

Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya

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INTRODUCTION

Clinical legal education has been defined simply as learning law by doing law.¹ It is a method of instruction in which students engage in varying degrees in the actual practice of the law. Students get the opportunity to apply the theoretical aspects of their training to real life or simulated situations.²

In Kenya, legal education has over the years been imparted by way of the traditional lecture method. This has mainly been theoretical with little or no attention being paid to the practical aspects of the law and the legal profession. It is only recently that the importance of incorporating practical skills began to be recognised. This recognition can be traced back to the year 1994 following the establishment of the Moi University Faculty of Law (the faculty).

In this work the author intends to examine the challenges faced by the faculty in its quest to incorporate the clinical based approach into its curriculum. In doing so, the author will have to examine the basis upon which the faculty's CLE is grounded and the method used by the faculty implementing it. An assessment will be made of the specific successes and challenges faced by the faculty in implementing the programme and lastly recommendations to improve its operation will be made. Though references will be drawn from other jurisdictions in certain instances, the author will confine himself within the subject of this work, i.e, CLE in Moi University, Kenya.

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1 Grimes, R., (2000) "Learning Law by Doing Law in the UK" in *International Journal of Clinical Legal Education* p.54.

2 See Iya, P.F., (2000) "Fighting Africa's Poverty and Ignorance Through Clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century" in *International Journal of Clinical Legal Education* p 16 and also, Gold, N., (2000) "Why not an International Journal of Clinical Legal Education?" in *International Journal of Clinical Legal Education*. p.7

BACKGROUND

Kenya inherited much of her institutions from her colonial masters, Britain.³ Consequently, even the system of education became patterned along British lines. The method of training lawyers was adopted from that of the colonial powers. It took principally the form of classroom discussion-cum-lecture; which form has been prevalent up to now.

Under this mode of instruction, students undergo lecture sessions in which notes are either dictated to them or topics are assigned to them for discussion in class (tutorials). There is normally a written examination at the end of each course according to which students are graded.

In Kenya generally, it takes four years to acquire an undergraduate degree in law. Upon graduation, students proceed for an apprenticeship stint (known as pupillage) for a period of one year. During this period, students are assigned to an advocate's chambers where they are expected to learn the practical skills of advocacy from the advocate (called a master) under whom they work.

The expectation is that at the end of the one year of pupillage, students will have learnt the relevant, practical skills that will enable them make an entry into the practice of law. Statute specifically provides that students are to receive instruction in the proper business practice and employment of an advocate.⁴ Students may be required to undergo further vocational training in institutions established for that purpose.⁵ In addition, students will usually have spent about six weeks on attachment at a magistrate's chambers.⁶

The approach embraced in Kenya has laid much emphasis on theoretical abstraction of ideas. Students under the guidance of their teachers, engage in merely academic exposition of refined legal issues far removed from the practical settings underlying them. Consequently, students do not get the opportunity to assess the effect of legal theory on the legal system and on the lives of those it affects.

As earlier on mentioned, it is only recently that legal training in Kenya began to be tailored in such a way as to incorporate the clinical approach. This approach lays much emphasis on practical solutions to real life or simulated legal problems.⁷ In real life situations, students get to deal with people with legal problems usually under the supervision of qualified practitioners. Students are able to put into practice the theoretical aspects of advocacy that they have learnt in classroom situations.⁸ They are often called upon to apply their own standards in making decisions about the legal issues facing them. They also learn about standards of practice and how to follow them and also how the same are enforced on practicing advocates.⁹ Importantly also, the clinical approach gives students a chance to experiment with the theoretical knowledge they have as they can discuss what they are learning and experiencing with other students, advocates or members of the bench before attempting to put them into practice.¹⁰

3 See generally Abuor C. O., (1971), *White Highlands no More: A Modern Political History of Kenya*, Vol. 1 Nairobi: Pan African Researchers; Flint, J.E., (1963), "The Wider Background to Partition and Colonial Occupation", in R. Oliver and G. Mathews (eds) *History of East Africa*, Vol. 1 Oxford and Ghai, Y. P. and M C Auslan J.P.W.B., (1970), *Public Law and Political Change in Kenya; A Study of the Legal Framework of Government from Colonial Time to the Present*. Nairobi: OUP.

4 *The Advocates Act Cap 16 and The Advocate (Admission) Regulations made thereunder*

5 *Regulation 3 of the Advocate (Admission) Regulations*

requires students to undertake a course of legal education at an institution established for the purpose e.g. the current institution is the Kenya School of Law where students learn practical courses.

