



# Improving the Effectiveness of International Lawyers in Rule of Law & Transitional Justice Projects

February 2015

## Contents

<b>PREFACE.....</b>	<b>I</b>
<b>ACKNOWLEDGEMENTS &amp; DISCLAIMER.....</b>	<b>III</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>III</b>
<b>I. INTERCULTURAL EFFECTIVENESS FOR INTERNATIONAL LAWYERS.....</b>	<b>1</b>
<b>II. BARRIERS TO EFFECTIVENESS.....</b>	<b>3</b>
Environmental and Organisational Factors.....	3
Individual Barriers to Effectiveness .....	4
<b>III. BECOMING A MORE INTERCULTURALLY EFFECTIVE INTERNATIONAL LAWYER .....</b>	<b>6</b>
<b>Improving Knowledge.....</b>	<b>6</b>
Know your host and their culture .....	6
Know yourself and your own culture .....	7
<b>Improving Skills.....</b>	<b>8</b>
Develop effective intercultural communication.....	8
Cultivate your professional and personal relationships .....	9
Develop organisational skills specific to intercultural environments .....	9
<b>Improving Attitudes and Values .....</b>	<b>10</b>
Show humility and respect .....	10
Cultivate personal and professional commitment .....	11
Be(come) adaptable .....	12
<b>IV. SOME PRACTICAL SUGGESTIONS FOR ORGANISATIONS AND EMPLOYERS</b>	<b>13</b>
<b>CONCLUSION.....</b>	<b>15</b>
<b>REFERENCES .....</b>	<b>16</b>

## Preface

This report was commissioned as part of the *Lawyers, Conflict & Transition* project – a three-year initiative funded by the Economic & Social Research Council.

The wider project explores the role of lawyers during conflicts, dictatorships and political transitions. Despite the centrality of the rule of law to the contemporary theory and practice of transitional justice, there is little emphasis in the relevant literature on the role of lawyers outside the courts – or indeed as ‘real people’ at work in the system.

Drawing on six key case studies (Cambodia, Chile, Israel, Palestine, Tunisia and South Africa) we set out to establish a comparative and thematic framework for lawyering at historic stages in conflicted and transitional societies. Taking a holistic approach to the role and function of law and lawyers, the project is intended as a bridgehead between transitional justice and the sociology of the legal professions.

Project staff members are based at the School of Law, Queen’s University Belfast, and the Transitional Justice Institute, Ulster University.

This project has at its core a ‘real-world’ dimension and seeks to make a difference both to theory and practice. In addition to academic outputs, we were determined to produce a body of work that will assist the societies we have researched. We were also conscious from the outset that academic fieldworkers are sometimes guilty of ‘parachuting in’ and then moving on, with little demonstrable benefit for participants. As part of our ethics policy we thus developed this series of practice-orientated reports, specifically tailored for each jurisdiction under scrutiny, as well as briefing papers for international audiences.

The individuals interviewed for the wider project (more than 120) were each invited to suggest research topics and themes that are of direct relevance to them and the organisations and networks with whom they work. The core team sifted and analysed these suggestions and commissioned two key reports per jurisdiction. In some instances the work was completed in-house; in other cases we drew on the resources and talents of our international consultants.

The reports are designed to be of immediate value to practitioners and as such we have sought to avoid complex academic terminology and language. We have made the texts available both in English and relevant local languages.

The anticipated readership mirrors the diverse range of interviewees with whom we engaged:

- National and international legal professionals (including cause / struggle lawyers and state lawyers)
- National and international legal professionals
- Scholars interested in the role of lawyers as political and social actors (with a particular focus on transitional justice)
- Government officials
- International policymakers
- Civil society activists
- Journalists and other commentators

The entire series will be made available on our website ([www.lawyersconflictandtransition.org](http://www.lawyersconflictandtransition.org)) and will be circulated via our various networks and twitter account (@lawyers\_TJ).

We hope that you will enjoy reading this report and encourage you to disseminate it amongst your networks.

For further information about the wider project please feel free to contact us at:

[www.lawyersconflictandtransition.org/contact](http://www.lawyersconflictandtransition.org/contact)



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Kieran McEvoy PhD  
Director, *Lawyers, Conflict and Transition* Project

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## Acknowledgements & Disclaimer

This report was prepared by Alex Batesmith, in association with the *Lawyers, Conflict and Transition* project. Alex is a Manchester-based barrister and mediator with twenty years' practical legal experience in national and international human rights, humanitarian and criminal law, transitional justice, conflict resolution and rule of law issues. He spent five years as an international prosecutor for the United Nations in Kosovo and Cambodia and was employed as the Cambodian consultant for the *Lawyers, Conflict & Transition* project.

All views expressed, and any errors, remain the responsibility of the authors.

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## Executive Summary

Improving personal effectiveness has been a popular subject for many decades in the business world.<sup>1</sup> The personal effectiveness of lawyers in general domestic practice has also been discussed, particularly in the United States.<sup>2</sup> The concept has also been explored in the context of development work.<sup>3</sup> However, in transitional justice and rule of law, effectiveness has only relatively recently been a topic of interest, as researchers investigate reasons why international legal interventions succeed and why they fail.<sup>4</sup>

In 2011, United Nations Secretary-General Ban Ki-moon published the latest of his reports on the rule of law and transitional justice in conflict and post-conflict societies.<sup>5</sup> Describing how the practice had evolved since 2004, he stressed that interventions require political will and local ownership as well as technical expertise and programmatic support.<sup>6</sup> He also welcomed the newly created UN Rule of Law Indicators (ROLI), the metric by which the strengths and effectiveness of law enforcement, judicial and correctional institutions can now be empirically measured.<sup>7</sup> However, neither the Secretary-General's report nor the ROLI specifically acknowledged that the recruitment, training and retention of *effective* field-based professionals were critical factors to the success of any mission.

