

Behind-the-Scenes Actors? Towards Enhancing the Visibility of Legislative Counsel in Developing Countries

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Abstract:

For decades, there has been on-going debate regarding the role of legislative counsel and their direct relevance to the development and governance process, most especially in the developing world. This paper examines whether legislative counsel are behind-the-scenes actors in the legislative process, most especially as it focuses on the development of economies, and makes a case for their greater involvement in the development and governance process in developing countries. In order to put the subject into proper focus and perspective, the paper also examines the recruitment and retention of legislative counsel and the role they play in the legislative process and possibly in the development process and the challenges they face – which factors diminish their visibility. The paper proposes the way forward on enhancing the visibility and participation of legislative counsel in the overall development of developing countries.

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Introduction

“Make visible what, without you, might perhaps never have been seen.” Robert Bresson²

Legislative counsel are often times relegated to the backseats and rarely acknowledged for the contribution they make to the legislative process and governance as a whole.³ This in itself has many repercussions, not only on attracting and retaining highly motivated staff, but also on the planning for their capacity building and professional development. The problems associated with law making in developing countries affect legislative counsel and the public’s perception of their role, duties and relevance.

Visibility is limited, not only at the international level, but also at the national level and within the governmental institutions. The factors diminishing the visibility of legislative counsel are two-pronged, some arising from the external environment and others from the internal environment – namely the institutions that employ legislative counsel.

This paper briefly examines whether legislative counsel are behind-the-scenes actors in the legislative process, most especially with regard to the development of economies, and makes a case for their greater involvement in the development and governance process in developing countries. The paper proposes the way forward on enhancing the visibility and participation of legislative counsel in the overall development and governance of developing countries. Given the limitations in time, most of the examples in this paper are derived from Africa, but remain relevant to the rest of the developing world.

Legislative Counsel in Developing countries

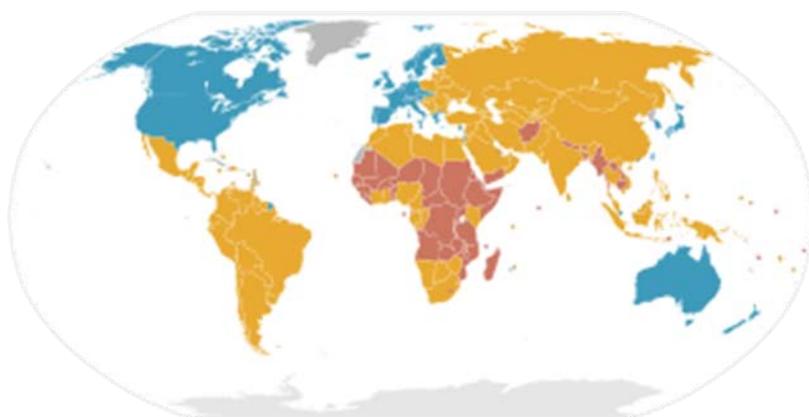
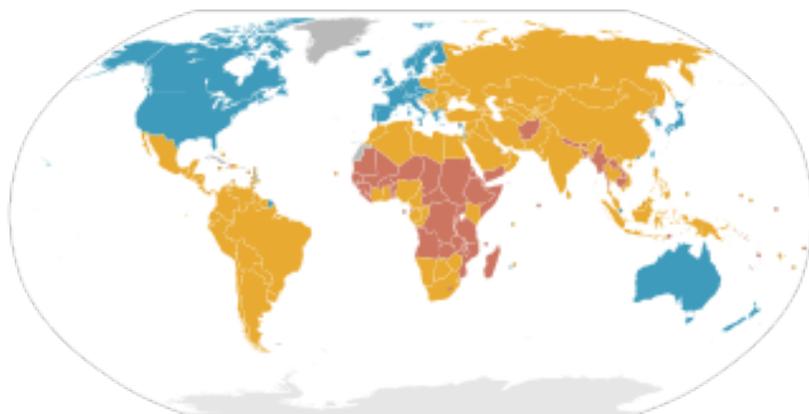
Currently, of the 54 members of the Commonwealth of Nations, 28 are categorized as developing countries, based on the statistical definitions provided by the International Monetary Fund (IMF) and the United Nations (UN).⁴

² French film director (25 September 1901 – 18 December 1999) known for his spiritual, ascetic style.

³ See F. Ruhindi, “Transition from a Professional Legislative Drafter to a Policy and Lawmaker: Experiences from Uganda”, Paper presented at Africa Region CALC Conference in Abuja, April 2010 and V. Crabbe, “The Role of Parliamentary Counsel in Legislative Drafting”, Paper written following a UNITAR Sub-Regional Workshop on Legislative Drafting for African Lawyers-Kampala, Uganda 20-31 March 2000. Available at <http://www.agora-parl.org/node/1878>.