6 At the faculty this occurs after the second year of study and takes a period of about 6 weeks.

7 See Iya P.F. *supra* at note 2

8 *ibid* at p.16. See also Stuckey, R.T., (2000) "Ensuring Basic Quality in Clinical Courses" in *International Journal of Clinical Legal Education* p.47

9 *ibid*

10 *ibid*

The traditional lecture method differs from the clinical approach in the time and place which students are expected to learn the practical aspects of law. In the former, it is usually after graduation from university and mainly in an advocate's office. In the latter, it takes place in the course of learning, before graduation and within the curriculum set-up (albeit in a wide variety of places not limited to an advocate's office only). There are certain poignant aspects of this distinction. For example the traditional lecture method divides the learning process into stages such as academic, practical and vocational, without a conscious effort to bridge the gaps in between. The academic stage takes place in the law school (university) and is purely theoretical. The practical training stage takes the form of pupillage during time students are expected to summon all that has been learnt (in the academic stage) and apply it in practice. The vocational stage takes place in an institution established for that purpose (the Kenya School of Law) although the content is also mainly theoretical. No attempt has been made to link these stages together so that they flow naturally from one to the other.

Each of these stages also has its own unique problems. For example, doubts have been expressed whether the pupillage programme achieves its stated objectives owing to several militating factors. For example, practicing lawyers being mainly pre-occupied with their work may not be in a position to give much thought to the education and monitoring of students. The law office or the court house may not be the proper place for the instruction of students as they were not designed to perform such a function.¹¹

The clinical approach is important in at least one other important aspect. This has to do with the role of the law and lawyers in contributing towards the ideal of social justice.¹² In Kenya for example, there are rising numbers of people who, because of their penury, cannot secure access to the legal system for purposes of protecting their rights. Though lawyers may be acutely aware of that problem, they are usually constrained by the need to serve their clients for their own good and to provide assistance to poor litigants for the sake of justice. Hence Kenyan lawyers have been unable to respond appropriately and satisfactorily to the unmet legal needs of the Kenyan society.¹³ It is at this point that the clinical approach with its positive inclination towards legal assistance to the poor comes in.

The clinical approach is therefore two-pronged in its goals; first to provide students with the opportunity to learn from their encounter with real life legal problems and secondly to provide free legal services to the disadvantaged members of the society. This approach becomes even more relevant in the circumstances of a developing country like Kenya where unmet legal needs are continually on the rise.

11 Gold, N., *supra* note 2 at p.11

12 See for example the curriculum for the Faculty of Law Degree of Moi University (the curriculum) which is premised on the ideal of promoting social justice

13 Efforts at providing legal aid services have been half-hearted and rather disjointed. Lawyers have not shown any enthusiasm towards this end. Much of the effort has come from non-governmental organisations including for

example Moi University Legal Aid Clinic (MULAC), People Against Torture (PAT), Public Law Institute (PLI), Rift Valley Law Society Legal Aid Scheme (RVLS) Federation of International Women Lawyers (FIDA) – Kenya Chapter. For a detailed analysis of the efforts of various organisations in providing legal aid see Consultant's Report on Kenya Civil Society Programme. Review of Access to Justice Projects, 2001

ORIGIN AND EVOLUTION OF CLE

Scholars have traced the origin of CLE in the United States of America.¹⁴ The main reason given for the development of this approach to legal education is that it was primarily a response to an obvious lack of legal services for the poor.¹⁵ Law schools were resorted to as a source of such services when it became clear that neither practitioners nor indeed even state institutions could be relied upon. Certainly in the United States, judicial activism seems to have played an important role in promoting CLE and there was of course material support from donors for the programmes run by law schools.¹⁶

The CLE approach then spread over to other jurisdictions apart from the United States. The early 1970's saw the CLE approach being embraced in jurisdictions such as the United Kingdom and Australia.¹⁷

Law schools in Africa have also taken discernable efforts to incorporate the CLE approach in their curricula.¹⁸ In East Africa, Uganda's Makerere University has been at the forefront followed by Dar es Salaam University and lately University of Nairobi and Moi University in Kenya. Of all the CLE programmes established by these universities perhaps the one that stands out is that of Moi University, because in it, student participation is compulsory and the programme is structured in such a way that participation contributes towards the assessment of students towards their degree requirements.¹⁹

Various other African Universities have come up with CLE programmes of varying descriptions with varying degrees of success.²⁰

In the next section, the author intends to describe those aspects of the Moi University faculty of law's curriculum that qualify it as a clinical oriented curriculum.