Similarly, most previous and ongoing studies on the effectiveness of rule of law and transitional justice interventions focus principally on the structural, environmental and intra-international relationship aspects.<sup>8</sup> This short paper aims to examine the issue of effectiveness of rule of law and transitional justice interventions from the somewhat narrower perspective of the actors themselves – the international lawyers, or 'the internationals' as they have been called<sup>9</sup> – especially as they work with their national counterparts to achieve their objectives.

<sup>1</sup> See for example Stephen R. Covey, *The Seven Habits of Highly Effective People* (Simon & Schuster, reprinted edition 2004).

<sup>2</sup> David T. Link, 'The Twelve Principles of the Highly Effective Lawyer' (*Highlights of the American Bar Association, Commission on Lawyer Assistance Programs*, Spring 2005) <[http://www.americanbar.org/content/dam/aba/publishing/highlights\\_newsletter/legalservices\\_colap\\_highlights\\_highsp05.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/highlights_newsletter/legalservices_colap_highlights_highsp05.authcheckdam.pdf)> accessed 19 December 2014; Clark D. Cunningham, 'Evaluating Effective Lawyer-Client Communication: An International Project Moving from Research to Reform' (1999) 67(5) *Fordham Law Review*, 1959.

<sup>3</sup> Michael L. Weyers, 'The Habits of Highly Effective Community Development Practitioners' (2011) 28(1) *Development Southern Africa*, 87.

<sup>4</sup> See for example Camino Kavanagh and Bruce Jones 'Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda' (New York University Center on International Cooperation 2011).

<sup>5</sup> United Nations Security Council *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General* (UN Doc S/2011/634 12 October 2011).

<sup>6</sup> *ibid* 3.

<sup>7</sup> United Nations, 'United Nations Rule of Law Indicators' (United Nations, First Edition 2011) (ROLI).

<sup>8</sup> See in particular the work of Elena Baylis, who has research has focused on how international lawyers interact with each other, both in transitional justice and rule of law settings: Elena Baylis, 'Function and Dysfunction in Post-Conflict Judicial Networks and Communities' (2014) 47 *Vanderbilt Journal of Transnational Law*, 625 and 'Tribunal Hopping with the Post-Conflict Justice Junkies' (2008) 10 *Oregon Review of International Law*, 361.

<sup>9</sup> Baylis 'Tribunal Hopping with the Post-Conflict Justice Junkies' (n 8), 363.

Successful transitional justice or rule of law interventions depend on positive interactions and strong relationships - yet few organisations provide guidance on how such interpersonal relations in international settings can be optimised. It is at the individual level where lawyers can make an immediate difference to the project, and we argue that the concept of intercultural effectiveness is particularly helpful for transitional justice and rule of law projects. We discuss how intercultural effectiveness might be measured, drawing heavily on Canada's Centre for Intercultural Learning and their seminal paper *A Profile of the Interculturally Effective Person*.<sup>10</sup>

We will briefly examine environmental and organisational issues before looking at the barriers to intercultural effectiveness at the individual level for international lawyers. The main part of this paper then focuses on the specific knowledge, skills and values through which an international lawyer may be able to optimise their own intercultural effectiveness. In particular, we highlight the desirability of a full factual briefing before starting work in a different country, the need for effective intercultural communication and organisational skills and the importance of adopting a flexible attitude and an understanding of one's personal and professional limitations.

We will discuss how institutions hiring international lawyers can take also concrete practical steps to improve the success of interventions, by helping their staff and consultants to become more interculturally effective. This includes creating measurable personnel selection criteria for interview, developing more practical pre-departure orientation programmes for the international lawyer once selected, sending staff on intercultural awareness courses, developing benchmarks for ongoing personal evaluation and setting realistic objectives, both in the short- and long-term.<sup>11</sup>

As the Centre for Intercultural Learning has observed, it would be 'inevitably idealistic' for any one person to possess *all* the attributes of intercultural effectiveness.<sup>12</sup> However, the aim of this paper is to encourage ourselves as international lawyers to consider how we can continually seek to optimise our personal effectiveness. By enhancing our individual intercultural effectiveness, we are likely to help improve the success rate of rule of law and transitional justice interventions in which we work.

It is acknowledged that this paper is written principally from a western-oriented, global north perspective. However, as the majority of transitional justice and rule of law interventions emanate and originate from the western and northern hemispheres, the themes discussed should be relevant for most international lawyers working on such projects.

The methodology for this paper is qualitative and impressionistic rather than quantitative and statistical. More than fifty lawyers with experience working in international interventions were surveyed for their personal reflections on effectiveness in their workplace.<sup>13</sup> The author of the paper has also drawn on his own

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<sup>10</sup> Thomas Vulpe and others, *A Profile of the Interculturally Effective Person* (Hull, Quebec: Centre for Intercultural Learning, 2001).

<sup>11</sup> *ibid* 7.

<sup>12</sup> *Ibid*.

<sup>13</sup> Their responses are not personally attributed within this paper although the author of this paper retains the notes of interviews. The respondents were asked for their reflections based on personal experience of situations where international lawyers work together with national counterparts, focusing on effective or ineffective practices, strategies and attitudes, particularly at the individual lawyer level but also at the project level. The respondents were then asked

experiences and discussions with both international and national colleagues, having spent more than ten years working in the field of international criminal law, transitional justice and rule of law development.

February 2015

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the following specific questions: (1) What has enabled national and international lawyers to work well together on projects in which you have been involved? (2) What has prevented them working effectively together? (3) Are there particularly obstructive practices, strategies or attitudes international lawyers adopt that create a barrier to working effectively with national colleagues? (4) What factors make matters better or worse (political, structural, institutional) and how? and (5) What specific changes to practice, strategies and attitudes (at both the individual lawyer and the project level) would you suggest that would make both immediate and long-term improvements to technical assistance and justice sector capacity building in future? Some respondents replied to all questions, others replied only to one or two, others still gave their answer in free text form.