⁴ Antigua and Barbuda, the Bahamas, Bangladesh, Belize, Botswana, Cameroon, Dominica, the Gambia, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Mauritius, Mozambique, Namibia, Nauru, Nigeria, Pakistan, Papua New Guinea, Rwanda, Samoa, Seychelles, Sierra Leone, Solomon Islands, South Africa, Sri Lanka, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu and Zambia.

Classifications by the IMF and the UN



■ Advanced economies

■ Emerging and developing economies (not least developed)

■ Emerging and developing economies ([least developed](#))⁵

In light of the prevailing conditions in developing countries and, by necessary implication, the role of the international community in providing development assistance, a number of internal and external actors are involved in governance and the development planning and implementation processes. It is with these actors that we seek to build partnerships which will ensure that the role of legislative counsel is highlighted and re-defined.

Legislative Counsel in Action

Without dwelling on the trite details, I will quickly summarise the role of legislative counsel – especially those in the mainstream as officers of the government (for example, in an Attorney General’s chambers) or in parliamentary bodies, including legislative

⁵ Table available at http://en.wikipedia.org/wiki/Developing_country .

assemblies, with the required expertise and experience to ensure that policies are effectively translated into law for the benefit of society.⁶

Legislative counsel, directly posted or deployed in parliamentary bodies, do more than draft legislation as they are tasked as lead counsel of parliamentary committees, sitting in a quasi-judicial capacity, to read witness statements, prepare questions and review committee reports for legal propriety. They also guide parliamentary committees on statutory interpretation and institutional mandates during the review of ministerial policy statements during the committee stage consideration of the budgets. And they draft key-note addresses and position papers on legal issues for senior parliamentary administrators and Members of Parliament and sometimes act as rapporteurs and secretaries to official parliamentary delegations to regional and international conferences or meetings.⁷

Within parliamentary bodies, legislative counsel:

- provide technical support to members of Parliament and committees during the process of drafting private members' bills;
- support the House in plenary, individual members of Parliament and parliamentary committees in drafting proposed amendments;
- interpret existing laws and make analysis of bills as the need may arise for the benefit of parliamentary commissions;
- provide drafting services for motions, resolutions and questions as may be required;
- give legal advice on matters relating to the administration of Parliament; and
- provide up-dated information on the progress of bills for posting to the Internet;
- ensure the accuracy of assent copies of bills and cause the timely publication of the final text as assented to.⁸

In some offices, Speaker's counsel have not been appointed even if this is provided for in the institution's organogram and the budget and so legislative counsel have to provide legal services in that capacity (providing advice to the House and its committees on all

⁶ V. Crabbe, above n. 3.

⁷ See E.M. Bakibinga, "Parliamentary Processes and Procedures: An Overview based on the Ugandan Experience", paper prepared for Diploma in Legislative Drafting Programme, International Law Institute-African Center for Legal Excellence, Kampala 31 October 2007 and E.M. Bakibinga, "The Role and Challenges of Parliamentary Counsel: Examples drawn from Uganda", paper prepared for Legislative Drafting IV Seminar, International Law Institute-African Center for Legal Excellence, Kampala 15 November 2007.

⁸ Parliamentary Commission, Parliament of Uganda, 'Administration of Parliament-Department of Legislative and Legal Services'. Available at <http://www.parliament.go.ug>.

legal advisory aspects of legislative business) as well, in addition to providing legislative services.

Outside the mainstream, legislative counsel working in consultancy firms, non-governmental organization (NGOs), offices of development agencies and supranational organizations⁹ are frequently more involved in policy development, planning and implementation of programmes, in addition to their work involving the drafting of legislative proposals and instruments. In most parts, if not all of the developing world, these legislative counsel are rarely referred to as such, due to their multi-dimensional role, but are designated as programme officers and specifically in the case of the UN and the African Union (AU), as 'Rule of Law officers', 'Judicial Affairs Officers', 'Legal Officers' or 'Advisers'.

For example, staff recruited as Human Resources Officers (Legal) in the Human Resources Policy Service of the UN, are charged with drafting or coordinating revisions to the staff rules and administrative issuances setting out rules, policies and procedures, among others. The positions of legal officers in the UN are located primarily in the Office of Legal Affairs, the Department of Management, the UN Compensation Commission, the Regional Commissions, the Department of Peace-keeping Operations, International Criminal Tribunals and Peace-keeping missions, but they may also be found in other offices throughout the UN Secretariat. Candidates for the position of legal officer must have years of progressively responsible experience in law, including legal analysis, research and writing, but some vacancy announcements may specifically require experience in legislative drafting.

The work of legislative counsel, especially while drafting, is largely behind the scenes, consequently not much recognition, funding and planning is allocated towards individual legislative counsel and drafting offices. Recognition of legislative counsel is also limited within parliamentary bodies. In my experience, it is not surprising to be involved in turf battles with regard to who is more superior or relevant to the legislative process and the work of parliamentary committees and the eternal debate surrounding the importance and relevance of intellectual and advisory support provided by legislative counsel vis a vis technical and administrative support provided by other categories of legislative staff.