IMPLEMENTATION OF CLE IN THE FACULTY

In the first part of this section the author analyses the principles upon which the faculty is premised and how they seek to advance its clinical approach to legal education. In the second part, the author undertakes an examination of the aspects of the faculty's curriculum that emphasize its clinical nature.

14 For example Iya P. F. *supra* note 2, Dickson J., (200) "Clinical Legal Education in the 21st Century: Still Educating for Service?" in *International Journal of Clinical Legal Education* p.37

15 This need was also recognised by the U.S Supreme Court in the cases of *Gideon v. Wainright* 372 US 335 (1963) and later on in *Argersinger v. Hamlin* 404 US 25 (1972)

16 Dickson, J. *supra* note 16. at p.38

17 Dickson traces the spread of clinical legal education from the United States to the United Kingdom and Australia. A clinical programme was established in 1975 at Monash University in Melbourne

18 Iya, P.F. *s supra* at note 3 p.18

19 See the curriculum

20 Iya P.F. *op.cit.* p.18

1. Foundations of the Curriculum

Universities across Africa need to develop curricula that fit well with the overall goal of promoting social transformation in a way that meets the needs of the people.²¹ In that light law faculties also need to be structured in such a way as to enable them become a useful tool in the achievement of this goal.

The faculty with its strong orientation towards social service was established so as to meet this kind of challenge. In 1981, a presidential working party submitted a report which called upon institutions of higher learning to promote social justice and expand educational opportunities for Kenyan citizens. Taking up the gauntlet, the faculty's curriculum states that the faculty was established:

*“[To] provide qualified students with a course of study designed to engage and challenge their intellect while exposing them to experiences designed to develop competent advocates committed to the social aims of high quality legal representation, Kenyan national development, and public service”.*²²

In achieving this objective the faculty has taken an approach that emphasizes the clinical method in addition to (rather than with the exclusion of) the traditional classroom instruction method. The curriculum stipulates that the bachelor of laws course of study will provide instruction in fundamental legal doctrine, legal theory and advocacy skills by way of traditional classroom discussion, simulated lawyering experiences, law related externships and live client representation.²³ The curriculum emphasizes that the approach taken by the faculty will be social justice and public oriented. It recognises that there are many challenges facing the Kenyan people and accordingly sets out to prepare students who have the ability of identifying social phenomenon in need of change and generating solutions consistent with the Kenyan situation. Therefore, the faculty aims at producing lawyers with a keen interest in providing services beneficial to the public.²⁴

Coupled with the social ideals that it seeks to imbue in students, the curriculum seeks also to inculcate practical skills of advocacy.²⁵ In its statement of educational goals, the faculty seeks to impart practical skills such as analogical reasoning, use of precedence, fact finding, research writing, persuasive speaking and effective listening. In the final analysis, graduands are expected to have the necessary analytical skills and ability to identify legal problems, the legal principles applicable to the problem, to use those principles to resolve the problems and to think critically about legal problems and the legal system.

It is therefore apparent that the faculty adopts an attitude that considers the study of law as going beyond the learning of legal rules and arguments. The entire curriculum is hence premised on the ideal that law is a process of human interaction which takes within its corpus moral, social and political issues.

21 This is perhaps in response to the criticism levelled against universities in Africa regarding their role in social transformation. According to Iya (op cit), there have always existed a concern as to what exactly should be the contribution of the university in meeting the needs of the ordinary citizens in their search for better life. This is a challenge posed not just to the universities alone but also to their different faculties, especially the law faculties

22 The faculty's curriculum proposal is said to be informed by the Report of the Presidential Working Party on the Second University of Kenya prepared by C. B. Mackay (Mackay Report)

23 *ibid*

24 *ibid*

25 *ibid*

In the courses taught at the faculty three fundamental areas are emphasized throughout. These are stated to be crucial to students' learning and are:-

- (i) *Legal theory*, which is intended to teach students that the doctrinal principles they are learning and evaluating do not arise out of logic or precedent but are embedded in a social and ethical context.
- (ii) *Clinical education*, which teaches students to take the action and make the decisions that advocates actually face, hence emphasizing the practical aspect of the curriculum.
- (iii) *Professional responsibility*, which teaches students that mastery of legal doctrine, theory and lawyering skills is not an end in itself but a means towards a legal practice that can reflect the professional person's choices, goals and values as well the broader social goals that underlie a university committed to practical problem solving and public service.