## I. Intercultural Effectiveness for International Lawyers

The extent to which international lawyers liaise with their national counterparts and the functions required of them varies with each project. Most vacancies in rule of law and transitional justice nonetheless require an additional set of intercultural attributes with which lawyers are not habitually blessed, and in which they are (certainly not initially) specifically trained. Few if any international organisations hiring lawyers for their overseas projects give their new staff any meaningful pre-deployment briefing, let alone provide specific training for their staff on how to be more effective in a multicultural environment. Inevitably some international lawyers may be insufficiently prepared for the challenges of their work.

We suggest that the concept of intercultural effectiveness could be adapted for use by international lawyers and the organisations that hire them to improve relationships and interactions at the individual level. Intercultural effectiveness, also known as cultural competence or cross-cultural intelligence, has been extensively used and discussed across a broad range of disciplines and professions. Many universities and private organisations offer training courses on the topic, and it has been a subject of academic study for many years.<sup>14</sup>

As well as the ability to communicate in a way that earns the respect and trust of people from another culture, interculturally effective people will demonstrate the capacity to adapt both professionally and personally to the conditions in the host culture. The expected benefit to the project is the creation of a cooperative workplace that facilitates personal and professional fulfilment, and ultimately greater overall effectiveness and the achievement of the originally desired objectives.

Various models have been created to measure intercultural effectiveness,<sup>15</sup> and there are many organisations and institutions across the world promoting their courses on the subject. One particularly useful method comes from Canada's Department of Foreign Affairs, Trade and Development, and their Centre for Intercultural Learning (CIL). In 2001, CIL produced their seminal paper *A Profile of the Interculturally Effective Person*.<sup>16</sup>

The Profile lists nine 'major competencies' of intercultural effectiveness focusing on both the personal and inter-personal qualities of a culturally effective person. These are further broken down into additional core competencies and observable behavioural indicators.<sup>17</sup>

Most lawyers who have experience of rule of law and transitional justice projects will recognise many of these from their original job descriptions, but the theory

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<sup>14</sup> See for example: *International Journal of Intercultural Studies*, *Journal of Intercultural Communication* and *Journal of Intercultural Studies*.

<sup>15</sup> For example, the development model of intercultural sensitivity (Mitchell Hammer, Milton Bennett, and Richard Wiseman 'Measuring Intercultural Sensitivity: the Intercultural Development Inventory' (2003) 27(4) *International Journal of Intercultural Relations*, 421) and the intercultural effectiveness scale (The Kozai Group, <http://kozaigroup.com/inventories/the-intercultural-effectiveness-scale/> accessed 19 December 2014).

<sup>16</sup> Vulpe and others (n 10).

<sup>17</sup> *ibid*.

underpinning the competencies bears greater scrutiny. Domestic legal practice has only relatively recently recognised the need for and embraced the concept of intercultural effectiveness – and chiefly in the United States.<sup>18</sup> The arguments for increasing a domestic lawyer’s personal intercultural effectiveness generally focus on the realities of an increasingly multicultural society: the need to understand one’s client, to relate to a jury, and to interact appropriately with a witness.<sup>19</sup>

The dangers of ethnocentrism become even more pronounced – and the potential consequences even more damaging – for lawyers working in an international development or transitional justice setting. Somewhat surprisingly, there has been nothing written previously on the subject of intercultural effectiveness relative to the international legal fields of rule of law and transitional justice. This paper aims to start the discussion.

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<sup>18</sup> Annette Demers, ‘Cultural Competence and the Legal Profession: An annotated Bibliography of Materials Published between 2000 and 2011’ in (2011) 39 *International Journal of Legal Information* 22; Travis Adams ‘Cultural Competency: A Necessary Skill for the 21st Century Attorney’ (2012-2013) 4 *The William Mitchell Law Raza Journal* 2.

<sup>19</sup> Adams (n 18). Although these issues were being flagged 25 years earlier in U.S. domestic legal practice: Joan B. Kessler, ‘The Lawyer’s Intercultural Communication Problems with Clients from Diverse Cultures,’ (1988) 9(1) *Northwestern Journal of International Law and Business*, 64.

## II. Barriers to Effectiveness

### Environmental and Organisational Factors

Rule of law and transitional justice interventions occur in conflict, post-conflict and other hazardous or difficult locations. Severe and sometimes unexpected environmental challenges – whether practical, political, economic or social – can seriously compromise the goals and effectiveness of any mission. The vast majority of these external problems are outside the control of individual lawyers or the employers for whom they work. However, the way in which organisations are structured and how their staff are managed to help them cope with the challenges of a different cultural environment are certainly areas that can influence the success of the project, for better or for worse.

As was repeatedly highlighted by the lawyers interviewed for this paper, one of the principal barriers to effectiveness is that interventions frequently set either unrealistic objectives (e.g. 'enabling the Ministry of Justice to effectively and efficiently perform its functions and responsibilities') or vague objectives (e.g. 'strengthening rule of law mechanisms', 'enhancing the rule of law').<sup>20</sup> This can result from the duration of the intervention being too short, or the scope being too broad or the implementation too superficial,<sup>21</sup> and inadequate funding and resourcing is not the only cause.

Secondly, some lawyers in their responses for this paper criticised organisations for their insistence on form over substance in the implementation of the project.<sup>22</sup> Organisational rigidity is also part of the problem when it comes to the criticism of a 'one size fits all' approach to international intervention, and a lack of nuanced understanding of the contextual issues for the particular project.<sup>23</sup>

Another commonly cited organisational criticism is the failure to learn from previous interventions or to share information and knowledge.<sup>24</sup> Although local context is key for each new intervention, there are real advantages in building on the work of similar projects or harnessing the knowledge and skills of those who have experienced similar challenges. The time, money and effort it takes to establish and maintain complex interventions should not be wasted on re-doing what others have previously done.<sup>25</sup>

Human resource management has been flagged as another potentially troublesome area for international intervention. Hiring and retaining good quality staff is key to the success of a project. Appropriately qualified professionals must be selected, given specific initial and ongoing training and properly managed throughout. However, some organisations, especially in the transitional justice sphere, offer contracts of very limited duration. Many organisations fail to provide any initial briefing for their staff,

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<sup>20</sup> Interview on file with the author.