Notwithstanding the role of legislative counsel as highlighted above, there is lack of appreciation sometimes from members of Parliament and at times from colleagues. One can imagine having to explain on regular basis to a senior parliamentary official and potential supervisor what the role of legislative counsel is.

⁹ For example, the UN, the African Union (AU), the secretariats of the regional economic communities such as the East African Community (EAC), the Economic Community of West African States (ECOWAS) and the Southern Africa Development Community (SADC).

M. Mayer states that ‘probably the greatest compliment a lawyer can receive from his profession (a compliment never publicized) is an assignment to draft a major law’,¹⁰ but in reality the accolade does not follow. This is further exacerbated by a tradition in most civil services that individual or group inputs are rarely publicly acknowledged (save at office or staff farewell parties).

Factors Affecting Visibility of Legislative Counsel

As pointed out above, the factors that diminish visibility of legislative counsel range from the limitations of legal education, especially concerning the content of the syllabi of institutions providing legal education, the focus of recruiters, the level of participation in the activities of professional associations and other entities, the assignment of tasks, the focus of needs-assessment exercises and planning for capacity-building programmes, among others.

Content of Legal Education

The syllabi of institutions providing legal education at under-graduate level across the developing countries, in varying degrees, address issues of constitutionalism, statutory interpretation and general principles of law, without promoting legislative drafting and legislative business as a viable career option. This is a missed opportunity to expose under-graduate students to legislative drafting earlier on in their pursuit of legal studies. The same applies to the programmes preparing candidates for admission to the Bar or legal practice where, in most instances, legislative drafting features on the timetable once in a week for approximately two hours. This does not allow sufficient contact time for those who may be persuaded to consider a career as legislative counsel. By way of comparison, the post-graduate course in Institute of Advanced Legal Studies provides 22.5 hours of contact-time per week¹¹ and the legislative drafting course in Boston University exposes students to 56 contact hours over 14 weeks.¹²

Recruitment of Legislative Counsel

Vacancy announcements run by government departments in developing countries, many times, call for interested candidates to apply for positions as ‘state attorneys’ and lump the duties together without any form of distinction. An example of this is set out below:

DUTIES: The incumbent will be responsible to the Senior State Attorney for performing the following duties: Advising Government, its Allied Institutions and the general public on legal matters and proceedings to which Government is a

¹⁰ Martin Mayer, *The Lawyers*, (Harper Collins, London: 1967) at.50.

¹¹ Centre for Legal Studies, ‘Legislative Drafting Course’. Available at http://ials.sas.ac.uk/postgrad/courses/cls_legislative_drafting_course.htm.

¹² Boston University School of Law; ‘Syllabus of Legislative Drafting Clinics’, Spring 2011.

party, Representing Government and its Allied Institutions in Courts of Law or any other legal proceedings to which government is a party, Assisting in Drafting Government Legislations, and any other duties as may be assigned from time to time.¹³

In the absence of identification or designation of specific posts for the units providing legal advisory services, civil litigation and legislative drafting (Office of Parliamentary Counsel), a number of applicants will be disappointed with the final result of the selection process. Some candidates who are randomly selected from the list of recommended candidates for positions as state attorneys and advised to report for duty to the legislative drafting office feel trapped and will look for all avenues of escape. Even in the recruitment by international organizations, the importance of the legislative drafting role is not obvious and does not stand out as an essential requirement, normally appearing at the bottom of the announcement in this form: "Experience in legislative drafting is highly desirable".

The point of recruitment is critical given the fact that many junior lawyers are subjected to peer-pressure when it comes to choice of career. The deliberate choice to become a legislative counsel is at many times frowned upon and often met with words of sympathy from colleagues who consider litigation and corporate work to be the more exciting options in legal practice.

Training and Capacity-building

In some jurisdictions in developing countries, legislative counsel may not receive many opportunities for training and capacity building in other areas of relevance to legal professionals, managers and administrators. Yet when the need arises, they are called upon to take on all forms of tasks, sometimes at the senior-most level of administration within their institutions of employment. J. Wilson illustrates the point clearly when he gives an example of legislative counsel being asked to step in and prosecute a case at short notice.¹⁴ Many are the times when the only instruction legislative counsel receives is "you go and represent us".

Participation in Policy Formulation

The participation of legislative counsel working in the mainstream in policy analysis and programme development is very limited in most jurisdictions because historically the perception was that legislative counsel were not expected to look beyond the form of the

¹³ Public Service Commission Uganda; Jobs in Uganda Published 23 September 2010. Available at <http://jobseastafrica.com/job/3666/state-attorney-at-justice-and-constitutional-affairs/>.

¹⁴ J. F. Wilson, "Contrasts-Challenges of drafting in Developing Countries", 2007-2, *The Loophole* 36 (http://www.opc.gov.au/calc/docs/calc_loophole_july_2007.pdf).