This section has described those aspects of the faculty's curriculum that form the basis for its clinical approach. In the next part, the author intends to discuss in a more or less descriptive manner the ways by which the general ideals of the faculty are put into practice.

2. Implementing the Curriculum's objectives

It seems necessary to state at the outset that the faculty views the clinical approach as being supplementary to, rather than replacing, traditional classroom lectures. Consequently, the subjects offered may be dealt with in three different classifications according to the mode of delivery:²⁶

- (a) Subjects taught mainly through lecture method
- (b) Subjects taught through simulated legal problems
- (c) Skills imparted through actual live-client representation.

Subjects taught mainly by Lecture Method:-²⁷

This method is used to deliver instructions on these subjects which by their nature are highly theoretical and which can only be appropriately handled by emphasis on lecture and discussion notes. These subjects include:-

Social Foundations of Law
Contemporary Legal Issues and Practice
Law of Contracts
Principles of Tort Law
Legal systems
Criminal Law
Civil and Criminal Procedure
Law of Evidence
Constitutional Law

²⁶ *The curriculum does not explicitly group these subjects as such*

²⁷ *Or the traditional method*

Legal Problems and Client Counseling
Family Law
Professional Ethics and Responsibility
Sale of Goods and Agency
Legal Analysis and Alternative Dispute Resolution
Law of Succession
Customary Law
Property Law
Equity
Administrative law
Commercial Law
Banking Law
Islamic Law
Public International Law
Disability Law
Information and Law
Proprietary Rights and Transactions
Environmental and Natural Resources Law
Law of Business Associations
Fundamental Rights and Freedoms
Law of Co-operatives and Partnerships
Law of Insurance
Gender and the Law
Tax Law
Labour Law
White Collar and Corporate Crime
Law of the Sea
Comparative Legal Systems of East Africa
Jurisprudence
International Commercial Transactions
Children and the Law
Bankruptcy Law and Practice
International Commercial Transactions
Conflicts of Laws (Private International Law)
Health Law

Subjects taught through simulation

Ideally, subjects falling under this head are mainly theoretical although students deal with legal problems that may arise in real life. The problems are posed within the context of simulations whose content is associated with recent or current areas of study. The following are the subjects falling under this head:

(i) *Legal problems and Client Counseling*

This subject is intended to:- develop skill in legal problem solving (which involves the analysis of facts within the context of relevant legal provisions), refine the student's legal writing skills, address issues of professional responsibility and of the advocate/ client relationship and engage students in analysis and resolution of simulated legal problems.

(ii) *Professional Ethics and Professional Responsibility*

This subject imparts to the students the fundamental principles and basic assumptions related to the conduct of members of the legal profession but more importantly, students are exposed to real and perceived problems of client representation which they are required to resolve.

(iii) *Legal Analysis and Alternative Dispute Resolution*

In this subject, students are imbued with reasoning and analytical skills, techniques and methods of alternative dispute resolution, theoretical and practical understanding of non-litigative mechanisms for the resolution of disputes and analysis of legal problems posed within the context of simulations.

(iv) *Trial Advocacy*

In this subject, students are trained on the basic principles of trial procedure, the fundamentals of litigation at the trial level, the use and abuse of pretrial motions, advanced case theory development and preparing witnesses for trial. Of significance however is the fact that participants engage in mock trials at the end of the semester.

(v) *Concentration or Clinical Substantive Law Seminar*

This subject is intended to impart skills of legislative drafting, legal writing, communication skills and research. Largely, it is a subject based on simulated legal problems and active class participation is highly encouraged.

(vi) *Advanced Legal Writing and Advocacy*

To a large extent, simulated legal problems are used to introduce students to the art of appellate advocacy, appellate argument, strategies and skills for complex fact organization and persuasive writing. Just like in trial advocacy, students engage in an end of the semester mock trial albeit at an appellate level.

Subjects Taught Through Live – Client Representation

In the author's view this method is very significant in emphasizing the clinical aspect of the faculty. The relevant subjects under this head are practical and usually stimulate students to call upon the knowledge and skills learned in the other subjects.