<sup>21</sup> Interview on file with the author.

<sup>22</sup> Interview on file with the author.

<sup>23</sup> Johannes Wheeldon, 'Learning from Latvia: Adoption, Adaptation, and Evidence-Based Justice Reform' (2010) 41(4) *Journal of Baltic Studies*, 507.

<sup>24</sup> Baylis 'Function and Dysfunction in Post-Conflict Judicial Networks and Communities' (n 8) 666 suggests that competitiveness between different rule of law project teams is the principal cause of the failure to share information.

<sup>25</sup> Elena Baylis has referred to the pressure to secure funding for the organisation's next project, which results in a competitive culture where information is not shared and projects are duplicated across several institutions – although she notes this applies more to the rule of law field than to the world of international criminal law: *ibid*, 665-8.

or to offer them in-country ongoing training in areas that will enhance their effectiveness. Finally, if key management personnel are themselves interculturally ineffective – whether they are based in the host country or at headquarters – then the project is also likely to suffer.

### **Individual Barriers to Effectiveness**

What makes an effective lawyer in the domestic setting does not necessarily make them effective internationally. Attributes such as single-mindedness and tenacity, being a tough negotiator and having a confident, theatrical formal advocacy style may be well respected in Manchester or Paris, but transplant them to a rule of law or transitional justice project in Mombasa or Phnom Penh and the reaction may not be so favourable. Western lawyers, even those from a continental civil law background, are trained to be adversarial and direct. However, lawyers working on rule of law and transitional justice projects are likely to need rather more collaborative skills, as seen in the field of international development.

One of the most commonly heard criticisms of some international lawyers is their poor knowledge of the local context. As Baylis has observed, a lack of deep understanding of the local situation can result in 'critical errors in judgment based on cultural, legal, historical or other misunderstandings'.<sup>26</sup> Poor understanding of the local culture may result in unintended insensitivity. A lack of knowledge of basic greetings in the local language, or basic comprehension of the political situation, may potentially alienate the national counterpart lawyers or the wider community in which the internationals operate. An incurious attitude towards the new environment may also result, as one of the surveyed lawyers suggested, in counterpart national lawyers being reduced to 'tour guides to international rule of law tourists' – meaning that the under-used national lawyers may feel disempowered, demoralised and as a result disinclined to promote change – to the obvious detriment of the project.<sup>27</sup>

Neglecting to take the time to understand customary or traditional law has been highlighted as another major problem for rule of law projects.<sup>28</sup> International lawyers naturally fall back on the systems of law with which they are familiar, and few will have spent their formative career in countries where traditional law co-exists with the formal justice system. As a result, rule of law projects may exclusively focus on (the sometimes dysfunctional) formal judicial mechanisms of a post-conflict environment without balanced attention to the places ordinary people go to settle their social, domestic or economic affairs such as informal dispute resolution mechanisms at the village level.

As we will develop in the next section, specific communication skills are critical to successful working in a different culture. It is unlikely that many international lawyers will be fluent in the local language, although developing the specific skill of communicating through interpreters will always be valuable. Poor communication of the project's aims and objectives, as well as a failure to share the methodology and rationale of evaluating effectiveness, can also lead to misunderstandings being embedded between international and national counterpart lawyers that can seriously

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<sup>26</sup> Baylis 'Tribunal Hopping with the Post-Conflict Justice Junkies' (n 8), 365.

<sup>27</sup> Interview on file with the author.

<sup>28</sup> Interview on file with the author.

impact the project's chances of success. More generally, an overly inflexible attitude towards the goals and the implementation of the project can be similarly damaging.

Lawyers in the west and global north, especially those working in the justice sector, are admired for their independence and self-reliance. For the most part, trial advocates work individually, devising and implementing the strategy for each individual case independently. Although rule of law and transitional justice vacancies may call for candidates to be team players, even the most senior domestic lawyers may have had little experience working in teams, and even less in multi-cultural teams with professionals whose legal training may be very different from their own. As one international lawyer put it, 'pursuing a personal agenda or acting in disregard of any real concerns expressed by the counterpart or colleague can be devastating.'

Many of those responding to the research for this paper highlighted the problems caused by some internationals arriving at the project with unhelpful attitudes. As one respondent expressed it, those western lawyers with highly deadline-driven, 'type A' personalities 'need to relax and not place so much emphasis on getting everything done in the shortest space of time.'<sup>29</sup> Another rule of law consultant described how he had often observed foreign lawyers conducting meetings with national lawyers as they would do in a law firm boardroom back home, where dominant behaviour and the robust challenging of ideas is often accepted and admired.'<sup>30</sup> As Nicholson and Low have argued, a failure to listen to local stakeholders means law-focused aid 'remains ethnocentric, self-referential, neo-colonial and possibly destructive'.<sup>31</sup>

Working overseas can be very stressful. Most international lawyers have had the experience of or witnessed 'burn-out,' and high staff turnover and the corresponding drain in institutional knowledge become barriers to the effective operation of a project. However, experience from other disciplines has shown that lawyers too can become better able to withstand the pressures of the job, and to retain personal and professional motivation, by improving their own intercultural effectiveness, as we shall discuss in the next section.

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<sup>29</sup> Interview on file with the author.

<sup>30</sup> Interview on file with the author.

<sup>31</sup> Pip Nicholson and Sally Low, 'Local Accounts of Rule of Law Aid: Implications for Donors' (2013) University of Melbourne Law School Research Series 8 <<http://www.austlii.edu.au/au/journals/UMelbLRS/2013/8.html>> accessed 19 December 2014.

### III. Becoming a more Interculturally Effective International Lawyer

Some work undertaken in rule of law and transitional justice projects may be more recognisable to a lawyer's domestic practice than others. Acting as an advocate in an international criminal tribunal will call upon familiar courtroom skills, notwithstanding perhaps unfamiliar procedure. In contrast, lawyers may not be so accustomed to undertaking post-conflict capacity building work such as drafting or delivering training curricula, assisting in the development of new criminal justice policies or conducting public outreach on fundamental principles such as the rule of law.