Bill.¹⁵ For complex historical reasons, drafters generally deny that they have any responsibility for the bill's substance. As their primary task, they claim they must focus on the bill's form. The question remains whether legislative counsel can realistically still claim to focus on form and not substance. In a number of jurisdictions outside the Commonwealth, a survey of the practice reveals that legislative counsel are expected to participate to some extent in planning the delivery of legislative services. The history of legislative counsel in Finland shows that drafters were tasked with planning and preparing reforms that were to be carried out through legislation and this incorporated the additional dimensions for research and planning necessary for drafting.¹⁶ The same applies to the United States of America.

On a number of occasions at CALC conferences, questions have been posed as to what the expectations should be for legislative counsel's participation in policy formulation and analysis and to what extent they should be involved in policy formulation, analysis and design. Professor Crabbe concludes that even though the classic theory is that parliamentary counsel do not initiate policy and are only expected to translate policy into law, they need to have a vivid understanding of policies so as to advise on them as their cardinal professional role is that of adviser.¹⁷

Involvement in Development Planning

In most instances, legislative counsel are not involved in planning activities for development. The planning teams for legislative strengthening programmes normally comprise rule of law experts and experts in development assistance. Legislative counsel in the institutions in which the programmes are being delivered do not easily find someone within the project team to identify with, someone who understands the challenges of serving as legislative counsel. The clerks and legislative researchers on the other hand may not face the same challenges.

Legislative counsel are relegated to the backseats when development interventions are being planned, yet the 'how' is as important as the 'what' and it is crucial for legislative counsel to be equal partners at the negotiating table and not after thoughts when legislative assistance programmes are being developed. Additionally, the tendency is to focus on the bill-drafting role of legislative counsel, yet there is more to the job of the legislative counsel than that. The observation that establishing a legislative bill-drafting office in Parliament

¹⁵ A and R. Seidman; 'Between Policy and Implementation: Legislative Drafting for Development' in *Drafting Legislation A Modern Approach*, edited by C. Stefanou and H. Xatanki (Ashgate, London, 2008) at 287-319 and 294.

¹⁶ M. Niemivuo, 'Legislative Drafting Process. Main Issues and Some examples', Seminar on The Quality of Law, European Commission for Democracy Through Law-Venice Commission, Strasbourg, 1 July 2010. Available at http://www.venice.coe.int/site/dynamics/N_Subject_ef.asp?T=28&L=E

¹⁷ V.A. Crabbe, above n. 3.

may be expensive and underused¹⁸ reflects how little is known about the role of legislative counsel within legislative bodies.

Involvement in Professional Activities

Legislative counsel are on the whole not very much involved in the activities of professional associations. This denies legislative counsel the opportunity to benefit from the advantages of participating in professional networks. Law societies and Bar associations represent legal professionals and promote their interests. They also promote professional and social intercourse, provide fora for voicing concerns on legal reform and provide support to their members throughout their careers.¹⁹

As a result of this disengagement with professional associations, it is difficult to attract new blood to legislative drafting offices and there is poor retention of legislative counsel and activities and programmes relevant to legislative counsel are limited.

Proposals on the Way Forward

The question is that, after analyzing what the situation is on the ground, what do we do? My thoughts on the way forward vary in accordance to the nature of the challenge or limitation identified. All recommendations are to be considered generally by all legal professionals with an interest in legislative drafting and the work of legislative counsel, bearing in mind the limitations and restrictions on the mandate of officials employed in the civil service.

Largely, it is important to identify ways of enhancing visibility, participation and recognition for legislative counsel.

Staffing and Training

Vacancy announcements, especially for state attorneys, should be specific to the unit recruiting and the activities the selected candidate will be involved in, as it will be very difficult to keep randomly selected staff. This has been done for recruitment of legislative counsel in other jurisdictions and can be emulated by those jurisdictions that have not done so.

Secondly, during training and mentoring, the identification of viable career options and paths for legislative counsel is important. Whereas legislative counsel are required to primarily focus on drafting and remain in permanent and pensionable positions of employment, they need to know that options are available for career planning and

¹⁸ National Democratic Institute for International Affairs, *Guidelines for Implementing Legislative Programs*, June 2000 at 6. Available at http://www.ndi.org/files/22_gov_legisprghbk00.pdf

¹⁹ National Bar Association, 'Objectives of the NBA', available at www.nationalbar.org. See International Bar Association, 'Public and Professional Interest Division', available at http://www.ibanet.org/Committees/Divisions/Public_Professional_Interest_Div/home.aspx

retaining highly motivated staff. In addition, it is important for legislative counsel in developing countries to always seek opportunities to teach, speak at public fora and participate in consultancies. After all, one of the noblest roles of a public sector lawyer is to provide legal education. It is from this exposure and interaction that the younger generation of legislative counsel can be inspired to pick up the ropes and join the profession. In an increasingly global arena of practice, promoting bilingualism or multilingualism boosts the competencies of legislative counsel to rise up to some of the challenges presented by the changing trends and compete favourably in the dynamic job market.

In the area of legal education, CALC can make proposals to the administrators of institutions that provide legal education on ways in which the syllabus can be further developed to address the limitations that have been identified.