The faculty has a Concentration and Clinicals Department whose purpose is to co-ordinate the subjects falling under this head. In general there are two broad subjects which utilize the live-client representation approach, namely:- (a) Concentration or Clinical Seminar and (b) Concentration or Clinical Externship. In the former, students are encouraged to undertake in-depth learning and practise in chosen areas of study and at the same time participate in an externship programme, usually attendance in a court. In the latter case, students work directly with qualified practitioners with real clients and real legal problems. Strictly speaking this subject directly gives effect to the

clinical nature of the faculty in the sense that students learn from their experiences with live clients and from instructions received from their supervising practitioners.

If the first two modes of instruction form the foundation of the curriculum then the live client representation method provides the material with which the walls are constructed. The method allows students an opportunity to enrich and broaden the doctrinal, theoretical and practical understanding obtained from the essential foundation curriculum. Students receive a detailed understanding of particular areas of law and of real dilemmas faced by practising advocates.

The Clinical and Concentration Programme has set out to achieve several goals all of which emphasize the clinical nature of the faculty. The significant ones may however be summarised into four:-

- (i) To provide students with opportunities for applying and expanding skills acquired through prior simulated experiences especially interviewing, counseling, case planning and litigation.
- (ii) To provide students with opportunities for learning the substantive law of the field of practice.
- (iii) To provide students with opportunities to develop their ability as problem solvers and
- (iv) To provide students with opportunities to provide legal assistance either through the faculty's own projects or in co-ordination with external projects.

To accomplish these goals students engage in a wide range of activities including representing clients (albeit in non-litigation matters), working on simulations, attending relevant seminars, workshops and conferences organized by other organizations and working on other relevant projects. The goals enumerated are particularly relevant in promoting clinical legal education as students are expected to work in real-life situations and learn while in the process of doing so.

To make the achievement of these goals a reality, it became necessary to establish a forum where students and clients would be able to encounter one another and interact. Thus, the Moi University Legal Aid Clinic (MULAC) was established with the aim of providing students with a forum through which they could offer legal assistance to indigent Kenyans while at the same time enriching their practical knowledge and skills.

It is author's view the faculty's clinical approach is most appropriate for achieving the objectives of any CLE programme i.e. practical training of students and the provision of legal services.

Having described the foundations of CLE in the faculty it seems logical to ask whether there have been any successes in implementation and what have been the constraints.

THE CONSTRAINTS OF IMPLEMENTATION

The faculty's mission and goals in establishing a CLE programme are very noble and realistic. However, having a blue print for CLE and successfully implementing it are two different things. Although it is important to examine the faculty's CLE programme in terms of its mission and goals, it serves more purpose to also assess it against other extrinsic criteria that are of relevance. For the purpose of this work, some of the criteria laid down by Kenneth S. Gallant would be considered as pointing some minimum requirements of a successful CLE programme.²⁸ In doing so however, the author does not lose sight of the importance of restricting himself to situation specific criteria. Reference to Gallant's work is made for purposes of enabling a more concise comparative analysis of the faculty's CLE programme.

28 Gallant, K.S., (1996) "Implementing Clinical Legal Education : A Checklist for Programme Design" (unpublished)

Successful implementation of CLE programme does not end with the integration of the clinical approach into the overall curriculum of the law school but also calls for integration of and co-operation with other relevant institutions, such as and especially the legal and judicial community in which they operate.²⁹

Far apart from this general consideration, Gallant identifies a number of questions that must be addressed by the developers and implementers of any CLE programme. These questions may fall into two contexts; i.e the academic and the legal and professional contexts.³⁰

1. The Academic Context

The clinical approach to the teaching of law ought to be regarded as supplementing rather than replacing the academic and largely theoretical legal training. With this general statement in mind, a number of relevant issues need to be considered. They include:-

Goals of the Programme

The goals set down by the developers of a CLE programme would have to revolve around issues like; the skills to be taught to students (e.g. legal research, analysis and problem solving etc); ethical consideration and values; ability of students to analyse their practical experiences in terms of the social economic and political role of law and lawyers in society.

Teaching Methods and Materials

Should they include: simulations and case study work?; legal aid clinics in law school?; field placements?; or combination and integration of clinical methods?

Achieving the Goals of the Programme

This would involve questions as to whether to create clinical courses (live client, simulation or field placement); to integrate the clinical base for the entire curriculum; to give credits to students for clinical work.

Academic Administration

Will it be necessary to employ external staff or incorporate present teaching staff in implementation and what would be their status vis-a-vis the law faculty; what would be the position of the programme within the law faculty and the university; how to evaluate and control quality of instruction.