We do not say that a wholesale re-programming of a lawyer's fundamental attributes is needed before working effectively overseas. However, we suggest that all of us working on an international project may benefit from reflecting on the specific additional knowledge, skills and values that could improve our overall effectiveness in the field.

#### Improving Knowledge

##### Know your host and their culture

That international lawyers should be more aware of the political, social and economic context of the country, the organisation in which they work as well as the local legal issues with which they will be dealing is uncontroversial in itself. However, others have written about how a lack of local knowledge is an inevitable consequence of the structure of international interventions.<sup>32</sup> We suggest that the incentive to understand a new environment should come from a lawyer's sense of vocation. As we suggest throughout this paper, lawyers can always make a difference at the individual level.

In terms of intercultural effectiveness, learning about a country and the relevant context should be seen as a process, which starts before deployment and continues throughout the assignment.<sup>33</sup> Interculturally effective people are curious about their hosts and strive to develop a deeper knowledge of their new environment – through investing time and effort in attempting to understand different social groups, local structures, history and traditions from a variety of sources.

International lawyers should also seek to understand how the law and the institutions of justice are viewed in the host country. In many developing countries judges, lawyers and the courts are not afforded the same respect or position as they are in the west.<sup>34</sup> International lawyers need to understand how law and its institutions function and how they are viewed by civil society, by the government and by the local media. As one senior international consultant expressed it, a failure to comprehend what people understand by 'law' in the host country is often at the root of the indifferent success of many international projects.<sup>35</sup>

Additionally, in order to work effectively with their national counterparts, internationals should cultivate an understanding of the educational and professional reality for

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<sup>32</sup> Baylis 'Tribunal Hopping with the Post-Conflict Justice Junkies' (n 8), 383.

<sup>33</sup> Vulpe and others (n 10), 35.

<sup>34</sup> Pádraig McAuliffe, 'Rebuilding Judicial Capacity with Enchanted Tools,' (2009) *Panóptica*, *Revista Eletrônica de Direito*, 1, n.15 at p6.

<sup>35</sup> Interview on file with the author.

lawyers. This includes an understanding of the state of legal education in the host country. In some post-conflict and developing countries, university law curricula can be out of date or poorly funded. In others, continuing professional development for lawyers, prosecutors and judges can be patchy or even non-existent. One of the most challenging aspects of working in a developing legal system is the persistent and perennial problem of systemic corruption in the institutions of justice. Internationals may well find themselves working alongside national counterparts who are exposed to or engage in conduct that is unprofessional or lacking in integrity. The international lawyer will usually, but not always, receive some guidance from his or her employer on how to react to this. In any event, he or she should also always seek to understand how the relevant legal and political institutions function in practice. Other papers within the *Lawyers, Conflict and Transition* project will deal with the issues of corruption within the legal system and how lawyers work with or against it.

### Know yourself and your own culture

Public-facing confidence is a critical skill for domestic lawyers whose job is to convince an often-sceptical audience of the merits of a case. For most domestic lawyers, being self-assured is a far more prized skill than being self-aware.

The situation is different for lawyers who work on rule of law and transitional justice projects. The Centre for Intercultural Learning's *Profile of the Interculturally Effective Person* explains the importance of knowing one's own preferences, characteristics, strengths and weaknesses and culture.<sup>36</sup> Such self-knowledge enables us to understand how we think, feel and react to different cultural stimuli. This in turn helps us to understand why people from the host country might react to situations in a different way from ourselves, and prevents us from engaging in unhelpful stereotyping.

The CIL suggests that knowledge of one's own strengths and weaknesses is good for the emotional wellbeing – and therefore effectiveness – of those working overseas. Knowing one's own personality type, communication or leadership style enables the international to improve the chances of operating in or assembling a compatible team of people from the host culture. Self-knowledge is also useful for the international to recognise and to manage one's own reaction to ambiguity – in other words, what it is that the people in the host country may not understand about them.<sup>37</sup> Additionally, knowledge of our own culture enables us to understand how our cultural conditioning and values shape what we do – and how this in turn may be problematic in another country.<sup>38</sup>

The process of acquiring self-knowledge would also be extremely useful for international lawyers seeking to manage the challenges of working in a culture sometimes very different from their own. Similarly, knowing the host country and culture will inform the way in which the international can reflect on how his or her personal preferences, characteristics, strengths and weaknesses. One example came from an international lawyer who quickly realised that his direct, adversarial approach from over 25 years of work in a western legal system would not be appropriate for a rule of law training programme in South-East Asia, and adapted his own style

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<sup>36</sup> Vulpe and others (n 10), 33-34 and 43-46.

<sup>37</sup> *ibid*, 43-46.

<sup>38</sup> *ibid*, 33-34.

accordingly, although in other parts of the world he felt that his native style would have been acceptable.<sup>39</sup>

Another rule of law practitioner emphasised the importance of self-awareness for the lawyer from a more holistic perspective. In her view, a lawyer who is able to reflect on their own position within the legal profession, and in society generally, is more likely to empathise with the people they are trying to help.<sup>40</sup> In an international setting where intercultural relationships are crucial to the success of the project, the self-aware lawyer actually increases the chances of the project being more sustainable by being able to understand and anticipate issues of cultural misunderstanding.