Development Partners

It is crucial to advise or remind development partners behind most of the reform programmes taking place in developing countries of the importance of involving legislative counsel in the project planning processes – emphasizing what legislative counsel can bring to the table for the successful implementation of projects and the achievement of goals. The United States Agency for International Development (USAID) in their guidance on implementing legislative strengthening programmes lists “develop bill drafting services” on the checklist for legislative strengthening activities²⁰ and Appendix A of the Sample Legislative Needs and Priorities Assessment Questions under the heading “Lawmaking: Authority and Performance” includes the question: “Are bill drafting services available? By whom?”²¹ Greater intervention by legislative counsel at this point can lead to a more detailed and relevant needs and priorities assessment.

The relevance of legislative counsel building rapport with development partners in developing countries is evident in, for example, how the USAID-funded Uganda Parliament-Technical Assistance Project²² for the modernization of the Parliament resulted in the re-alignment of the administration of the Parliament in such a way that the staff now identify more with the American way of conducting legislative business, emphasizing the relevance of legislative counsel in committees, among others, more than would have been envisaged if the funding had originated from another source. It is very clear that earlier involvement of legislative counsel in programme design and project implementation can have a positive impact on needs-assessments.

²⁰ USAID, *USAID Handbook on Legislative Strengthening* at.55. Available at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnac632.pdf .

²¹ *Ibid.*

²² USAID/Uganda Monitoring and Evaluation Services, *Evaluation of the Uganda Parliament-Technical Assistance Project*, December 2003. Available at http://pdf.usaid.gov/pdf_docs/PDACF477.pdf.

In all jurisdictions, legislative counsel from developing countries have to be their own public relations agents, to advertise their relevance and do a reversal of the process by addressing stakeholders on how their acts or omissions affect the efficacy of legislation, among others. It does not help much for legislative counsel to be quiet performers in a political arena: they have to enjoy their place in the sun. The presence of assertive legislative counsel serves to inform and correct the misconception that legislative deserts exist in developing countries.²³ Legislative counsel have to participate in regulatory impact assessments to be sure that their work has contributed to the desired impact and to expose them to their counterparts in the regulatory process.

CALC and its Members

It is also important for legislative counsel, as members of CALC and also in individual capacity, to be heard at the highest levels of governance whenever the opportunity presents itself. Members of CALC can make great contribution to the legislative developments taking place at national, regional and international levels.

CALC should interest itself in the work of the Sixth Committee of the UN General Assembly, which is the primary forum for the consideration of legal questions in the General Assembly.²⁴ CALC can also distinguish itself as one of the non-State actors that the UN Secretary-General can target for purposes of enlisting support for and comprehension of key multilateral treaties as envisaged in the *Strategy for an Era of Application of International Law*.²⁵

Specific areas in which CALC members can individually and jointly make contributions include

- the process of codification of international law undertaken by the International Law Commission²⁶ and the Codification Division of the UN, which also prepares drafts of international conventions and agreements,
- the development of bilateral and multilateral treaties specifically undertaken by the Treaty Section of the UN, which also collaborates in the drafting of final clauses of treaties and agreements concluded under the auspices of the UN,²⁷

²³ J.M. Otto, W.S.R. Stoter and J. Arnscheidt, "Using Legislative Theory to improve law and development projects", Leiden, RegelMaat afl 2004/4.

²⁴ United Nations Secretariat; UN General Assembly Sixth Committee. Available at <http://www.un.org/en/ga/sixth/>.

²⁵ United Nations Secretariat; Available at http://untreaty.un.org/ola-internet/action_plan_final.pdf.

²⁶ Currently, the Commission is handling the following topics: reservations to treaties, responsibility of international organizations, shared natural resources, expulsion of aliens, effects of armed conflicts of treaties, obligation to extradite or prosecute, protection of persons in the event of disaster, immunity of State officials from foreign criminal jurisdiction, treaties over time and the Most-Favoured-Nation clause.

- the activities of the Inter-Parliamentary Union²⁸ in the execution of its mandate as well as the work of the International Development Law Organisation,²⁹ the International Institute for the Unification of Private International Law (UNIDROIT)³⁰ and the Global Legal Information Network of the Law Library of Congress,³¹ among others.

CALC members can benefit from building partnerships with the proponents of various programmes targeting parliamentary staff in developing countries.

Parliamentary Associations and Networks

The Association of European Parliamentarians with Africa (AWEPA) works in partnership with African parliaments to strengthen parliamentary democracy in Africa, keep Africa high on the political agenda in Europe, and facilitate African-European parliamentary dialogue.³² In addition to many other activities, AWEPA seeks to strengthen democratic institutions. AWEPA's capacity-building programmes offer training, workshops, seminars and study visits for parliamentarians and parliamentary staff, with the objective to create a space and environment that fosters knowledge-sharing of the democratic process.