Student Opportunities and Concerns

It would be important to consider questions regarding the effect that the programme would have on students e.g time constraints on students from other classes, travel considerations, costs to students and professional benefits to students such as opportunities to meet lawyers and potential employers.

2. Legal and Professional Contexts

Gallant postulates that once a clinical programme involves much more than classroom simulation and begins to touch on live client representation other wider non-academic concerns come to the fore. An important issue is the attitude exhibited by lawyers to the student practice of law. It may be felt that students are infringing on lawyers' livelihoods or that they are compromising standards.

²⁹ *ibid*

³⁰ *The criteria discussed subsequently are sourced mainly from Gallant's article above*

Consequently, it becomes necessary to design a clinical programme that takes into account these fears. It may be necessary to restrict students to those activities that they may engage in without any hindrance by the law – likewise, it may be relevant to seek the implementation of a rule or statute to allow student to practice in certain fields only. Either way there must be co-operation and a sound relationship between the faculty on the one hand and the bar and bench on the other.

There is also a need to address questions relating to the restrictions that may be imposed on clinical programmes, whether they are political or financial.

The author recognises that, though Gallant's criteria may not have been proposed with the faculty's clinical programme in mind, they do serve as an important (though not necessarily sufficient) benchmark for the faculty's clinical programme. In the following section it is intended to evaluate the strengths and the weaknesses of the clinical programme as implemented in the faculty of law, Moi University. This exercise is to be carried out against the background of the concerns raised by Gallant and of the goals laid down by the faculty in its attempt at a clinical oriented approach to legal education.

SUCSESSES AND FAILURES

Arguably an important achievement of the faculty's clinical programme is its revolutionary approach to the teaching of law in Kenya.³¹ The Moi University Faculty of Law is the younger of the two faculties of law in Kenya having been preceded by the decades old Nairobi University Faculty of Law. Whereas the pedagogical approach in the latter consists mainly of theoretical classroom lectures, in the former there has been a conscious and positive attempt to incorporate practical aspects into the traditional, theoretical academic discourse.³² This revolutionary aspect is also discernable in the fact that the faculty's clinical courses are compulsory and contribute to the assessment of students towards the acquisition of a degree. Admittedly the faculty has broken new ground in this regard.

Additionally, the faculty has succeeded in pioneering a public interest oriented curriculum for the teaching of law. It is committed to the ideals of delivering basic legal services to citizens, graduating resourceful and efficient legal professionals with a commitment to public interest advocacy and promoting social justice. The machinery through which these ideals are expected to be achieved is the Concentrations and Clinical Department. It is through this Department that students participate in the judicial attachment programme which takes place after their second year of study. Students are basically attached to a court where either a magistrate (or a judge) presides. They sit together with the magistrate (or judge) either in chambers or in court in the course of proceedings. They are ideally expected to learn by observing the way the court and lawyers conduct their business. But perhaps what is of more relevance to the development of practical skills for students is the Moi University Legal Aid Clinic (MULAC) through which students render legal advice and routine legal assistance to indigent clients. Apart from fulfilling the unmet legal needs of the society, students of course get the opportunity to learn from real life situations.

31 *The introduction of practical training at the under graduate level was a bold and distinct step by the Faculty in the legal education field as the previously existing faculty of law at Nairobi University did not embrace such an approach.*

32 *In Nairobi University, the Student Association of Legal Aid and Research (the equivalent of Moi University Legal Aid Clinic) is largely voluntary and has not been incorporated into the curriculum for law degree.*

Moreover, the faculty's clinical programme seeks to supplement traditional classroom teaching methods of legal education with those that capture most effectively the principles for which the faculty stands for, i.e practical learning and public service. It is for this reason that the traditional method has not been abandoned but is being used alternately with practical delivery. In the same way that students engage in critical exposition of theoretical legal issues, so too do they exercise skills of legal research, analysis and problem solving, legal writing, litigation skills, client counseling, negotiation, interviewing, mediation, arbitration and giving non-litigation advice to litigants.

Another pioneering aspect of the faculty's clinical programme is its attempt at incorporating the input of other non-lawyer participants in a collaborative effort at pedagogy. For instance the courses offered under the auspices of the Concentrations and Clinical Department emphasise close collaboration with several key players. In the Refugees and Human Rights Law Concentration, the faculty seeks to collaborate with the Moi University Centre for Refugee Studies to identify appropriate and mutual areas of concern for research purposes. Likewise in the Environmental Law Concentration, the faculty seeks to collaborate with the School of Environmental Studies in identifying law reform issues and areas of legislative initiative.