## Improving Skills

### Develop effective intercultural communication

The *Profile of the Interculturally Effective Person* divides intercultural communication into five individual 'core competencies': expressing oneself in a way that is understandable yet culturally sensitive; participating in local culture and language without being afraid of making mistakes; establishing shared meanings with locals through effective listening, observation and verification of mutual understanding; developing capacity in the local language to demonstrate one's interest in the local people and culture; and cultivating empathy with the people of the host country.<sup>41</sup>

Undoubtedly, all these skills would enhance the profile of the international lawyer working on a rule of law and transitional justice project. When lawyers undertake legal development work in another country, how they interact and communicate with their counterparts and with others in the host country will have a considerable impact on the success of the project. Effective listening is a critical skill for international lawyers, but one that may not be particularly developed from their domestic practice. As one respondent put it:

It's a matter of listening, and understanding one's role as an international lawyer. One of the problems is that lawyers are all egoists. Your role as an international lawyer is to support the locals, listen to them and explain ideas in a way that is not saying 'I think, I suggest we do that'...<sup>42</sup>

Seeking collaborative working relationships and promoting mutual understanding of the methodology and main project goals will certainly improve both the working environment and the relationships within it. Most international lawyers will say that efforts to understand and use the local language and to participate in local cultural events is recognised and appreciated by their national counterparts. It may take some time, but learning another culture will enable the international lawyer to better understand the subtleties of communication in the host country. This can only be beneficial for forming strong intercultural relationships that are so important in post-conflict and transitional environments.

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<sup>39</sup> Interview on file with the author.

<sup>40</sup> Interview on file with the author.

<sup>41</sup> Vulpe and others (n 10), 47-50.

<sup>42</sup> Interview on file with the author.



## Cultivate your professional and personal relationships

Good relationship building skills are central to any collaborative project. Lawyers working on rule of law and transitional justice projects will almost invariably be working in groups, often with extremely varied roles, interests and positions within the hierarchy. The manner in which an international lawyer relates to local colleagues, both at and outside work, will determine the level of confidence and trust reposed in them.

One international lawyer spoken to for this paper talks of the importance of 'frontloading' the relationship between national and international colleagues. In other words, spending time at the outset to establish good working practices and to develop channels for open communication in the event of disagreements.<sup>43</sup> Knowing how the host culture processes information, and recognising the different working habits, will ensure all team members have a common understanding of the project objectives and how these will be achieved. Another international lawyer spoke of the need to create an environment in which national lawyers feel free to speak and share their ideas and advice on an equal footing with foreign lawyers:

We must ensure that we don't patronise national lawyers, rather that we show how much we value them. This comes back to appreciating where they've come from.<sup>44</sup>

Establishing a personal rapport outside the workplace can be equally important for the international lawyer. Retreating to the cultural safety of a gated community with familiar home comforts will reinforce the neo-colonial stereotype and be counterproductive for internationals looking to improve their relationships with local colleagues. Adapting the CIL 'behavioural indicators' of relationship building, whether this is attending cultural or community events, demonstrating a capacity to initiate conversations with locals or being aware of the different social protocols in the host country, international lawyers too can take steps to ensure their personal interactions are culturally appropriate.<sup>45</sup>

## Develop organisational skills specific to intercultural environments

Another reason why overseas projects can be so disorientating for international lawyers is that the organisational culture, structure and processes may be very different from what they are used to at home. *The Profile of the Interculturally Effective Person* lists numerous aspects of effective organisational skills. Of most relevance to international lawyers working in rule of law and transitional justice are the abilities of: effective networking in order to identify and understand the key stakeholders; synthesising a variety of organisational cultures and practices within a team in a manner that encourages open discussion; maintaining a focus on the project goals whilst managing any organisational resistance; assessing competing forces within an institution; and operating on a different level of resources and support than they may be accustomed to in their home country.<sup>46</sup>

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<sup>43</sup> Interview on file with the author.

<sup>44</sup> Interview on file with the author.

<sup>45</sup> Vulpe and others (n 10) 1, 39-40. Also see Nicholson and Low (n 31), 6: 'Other attributes that were much appreciated by the locals: working in the local language; socialising at restaurants, drinks and karaoke were good for project morale.'

<sup>46</sup> Vulpe and others (n 10), 51-57.

The international lawyer needs to learn how to build or promote consensus in a multicultural team, regardless of whether they are in a position of managerial responsibility. Creating a working environment in which every member of the team feels valued and can undertake useful and productive work is extremely important.<sup>47</sup> Whilst international lawyers may sometimes (but not always) have a better grasp of internationally applicable human rights treaties and standards, local lawyers will have a distinct advantage when it comes to the domestic laws and institutions and how they are applied, and the language, culture and history of their home country. In order to work successfully, an interculturally effective lawyer will need to develop a sophisticated organisational culture in which the varied strengths of individual team members are both harnessed and shared. This can be extremely challenging, especially when attempting to balance the short-term project goals with longer-term capacity building objectives.

Finally, as one senior international lawyer observed, organisational cooperation can only be achieved when both national and international lawyers in the team are motivated to serve the same purpose and goal.<sup>48</sup> Often this will require careful management of the expectations of not only all team members, but also external stakeholders including government, the donors and civil society.

## Improving Attitudes and Values

### Show humility and respect

Humility is not a quality that is often associated with lawyers, yet in a rule of law or transitional justice setting it is vital. Equally, showing respect for the local culture can help relationships to develop and build the trust essential for a harmonious multicultural working environment. Almost every lawyer spoken to for this paper recognised the need for a markedly different attitude to that which is often adopted at home. As others also acknowledged, reflecting on one's own motivation and values is an ongoing process.<sup>49</sup>

*The Profile of the Interculturally Effective Person* identifies a series of behavioural indicators for demonstrating an attitude of modesty in relation to one's own culture and attributes as well as humility about one's knowledge of the local context. Particularly relevant for international lawyers is the ability to acknowledge the importance and contributions of the local context, which may include customary and traditional justice mechanisms and dispute resolution.<sup>50</sup> As one lawyer interviewed for this paper remarked:

We shouldn't go in and presume that everything that's done in the west should be done in the host country. People communicate and think in a very different way, and you need to take account of local context as well as a recognition of local ownership of the project.<sup>51</sup>

As international lawyers, we should also take care that the interesting work we do does not lead us to feel or to give the impression of superiority or privilege – even if,

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<sup>47</sup> Interview on file with the author.

<sup>48</sup> Interview on file with the author.

<sup>49</sup> Interview on file with the author.

<sup>50</sup> Vulpe and others (n 10), 29-31.