The Inter-Parliamentary Union operates a Technical Cooperation Programme under which it assists national parliaments, particularly in developing countries, to improve the organization of their work and strengthen their infrastructure. It focuses on strengthening the parliamentary institution itself, as well as providing assistance to elected parliamentarians and parliamentary staff.

The UN Department of Economic and Social Affairs-managed Africa Interconnected-Parliaments Project and the African Parliamentary Knowledge Network (APKN) associated with it have presented yet other opportunities through which legislative counsel can independently influence and shape the development process in developing countries. The Africa i-Parliaments Action Plan, *Strengthening the Role of African Parliaments in*

²⁷ Both the Codification Division and the Treaty Section are part of the Office of Legal Affairs, UN Secretariat.

²⁸ IPU, *Promoting Democracy Worldwide*. Available at <http://www.ipu.org/dem-e/overview.htm>.

²⁹ <http://www.idlo.int/english/Pages/Home.aspx>.

³⁰ UNIDROIT; 'UNIDROIT: An Overview', available at <http://www.unidroit.org/dynasite.cfm?dsid=103284>.

³¹ www.glin.gov. A summary on participation in GLIN was published in the CALC Newsletter of March 2010 under the title 'Online Legal and Legislative Information Databases: The Global Legal Information Network'. Available at <http://www.opc.gov.au/calc/newsletters.htm>.

³² AWEPA, available at <http://www.awepa.org/about-us>.

Fostering Democracy and Good Governance through Knowledge and Information Management, is an Africa-wide initiative that aims to modernize African Parliaments' information management capabilities and provide them with skills, services and applications that will allow them to become open, participatory, knowledge-based learning organizations.³³ It builds on the experiences, lessons learned, tools and applications developed during the implementation of the initiative.

The Plan more specifically provides a set of common XML standards called "Akoma Ntoso" (Architecture for Knowledge-Oriented Management of African Normative Texts using Open Standards and Ontologies)³⁴ for the management of digital documents. The standards allow the exchange and reuse of parliamentary, legislative and judiciary documents more efficiently. They define a set of simple, technology-neutral electronic representations of parliamentary, legislative and judicial documents for e-services in a Pan-African context. It also provides an enabling framework for the effective exchange of "machine readable" parliamentary, legislative and judicial documents such as legislation, debate records, minutes, judgements, etc. The Plan also provides the Bungeni Parliamentary Information System, which is a solution for drafting, managing, consolidating and publishing legislative and other parliamentary documents.³⁵

Under the same umbrella the APKN portal (www.apkn.org) was officially launched in 2008 as a network that supports the work of African assemblies by establishing mechanisms and procedures for exchanging information and experience in areas of common interest. It also intends to strengthen cooperation for capacity-building, staff training and collaboration on technology development to serve parliamentary functions. Major areas of cooperation include legislative processes, information and research services, ICT tools and communication with the public. Through the APKN portal, African parliamentary assemblies have access to tools and services that facilitate the sharing of information and documentation and promote collaboration. These tools include Legislative Drafting Guidelines and the Africa Parliamentary Information Exchange (APEX), which is meant to facilitate the flow of information among national parliaments and to expand the information available to national parliaments with regard to cross-national initiatives.

UN Operations and Programmes

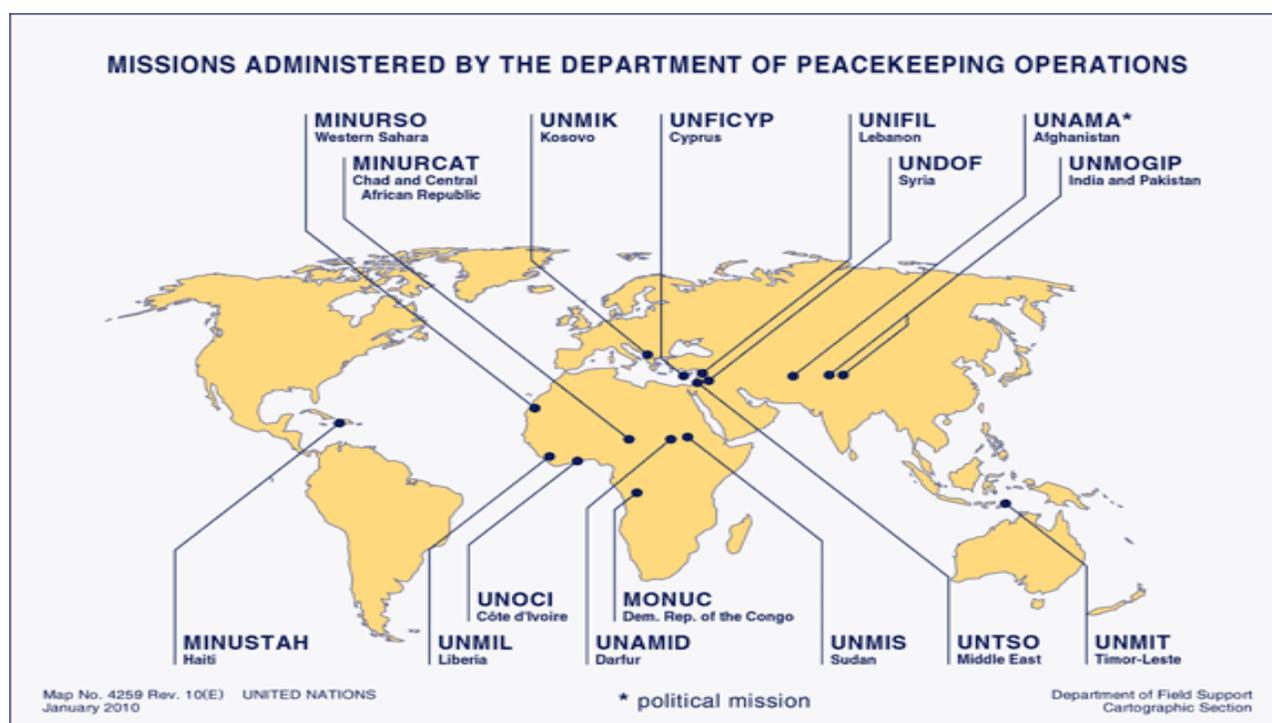
Crucial partnerships for legislative counsel in developing countries can be with the UN Department of Peacekeeping Operations missions (15 of the 16 missions are currently deployed in developing countries, as shown in the figure below) with a current annual