Also, it has been possible to bring students into contact with people having real legal problems. This has been not only challenging but also revealing to the students who often have been called upon to use their knowledge of the law as acquired in the classroom and apply it in the relevant situation. More importantly, however students have been able to discern the fundamental difference between the law as learnt in classroom situations and the law as applied in practical life. Students have come face to face with situations in which they have to make fundamental decisions, at times far removed from their own values and aspirations knowing all too well that the decisions made could have far reaching consequences for the lives of the people they advise. All this has been made possible through regular excursions to courts and jails where students meet people with various legal needs especially concerning criminal law.

Although, the clinical programme has set out to achieve important objectives a host of constraints have been encountered in the implementation. An important thrust of the clinical approach of the faculty is the provision of legal services to the poor. For this to materialise, it is necessary that members of the public be sensitised on the availability of free legal services. In the three years that the legal services arm of the programme (i.e the MULAC) has been operational, students handled only a handful of cases. There are hardly any new cases on any given day. It might as yet turn out to be premature to indict the programme's implementers for failing to publicise their services, as there have been a number of efforts to establish their presence. For example, the faculty maintains a stand at the annual Agricultural Society of Kenya Show during which time presentations are made to the public on the activities of the faculty. Clearly however this strategy cannot be said to have been completely successful.³³

Although the faculty's mission recognises the necessity of an all inclusive approach, it can be reported that the implementation has failed to embrace this ideal. Specifically, there has been a failure to integrate members of the legal profession and the judicial community in the area in which the programme operates. According to Gallant, one of the concerns that needs to be

³³ *It is worthy of note that the faculty was established in 1994 after the preparation of the Mackay Report. The time gap in between may reflect significant changes in public attitude. This ought to have been gauged again in*

the course of setting up the faculty. In any event, the Mackay Report was done with specific reference to the entire university rather the faculty of law itself.

addressed by those who design and implement clinical programmes is the fear that student participation in the provision of legal services would interfere with the business of lawyers. Further it is necessary to enlist the support of local lawyers especially in circumstances where student practice of the law is not allowed since the lawyers may be requested to assist in litigating matters in a court of law. So far, no formal arrangement has been thrashed out between the faculty and the judicial community with the result that the magistrates in whose courts students are stationed are usually not aware of their presence.

The question of supervision has emerged as one of the problems affecting the faculty's programme. Only a handful of the supervising staff has shown active participation.³⁴ This militates against one of the requirements for setting up a clinical programme that is, that members of the faculty should share not only the same ideals but also level of commitment.³⁵ The lack of such commitment, may be explained by the fact that, most of the faculty's lecturers are also practicing advocates. Some practice within the precincts of the faculty whereas others have to travel a distance of about 200km for their class sessions.³⁶ Coupled with this is the fact that the faculty also runs an evening class programme alongside the regular one. Splitting their time so as to devote adequate attention to each of these concerns becomes a hard task to the lecturers. Their lethargy may also be explained by the fact that since their training as undergraduates did not incorporate a clinical component it may be difficult for them to appreciate the inherent advantages of the approach.³⁷

The lack of active participation has also affected the operations of the legal aid clinic run by the faculty. Students do not receive adequate instructions on the activities they are expected to engage in and the objectives of the programme as a whole.³⁸ Usually, students are constrained to call upon their own personal intuition and skill when dealing with clients and managing cases and files. The disarray that results dampens the morale of the students who after some time at the legal aid clinic become disinterested and begin to question the rationale behind the whole idea. This has had a telling impact on attendance, which at best is erratic and at worst non-existent.³⁹

The undefined status of the MULAC has not made the situation any better. As a matter of principle, the clinic is supposed to be an entity separated from the university administration. By this it is meant that major decisions are to be made by the administrators of the legal aid clinic without any undue interference from the university. If and when the clinic decides to pursue a matter in court, pressure ought not to be brought to bear on it if it turns out that the adversary is the university itself. The question of funding MULAC's activities is of even greater significance when one considers the issue of independence. The present status is that the MULAC can only seek its own funds through the machinery of the university administration.⁴⁰ It cannot do so

34 A schedule is usually drawn according to which lecturers as supposed to attend the MULAC, to supervise students' work. Most lecturers ignored it and never made an appearance.