<sup>51</sup> Interview on file with the author.

as the *Profile of the Interculturally Effective Person* says, power and respect might in fact accompany the position in the host country.<sup>52</sup>

The *Profile of the Interculturally Effective Person* makes the interesting point, however, that displaying an attitude of modesty and respect should not prevent international lawyers from having the self-confidence to take initiatives and promote change 'where called for by the assignment'.<sup>53</sup> As the Profile points out, there may be occasions where internationals may be required to engage with their national counterparts to collaboratively re-examine their professional behaviour, with a view to improving skills and attitudes, in order that the sustainable project objectives can be achieved. Clearly it will be important to gain the trust and respect of colleagues from the host country first before the international begins to suggest changes to the policies and procedures of the host institution.<sup>54</sup>

International lawyers working within another country's justice institutions often find themselves in a very difficult position. One person interviewed for this paper described how working on an international human rights capacity building project, embedded in the state prosecution service of a highly corrupt country that did not respect the rule of law, he/she was constantly required to deliver reports that the host government found unpalatable.<sup>55</sup> Ultimately, without proper institutional commitment it will be impossible for the international lawyer to have any impact on the people with whom he or she works despite recommendations based on international standards delivered in a culturally-sensitive manner.

### Cultivate personal and professional commitment

It might be taken for granted that lawyers who choose to leave the comfort, security and predictability of their domestic careers and environment will do so because they are committed to a new challenge overseas. It might also be said that most people working in rule of law and transitional justice are not particularly motivated by monetary gain. For most international lawyers, an expectation of vocational professional and personal fulfilment is usually the driving factor in their decision to work overseas.

However, the stresses of working overseas may challenge a lawyer's level of commitment, and expectations of fulfilment can be unexpectedly dashed from time to time. How an international lawyer manages these challenges is critical to ensuring that he or she maintains the commitment to continue. Cultivating a closer connection to colleagues from the host country, and reflecting upon what all members of the team are learning and contributing at the individual level, can be an effective way to maintain the necessary commitment at both personal and professional levels.

Demonstrating that one wants to contribute to the host community and the effectiveness of the organisation in which one is based is a very helpful attitude to cultivate.<sup>56</sup> This can be achieved, for example, by taking the time to help colleagues and by discussing professional concerns, or by facilitating or participating in joint training sessions and seminars. Developing a mutually encouraging working

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<sup>52</sup> Vulpe and others (n 10), 30.

<sup>53</sup> *ibid*, 31.

<sup>54</sup> *ibid*.

<sup>55</sup> Interview on file with the author.

<sup>56</sup> Vulpe and others (n 10), 59.

environment within which both international lawyers and their national counterparts can fulfil their potential will also be of great benefit to the project.

### Be(come) adaptable

Adaptability is the most important attitude an international lawyer can cultivate when working overseas, especially when unfamiliar challenges and myriad unforeseen circumstances may threaten the direction or objectives of the project. *The Profile of the Interculturally Effective Person* identifies several key aspects to this quality, including the ability to: effectively organise the necessary logistics for living in the host country, including housing, taxes, health, childcare and education, and security; maintain a positive attitude to life in the host country by avoiding unconstructive complaints and criticism, maintaining a sense of humour, remaining calm and patient in the face of obstacles or stressful situations; develop a personal support network of family, friends and colleagues; and display a spirit of adventure and express satisfaction with life and work in the host culture.<sup>57</sup> We suggest that all these are useful attributes for international lawyers working in rule of law and transitional justice environments.

As the *Profile of the Interculturally Effective Person* has also noted, internationals can face numerous logistical, political or environmental difficulties outside their control that may mean that personal and professional needs are unmet. To counter any adverse impact on motivation caused by unforeseen events, internationals may need to reassess and revise their personal and professional expectations.<sup>58</sup> Being realistic in terms of what can be achieved, both individually and for the project, is a particularly useful attitude to adopt when working overseas. As one respondent said,

The most important thing when going into a situation is understanding how you can and you can't help.<sup>59</sup>

Lawyers in their daily domestic practice are used to understanding everything down to the last detail: they master the facts of their case, ensure they know the law and are totally familiar with the court and its procedure. Understanding one's own society and its values is also taken for granted. Transplanted to another country, a lawyer will be faced with many uncertainties – not just in their working environment, but also in virtually every aspect of the culture. As one respondent expressed it,

The first thing a lawyer needs to do when working internationally is to understand that they don't know what is going on, and they have no chance of knowing it in the full depth they're used to.<sup>60</sup>

International lawyers therefore need to recognise this lack of knowledge and adapt their attitudes accordingly – in other words, to become more comfortable with the idea of not being fully in control of both the immediate working environment and the wider cultural surroundings.

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<sup>57</sup> *ibid*, 23-27.

<sup>58</sup> *ibid*, 60.

<sup>59</sup> Interview on file with the author.

<sup>60</sup> Interview on file with the author.

## IV. Some Practical Suggestions for Organisations and Employers

Whilst this paper is principally focused on the personal attributes of individuals, the organisations hiring lawyers to work in rule of law or transitional justice projects also have a role to play in increasing the personal effectiveness of their consultants and staff. We suggest that there are five practical suggestions that may help achieve this.

Firstly, organisations should do all they can to ensure they select the right people in the first place by appropriate interviewing and vetting processes that include an assessment of intercultural effectiveness. Most large organisations have a standardised interview protocol. Although an obvious point to make, careful pre-interview preparation for the interviewers is as important as for the candidate. Specifically, interviewers should identify the particularly important intercultural attributes the successful candidate will be expected to demonstrate, and to develop targeted questions to explore this. A short psychometric test focusing on intercultural attributes could be very useful in this regard. It would be particularly helpful to have a mixed interview panel of both national and international staff: most interviews these days can be successfully conducted over the Internet, so there should be no reason why national lawyers cannot also participate.