³³ APKN, available at <http://www.apkn.org/>.

³⁴ Meaning "linked hearts" in the language of the Akan people of West Africa, a symbol of understanding and agreement.

³⁵ Available at <http://www.parliaments.info/>.

budget of \$7.3 billion US.³⁶ A large number of them have rule of law mandates under which rule of law and judicial affairs officers execute and manage programmes critical to rebuilding rule of law institutions and legislative drafting capacity, among others. Since 1999, all major peacekeeping operations and many special political missions have had mandates to work with the host country to strengthen the rule of law, but the emphasis has been on police, the judiciary and prisons/corrections services and not on legislative services. The Department of Peacekeeping Operations (DPKO) aims to address these three institutions simultaneously, deploying police, judicial and corrections officers. As a first step the Department works to stabilize the security situation and then begins to work on short- and medium-term plans to rebuild the criminal justice system. The focus is on police, judicial and corrections institutions and this has to be changed to accommodate the needs of legislative counsel, something that can only be achieved through interaction.



In addition, the UN has at its highest level of management, in the Executive Office of the Secretary General and directly under the supervision of the Deputy Secretary General, a small substantive Rule of Law Assistance Unit. It offers guidance that emphasizes national ownership of rule of law programmes, which presents an opportunity for us as legislative counsel to step forward and participate directly.

³⁶ UN, Department of Management, Peacekeeping operations budget 2010-2011, available at <http://www.un.org/en/hq/dm/pdfs/oppba/Peacekeeping%20budget.pdf>.

The UN is currently engaged in an ongoing process to strengthen its approaches to rule of law engagement at the national and international levels. This is another point at which CALC can intervene. The UN common approach to the rule of law at the national level emphasizes strategic considerations and partnerships. This involves all relevant UN entities jointly

- conducting thorough assessments with the full and meaningful participation of national stakeholders to determine rule of law needs and challenges;
- supporting the development of a comprehensive rule of law strategy based on the results of the assessment;
- developing a UN rule of law programme guided by the strategy; and
- assigning accountabilities and implementation responsibilities.

Effective coordination and strong partnerships with other rule of law stakeholders are also key aspects of the approach.³⁷

In his report, “Strengthening and coordinating United Nations rule of law activities (A/63/226)”, the Secretary-General requested the Rule of Law Coordination and Resource Group and the Rule of Law Unit to “initiate a dialogue with Member States on strengthening promotion of the rule of law at the international level.”³⁸ CALC can engage with the Rule of Law assistance unit which, among other things, seeks to develop partnerships with non-UN rule of law actors, both governmental and non-governmental, to maximize resources. In the public practice sector there is greater room for legal professionals, including legislative counsel, to get involved in the implementation of rule of law and democratic governance programmes.

The United Nations Development Programme (UNDP) provides technical assistance to more than 60 parliaments around the world in their efforts to build the capacity of legislators and technical staff, among others. For ten years, the UNDP Global Programme for Parliamentary Strengthening has been setting global standards and benchmarks, exchanging regional best practices and building capacity in selected countries.³⁹

S. N. Carlson emphasizes the importance of strengthening engagement with host-country

³⁷ UN Secretariat, Rule of Law Coordination and Resource Group Joint Strategic Plan 2009-2011. Available at <http://www.unrol.org/files/RoLCRG%20Joint%20Strategic%20Plan.pdf>.

³⁸ UN Secretariat, available at http://www.unrol.org/search_results.aspx?cx=012143788501653073323:muml8h1ts2y&cof=FORID:10&ie=UTF-8&q=A%2F63%2F226#1100.