35 Gallant K. S. (*op cit*)

36 At least two of them have to commute for close to 800km every week, to and from the faculty.

37 Almost all the lecturers received their undergraduate degrees from Nairobi University. The degree however did not (and still does not) incorporate the clinical approach.

38 Before students take in prospective clients, they are required to perform a needs assessment to confirm their indigence. Apart from the student's subjective

conclusions there does not seem to be any clear cut standard for assessing would-be clients.

39 Since lecturers go to great lengths to attend normal classes and show a contrary attitude to the clinical programme, it is inevitable that students should feel that it is a total waste of time to attend particularly when they have other pressing courses.

40 This view was reached by the author through his discussion with one faculty member who seemed to be the only one actively involved in the programme. This member's active participation could be explained from the fact that he does not maintain a legal practice having thought it necessary to direct his attention to the academic field only.

independently since it is a policy of the university that all solicitation must be channeled through it. The lack of independence affects even the running of routine operations at the clinic.

Though the legal aid clinic envisions the provision of both litigation and non-litigation assistance, the former has not been made possible to date owing to some or a combination of the problems discussed above.⁴¹

Further, the lack of supervision has meant that students' rights and responsibilities are not clear. It is not exactly certain what sort of advice students can give and to what extent. It is therefore not clear whether and to what extent students will be liable for malpractice or neglect of clients' concerns.

The faculty's clinical programme has not been sensitive to concerns raised by students. It does not address issues relating to time constraints on students and the effect of adding clinical work to students' performance in other academic subjects. It ignores issues of travel considerations especially since the legal aid clinic is 36 Km away from campus. It does not address the additional financial burden posed on the students to cater for their meals at rates which are higher than the ones they are used to back in campus.

THE CHALLENGE FOR THE FACULTY'S CLINICAL PROGRAMME AND HORIZONS FOR CHANGE

It is not doubted that the faculty is desirous of implementing clinical legal education in its curriculum. The clinical approach has rightly been regarded as a crucial step in revolutionizing legal education in Kenya. The main challenge facing the faculty is how to strengthen the existing curriculum to ensure that it achieves the ideals for which it is set up. Many of the problems are without a doubt logistical ones though there are those that have everything to do with attitudes. Looking at the courses taught at the faculty, some are stated to incorporate the practical component. However, so far the approach by the lecturers has been theoretical.⁴² Consequently, it needs to be impressed upon them that whereas they need to be flexible in their mode of teaching, the practical component as envisaged in the curriculum must be emphasised.

Further, there is need to address the concerns of the teaching staff so as to ensure their commitment to the whole idea. Since it appears that their major constraint is time, then there may be a need to have only a few permanent staff employed to administer the legal aid clinic so that the teaching staff are engaged in minor supervisory roles. The administrative staff would be responsible for operations at the clinic including supervising student participation.

Whereas, it is important that the legal aid clinic enjoys the support and goodwill of the university administration, it is also important for its operations that it be allowed to take its own initiative on issues such as solicitation of funding, running routine operations, deciding which cases to handle

41 *The inability of MULAC to institute court proceeding has been a source of frustration since its establishment. In the eyes of the public (whose understanding of justice is the one achieved through the courts only), the MULAC is so incapacitated as to be of no use to them at all. If they cannot have their day in court, then it is as good if one does not start the process at all. This may partly explain why attendance has been particularly low with only a few new clients coming in at any one moment.*

42 *For example Legal Analysis and Alternative Dispute Resolutions as well as Legal Problems and Client Counseling are said to constitute a practical component though the approach has been purely theoretical. The same can be said of procedural courses; Civil and Criminal Procedure, Evidence and Proprietary Rights and Transactions.*

and the like. In saying this, the author does not call for a permanent severance of ties with the university as this would defeat the logic of student participation.

There is need to undertake a publicity campaign with respect to the activities of the legal aid clinic. Such a campaign must be all-inclusive.

There may be need to seek a separate legal existence for the legal aid clinic. The present scenario is that the clinic cannot pursue a claim in court on behalf of a client as it is not recognised in law as a provider of legal services. The clinic resorts to instructing advocates who sue in their own capacity . However, there are no funds to make this a possibility.

There is need to come up with a clear policy on what is assessed and at what time so as to encourage serious participation by students.

There is need to sincerely address student concerns e.g. transport, cost and time constraints so that they are not inconvenienced.

Ultimately, any clinical programme must be all rounded and inclusive. It must receive the support and goodwill from all relevant sections of the society including students, academic staff, legal and judicial community, potential donors and most importantly, the public.