Secondly, those joining a rule of law or transitional justice project should be required to participate in both a compulsory initial orientation course and an ongoing information programme relating to the host country and the organisation's activities within it. Done thoroughly this will ensure that all international project staff will have a similar understanding of the new environment within which they will work. This may be time-consuming but the potential benefits to the project could be considerable. This need not be overly formal – seminar discussions, interactive exercises and even social or cultural visits could be incorporated into the programme, making the most of the national counterpart staff to share their knowledge and experiences with their international colleagues.

Thirdly, organisations should consider developing a specific course on intercultural communication for lawyers in advance of their arrival in the host country. Many organisations such as the United Nations require their staff to undertake certified online training courses relating to issues of security and personal safety awareness. To our knowledge, no organisation working in the field of rule of law and transitional justice offers their staff training on intercultural effectiveness. There are a scant few courses on this subject worldwide aimed specifically at lawyers,<sup>61</sup> and given how poorly domestic legal training prepares us for the challenges of legal work overseas it would be of tremendous benefit to developing and maintaining the necessary positive, flexible outlook if lawyers attended a suitable course. In the absence of requiring staff to undertake specific and certified intercultural courses, one senior international lawyer interviewed for this project suggested that there should be a series of briefings on the topic of intercultural communication: one for the national lawyers, one for the

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<sup>61</sup> See for example Advocates for International Development's annual 'Law and Development' training programme, the United States Institute for Peace also Centre for Intercultural Learning (CIL)'s courses and workshops for professionals, volunteers and special 'fragile state' courses.

internationals, and a further briefing attended by both groups.<sup>62</sup> This could be facilitated through a series of workshops and other team building exercises.

Fourthly, organisations should consider implementing an evaluation system for their staff incorporating aspects of intercultural effectiveness. A box-ticking performance appraisal is of little value and is sometimes seen as a considerable nuisance. However, the procedure would be vastly improved through periodic self-evaluation, self-reflection as well as discussion on the personal as well as project objectives, based on recognised interculturally effective knowledge, skills and values. In a supportive and non-judgmental working environment, staff should be encouraged to discuss candidly any obstacles to achieving their own and the project's objectives, to share solutions, and to recognise the limitations on what can be achieved.

This leads to the fifth and final suggestion. Organisations should consider setting more realistic goals. Monitoring and evaluation in the development sector is an industry all in itself, and every project manager will be familiar with the need to demonstrate to donors that the intervention is relevant, effective, efficient, has a measurable impact and is sustainable. Sustainability, or capacity building as it is more often called, is perhaps the most frequently cited metric of success by which rule of law and transitional justice projects are judged. At the end of the intervention, have things changed for the better and will this change be long lasting? The short- and long-term objectives of a project may be clearly articulated, but in reality they may be too ambitious. Developing a training course for new judges in the host country is a challenging but relatively achievable goal. In some countries, changing the culture of the judiciary so they act impartially, independently and do not accept or solicit bribes, remains a virtually impossible long-term objective.

International organisations also need to relinquish control and involvement of the project when it is over: as one lawyer acknowledged, it is difficult for internationals to let go.<sup>63</sup> The sustainability of an intervention is built on local people participating and owning the project themselves, and the objectives set at the outset should ensure that capacity building is a part of every lawyer's daily work – rather than an optional extra at the end when discussing the legacy for the host country. In the experience of many of the lawyers spoken to for this paper, one particular factor that improves the effectiveness of a project is the extent to which national lawyers have 'ownership' of the process, from the development phase onwards. Establishing good working relations from the outset, meaningfully devising joint project strategy and planning is key to ensuring that local commitment can be maintained throughout. The concept of 'change management' is also gaining credence in the rule of law and transitional justice fields, and much more needs to be done to understand how a desired impact can in practice be achieved.<sup>64</sup>

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<sup>62</sup> Interview on file with the author.

<sup>63</sup> Interview on file with the author.

<sup>64</sup> Vivienne O'Connor, 'A Guide to Change and Change Management for Rule of Law Practitioners', International Network to Promote the Rule of Law (2015).

## Conclusion

Although the skills of individuals do not guarantee success, without these skills overall success of international and intercultural projects or assignments will rarely, if ever, be achieved. They are a necessary condition of success.<sup>65</sup>

The UN Secretary-General's report of 2011 suggests that international interventions in rule of law and transitional justice have developed considerably in the first decade of the new millennium. However, it would be a mistake to concentrate exclusively on the macro issues of politics, finance and logistics. We suggest that the time has come to focus on the individual, and to develop the personal qualities that all of us need as international lawyers to operate effectively in cultures that are not our own. This paper has attempted to highlight some of the intercultural attributes that organisations need to identify, and lawyers might attempt to cultivate, in the challenging personal and professional conditions in which they operate.

The opinions of experienced practitioners in the field reveal that there is quite some work to be done to improve standards of personal effectiveness. We say that part of the essential preparations for lawyers embarking on work overseas should include an understanding of intercultural effectiveness. We have demonstrated how barriers to such effectiveness can adversely affect a project's objectives. We have identified particular improvements we can make to our knowledge, skills and values to be more interculturally effective, and have also offered practical suggestions for organisations looking to help their staff and consultants fulfil their potential whilst working overseas.

Changing the ingrained culture and habits of lawyers to maximise their effectiveness in international interventions will ultimately depend on the individual. Perhaps rule of law and transitional justice work to some extent self-selects those lawyers that are already open to difference, uncertainty and environmental challenges. Nevertheless, there is always room to learn more about the cultures in which we work, and our reactions to them, no matter how many consultancies we have undertaken and missions we have completed. Whilst it would be unrealistic to expect all international lawyers regardless of the length of contract or exact nature of their work to possess all the intercultural attributes described in this paper, an awareness of where we can improve our knowledge, skills and values to increase the effectiveness of the project can only be beneficial.

It is hoped that this paper and others that follow can help to further professionalise the field of rule of law and transitional justice lawyering, by inviting lawyers and those who hire them to reflect, and to continue reflecting, on how they interact with others.

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<sup>65</sup> Vulpe and others (n 10), 10.

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