students are expected to comprehend what many consider a distinct discipline, (7) the multidisciplinary nature of the module, often perplexing to law students, (8) the possible perpetuation of Euro-North-centred law and development models, (9) the seemingly indeterminate content of the course, (10) the baffling relationship or distinctions between Law and Economic Development, International Economic Law, International Development Law, International Law and Development. Other concerns are mostly related to teaching methodology and teaching resources.

In summary, for law students, who have been schooled in the letter of the law, the introduction of necessary non-doctrinal literature for the provision of much-needed context is perceived as an imposition which creates more challenges than solutions. Importantly, many law students struggle to understand the rationale for the inclusion of "impure" law modules in the undergraduate law curriculum. Secondly, they find what appears to be a lack of a coherent theoretical base for law and development a discouragement and sufficient reason to avoid the course where it is not compulsory. Navigating students' resistant scepticism towards a subject perceived as complexity itself, coupled with scarce literature

46 See *Yong-Shik Lee*, Call for a New Analytical Model for Law and Development, Law and Development Review 8 (2015), pp. 1-67; see also *Lee*, General Theory of Law and Development, Cornell International Law Journal 50 (2017), p. 415.

47 *Hubbard*, (…), p. 271.

and limited collegial networks in local jurisdictions soon makes a teacher of law and development a bird of passage.

Some reflection on these issues is undertaken in five clusters, starting with naming, moving on to curriculum design and development and further on to semesterisation, examination and teaching methodology.

I. Naming: Law and Development or Law and Economic Development?

Law and development scholarship supports, among other things, "a comprehensive, inclusive and humanistic approach" to development.[48] This broad scope of content creates a potential quandary both for students and teachers. In this regard, the GZU module places a high premium on the economics of development, which is in itself narrowly construed, within the parameters of trickle-down economics and neoliberal approaches. In other words, Law and Economic Development appears to be based on traditional development thinking anchored on economic growth principles. However, the more pertinent task is to ensure that course content is embedded in practical scenarios with which students are familiar in a way that equips them with the analytical tools for tracing and uncovering links between law and development in their society. Thus, course content should be more about designing integrative and facilitative frameworks for class engagement, rather than pursuing strict adherence to course title.

II. Curriculum Design and Development

The law and development teacher must at the onset navigate what often feels like a nebulous field in order to establish the parameters of the particular course in focus. Defining the scope of the course necessarily entails acknowledging other content that will not be covered. While the curriculum design exercise provides the opportunity to incorporate quieter global south voices in the literature, the training of the curriculum designer may yet tilt the outcome heavily in the direction of traditional law and development scholarship. It is therefore, crucial that a simplified text be developed, which embeds the course in the African development co-operation trajectory, while incorporating a synthesis of law and development "genealogy", as well as comparative content from other parts of the developing world.

III. Semesterisation and Examinations

As earlier mentioned, the course is only offered for a semester in the fifth and final year of the LLB, by which time, students are immersed in their research dissertations, while preparing for final examinations in a suite of courses. With regard to exams, the tension

48 *Bhupinder Chimni*, The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels, Law and Development Review 1 (2008), p. 3.

for the teacher is between testing for an understanding of formal content found in the few available materials, to ensure that students can demonstrate familiarity with global debates, and redesigning assessments embedded in local realities so as to promote original thinking. This needs to be critically thought out at the point of curriculum design and course outline preparation.

IV. Teaching Methodology

From the GZU experience, the lecturer must employ a variety of approaches to promote active student learning. Coursework constitutes 30 percent and comprises assignments, tests, presentations, simulations etc, while examinations account for 70 percent. Both in-person teaching and electronic learning platforms are utilised. E-learning tools include video recordings of certain topics, while in-person formats consist of lecture-style methods and student discussion groups. Group discussions have proven extremely valuable for breaking down complex reading material. The role of the lecturer in group formats is mainly to guide the students to identify major themes and highlight novel or pertinent issues relating to the topic under discussion. Whatever the format, the test of success from a law student's point of view, lies in whether the learning session has established causation between the law and the socio-economic conditions or other developmental phenomena it is directed at creating or regulating.

In wrapping up this discussion on teaching law and development, it must be reiterated that the challenge of teaching law and development in an African context calls for a rethinking of traditional approaches to law and development studies. If students are to be drawn into a sustained engagement with the course, a dedicated textbook on Law and Development in Africa, written in simple language should be the goal for a primary resource, complemented by other accessible texts.[49] Secondly, content must be disaggregated and repackaged to suit various academic levels, including undergraduate classes, postgraduate study, professional short courses and executive learning. Perhaps most compelling is the imperative of reconstituting content to reflect the trajectory of overarching development planning on the continent and recognising the ways in which plural development pathways interact with the law, while retaining salient aspects of global law and development theory.

E. Conclusion

The imperative of producing mainstream lawyers who are able to actively contribute to broader concerns of law reform and socio-economic transformation in Africa makes the introduction of law and development in undergraduate study a strategic choice. Within the increasingly central paradigm of regional co-coperation and economic integration, the need

49 Such as *Mariana Prado*/*Michael Trebilcock*, Advanced Introduction to Law and Development Cheltenham 2021, 2nd Edition.

to grow productive capacity and establish value chains is critical. What this means within domestic economies is that modern lawyers in Africa are expected to be grounded in ways of utilising the law, legal frameworks and institutions to achieve specific outcomes, such as for example, creating an enabling business environment for a particular industry or defining a sustainable economic intervention in relation to a specific demographic of the population. Still, this purpose is not served by pitching students straight into the arena of battle with law and development theories, when they can be more amenably eased in through the foyer of the African regional co-operation trajectory, succinctly captured in this paper.

Put differently, as important as it is to introduce students to law and development from the later years of LLB studies onwards, students must find it palatable and digestible. In other words, it is a diet that needs to be served in student-friendly platters that offer interactive, group problem-solving methods. Suitable approaches may include case studies of past law and development initiatives, problem-solving questions around current initiatives and scenario-setting to project future trends. Needless to say, teaching methods will be adapted to the level of the course offering, be it undergraduate or postgraduate.

It is a positive development that Law and Development is starting to feature as a course in Law School curricula in Africa, providing students with some exposure to its analytic frameworks and thought processes. Equally important is the response of conveners of law and development courses when confronted with the contextual and other challenges which students grapple with. Interventions that are informed by such valuable experiential insight are key in that they reflect what works for the achievement of the goals of the course and what does not.

In some ways the unfolding experience of teaching law and development in Africa reflects some of the criticisms levelled against the field in its chequered history. However, in even more compelling ways, the debates, contestations and challenges faced by a teacher of law and development in Africa are not about whether the subject has a place in the academy, but more about how to interpret it in terms of the developmental context in which life in Africa is lived. Africa's development co-operation trajectory seldom features in the law and development literature, and yet it presents a compelling account of the influence of regional legal frameworks on the ecosystem within which country development plans are made and legislated into effect. In conclusion, it is submitted that a law and development teaching plan cannot operate as a one-size-fits-all and at the very least, the teacher must give careful thought to the history of the society in focus, to the ways in which law has been positioned and put to use (or not) through various timeframes and to the target recipients of a particular content. The society needs to feed the curriculum and the teacher must learn to be the curator of this process.