³⁹ UNDP Global Programme for Parliamentary Strengthening, available at http://www.undp.org/eu/Global_Programme_for_Parliamentary_Strengthening.shtml.

rule of law partners and that the concept of partners should include independent professionals and civil society groups, including women's groups.⁴⁰

Enhanced Role for Legislative Counsel

Legislative counsel cannot draft relevant legislation without constantly addressing the factors best pointed out in a proper analysis of a given society. Given the importance of rule of law and human rights based approaches to development in developing countries, legislative counsel need to be more attuned to the impacts and repercussions of drafting that does not address such issues. When legislative counsel are competent in policy analysis and more involved in the development of legislative assistance programmes they attract better interventions from governments and development partners as they may be involved in the diagnostic process of technical assistance and development needs.

It is critical to note that most vacancy announcements for legislative-strengthening consultants' positions will require the candidate to do more than advise on the drafting process. Candidates must have demonstrated expertise in any of the following areas within the legislative strengthening sector:

- constituency outreach;
- legislative-executive relations;
- legislative drafting;
- parliamentary caucus strengthening, parliamentary budgeting;
- legislative ethics;
- legislative research and library development;
- legislative staff training;
- legislative new member orientation;
- women's caucuses strengthening;
- legislative media relations; and parliamentary advocacy.⁴¹

For legislative counsel to rise to the challenges presented by such opportunities, training and exposure to other aspects of legislative administration and management remain critical. S. Lortie asserts that for external assistance to be truly effective, it is essential for a

⁴⁰ Scott N. Carlson, *Legal and Judicial Rule of Law Work in Multi-dimensional Peacekeeping Operations: Lessons-Learned Study*, UN Legal Consultant March 2006 at16. Available at <http://www.peacekeepingbestpractices.unlb.org/PBPS/Library/ROL%20Lessons%20Learned%20Report%20%20March%202006%20FINAL.pdf>.

⁴¹ Management Systems International; 'Vacancy announcement for an 'Adviser-Legislative Drafting Capacity Building, Afghanistan' posted by the UN Office on Drugs and Crime. Available at <http://unjobs.org/vacancies/1303645543294>.

recipient country to have a clear sense of the type of law-making system that it wants and of the particular role of the legislative drafting agency.⁴²

Legislative Counsel Associations

There is a need to increase membership of CALC. There is strength in numbers. Membership can be increased by spreading the word and interacting with colleagues from the law reform commissions and legal education facilities and also reaching out to non-Commonwealth citizens through associate membership. One way of encouraging this is through the regional integration frameworks in which legislative counsel engage with counterparts from non-Commonwealth countries. A case in point is the East African Community (EAC) in which four out of the five member States belong to the Commonwealth, making it important to attract legislative counsel from Burundi to sign up for membership as associates. The debate remains open as to the likelihood of an increase in the membership of the EAC to include potentially interested states like South Sudan after the final status-determination, Democratic Republic of the Congo and Central African Republic.⁴³

Local participation and consolidated interaction at local and international levels, numbers permitting, in a manner similar to bar associations or law societies is another way in which the profile of legislative counsel can grow, most especially within the circles of legal professionals. CALC can draw lessons from the National Council of State Legislatures which is a bipartisan organization that serves the legislators and staff of the 50 US states, its commonwealths and territories with capacity-building, training and support.⁴⁴

Conclusion

With all these strategies in place, the odds are high that there will be greater visibility for legislative counsel in developing countries, which is likely to yield more returns for all involved. By way of self-actualization, increase in recognition and visibility may result in higher retention of legislative counsel and the establishment of legislative drafting as a viable career. Hopefully, this will limit or bring to rest the debate on whether legislative counsel are relevant to the legislative process as a whole, which has been proven beyond doubt in a number of jurisdictions, such as the US, Finland and Canada, among others.

Further, greater visibility of legislative counsel has a way of completing the legislative process cycle. Regular input and involvement of legislative counsel in the translation of

⁴² 'Providing Technical Assistance on Law Drafting', *Statute Law Review* 31(1), 1-23, doi:1.193/slr/hmq4, available at <http://slr.oxfordjournals.org/content/31/1/1.short?rss=1&ssource=mfc>.

⁴³ Transcript of the interview of J. Mwapachu, Secretary General of the EAC 'South Sudan and Democratic Republic of Congo lining up to join EAC', available at http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&news_id=97493&cause_id=1694

⁴⁴ Available at <http://www.ncsl.org/LegislativeStaff/tabid/788/Default.aspx>.

policy into law affects the quality of policy analysis and regulation due to the feedback provided to counsel after an impact assessment has been done and reviews have been conducted to establish what was appropriate, what worked and the efficacy of legislation among others. Any increase in communication should yield better results and a re-definition of roles.

As discussed above, it is possible to build and maintain high visibility for legislative counsel in developing countries for the advantages that it brings. The onus remains on us as individuals and collectively as members of CALC to advocate for increased participation. Hopefully, further discussion of the role of legislative counsel in the rule of law and governance process will shape developments that will result in the desired reforms.
