

PROVIDING ACCESS TO HEALTH CARE THROUGH THE LAW:
SOCIAL ECONOMIC RIGHTS LAWYERING IN SUB-SAHARAN AFRICA AND
THE TALE OF TWO LEGAL RESOURCES CENTRES

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW

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May 2004

REGISTRAR'S OFFICE

MAY 05 2004

STANFORD LAW SCHOOL

ABSTRACT

This paper seeks to capture the original features and characteristics of a recent practice reflective of the rights-based approach to development: socio-economic rights lawyering. It provides an empirical, comparative, and theoretical analysis of socio-economic rights lawyering in sub-Saharan Africa, through a participant-observer inquiry into the practice of two *Legal Resources Centres* engaged in right to health and other developmental rights lawyering activities in Ghana and South Africa.

Building on the literature on law and development and the political economy of rule-of-law assistance, socio-economic rights, as well as public interest, cause and poverty lawyering in the United States and developing countries, the paper uses a case study approach to investigate the practice of lawyers involved with these two organizations. For each organization, the empirical analysis explores the social and legal context, the principal actors' theories of change and lawyering practice, as well as the wider local political economy of welfare rights lawyering in which they operate. The paper draws from this analysis to develop a theoretical framework and a comparative and systematizing typology of socio-economic rights lawyering in these two countries, featuring either a mostly court-centred public interest impact litigation approach (in South Africa), or a community-based, social movement-oriented, legal empowerment approach (in Ghana). Finally, it suggests some criteria and empirical methodological directions to evaluate the impact of a right to health campaign conducted by the *Legal Resources Centre* in Ghana.

This paper argues that socio-economic rights lawyering could enhance the poor's ability to take control over decisions affecting their lives in developing countries, provided first that its practice is based on a pragmatic approach to lawyering, rather than a rigid formalistic or non-formalistic conceptual model, and that it is informed by local, national and international political economy considerations, as well as by empirical analysis

Ultimately, this paper seeks to provide lawyers and activists in this field with a theoretical framework and a systematized empirical analysis of the practice of socio-economic rights lawyering in two African countries. This paper lays the foundation for a wider research project, which could serve as a basis to appeal to rule-of-law assistance and other donors to channel increased amounts of resources to similar projects, which so far have been insufficiently scrutinized from an empirical point of view.

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