

Fighting Africa's poverty and ignorance through clinical legal education:

Shared experiences with new initiatives for the 21st Century

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Introduction

Most of our fellow citizens are poor. They are without proper housing, health care and schools. Many are without jobs. Even those who have them earn too little to support themselves and their families. Poverty is inimical to democracy... There is no shame in admitting there is poverty, and unjust distribution of wealth and the granting of honours amongst us. The real shame is and will continue to be our failure to take steps to put an end to both poverty and substantial inequality".¹

The above statement by one of South Africa's highly reputed and veteran human rights lawyer and activist reminds the readers (and society at large) not only of the serious concerns for poverty, ignorance and their consequences, but more importantly, for the challenges that face societies in combating them. Whereas the statement relates directly to the poor in South Africa, its application and implications to Africa generally is beyond doubt. Evils like crime, diseases, illiteracy, wars (both at national and regional levels), debt crisis, unemployment, corruption (in both the public and private sectors) and others are constantly cited as serious challenges which the African Society must address to attain the long-desired sustainable social development.² With particular reference to poverty, recent reports show that 40% of Africans live on less than \$1 a day.³ The situation in the education sector is no less disturbing. In South Africa, for example, the Bantu education system of the apartheid regime the legacy of which still lingers on, has resulted in creation of a huge reservoir of illiterate cheap labour. There is, therefore, an objective reality that the bulk of

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1 Bizos, G: "Our failure to end poverty is the real shame of the Nation". In *Sunday Times (South Africa)* of May 30, 1999 p.20.

2 For details of such evils read: Kobokoane T., "It's time for Africa to take a long, hard look at itself" in *Sunday Times (South Africa)* of October 4, 1998 p.18.

3 Figure provided by the World Trade Organisation as reported in *Mail and Guardian (South Africa)* of March 10 to 16, 2000 p.2.

Africans are poor and educationally ill equipped to effectively participate in and meet the demands of social growth so desperately needed in the continent. The question then is: What needs to be done that has not been done? What have governments, international organisations, NGOs and other institutions done to address the challenges of Africa's poverty and ignorance? Have universities and their respective law schools risen to this important challenge? If so, how?

It is in response to the above concerns that this paper attempts to establish and analyse the role of African universities generally and their law schools in particular in their fight, if any, against poverty and ignorance. In that regard, the case of legal education and specifically its clinical programmes will be analysed, and the thrust of the discussion will be directed toward the following issues:

1. The backdrop of the debate: Universities and Community Outreach Programmes;
2. Understanding the genesis and application of clinical legal education in Africa;
3. Sharing experiences of clinical education in different countries in Africa; and
4. New challenges and initiatives for the 21st Century.

Each of these issues is discussed separately and seriatim in subsequent paragraphs.

1. The back drop of the debate: African universities and the general community *African universities out of reach to the ordinary person?*

One of the many criticisms leveled against Universities in Africa relates to their role in social transformation. There has always existed in most developing countries, including those in Africa, the concern as to what exactly should be the contribution of the university in meeting the needs of the ordinary citizens in their search for a better life. The same question is posed to the different arms of universities including, and especially, their respective law schools/faculties.⁴

In the 1960s, a period when the process of decolonisation was sweeping throughout Africa, derogatory terms like "The Ivory Tower" or "The Highest Seat of Learning" and other similar terms were closely associated with and commonly used by the ordinary citizens when referring to their universities. Ironically too, a university like that of Makerere in Uganda, with literally "high seats" for the colonial professors, has been pegged right high up on top of one of the highest and most famous of the seven hills of Kampala. Equally notable is the University of Dar es Salaam with its "towering" white (not ivory) skyscrapers built miles away in the thin horizon of the hills, distant from and out of reach of the ordinary citizen. Not only the community but even the newly independent governments, enlightened by the new demands of independence, began to question the role of universities and their respective departments in the process of social transformation that began to sweep across the continent in subsequent years. How were the post-independence expectations emerging from these new social demands for improving the lives of the ordinary citizen to be met by the universities? Any debate on mechanisms for alleviation and eradication of Africa's most deadly enemies, poverty and ignorance, cannot ignore the concerns relating to the contribution of legal education to that important cause. The question still is: in what way has legal education done that?

⁴ For the purpose of this discussion the terms "Law Schools" and "Law Faculties" are used inter-changeably.

Current missions of universities on community outreach programmes

In developing countries, and particularly those in Africa, universities established after the attainment of independence have adopted the three fundamental functions normally attributed to universities:⁵

- producing middle and high level manpower with skills to manage the economy and government;
- conducting research into problems of development; and
- providing a focus for national, political and cultural activities.

The point to note, however, is that today universities in Africa are assigned their respective functions by the relevant statutes establishing them. What is more is that those legal functions have been supplemented by broader commitments to the service of the community as evidenced by different mission statements on the issue.⁶ Law school outreach programmes to the wider community geared towards alleviation and eradication of poverty and ignorance are, therefore, undertaken within the broader framework of respective university outreach activities.

Evidence of commitment by university law schools

A quick survey of law schools in Africa points to the availability of commitment of law schools to community outreach programmes. At the University of Fort Hare in South Africa, for example, the mission statement of the Faculty of Law states that through its outreach programme, the faculty encourages awareness and respect for citizens' rights and responsibilities, and provides legal advice and representation. In addition, the statement categorically directs the faculty to associate fully with the community to which it owes a responsibility of contributing to its welfare and developmental process.⁷

A similar mission can be found in Uganda where the law faculty of Makerere University states as its objectives, *interalia*;⁸

- To provide other university students and members of the public with quality and quantity of legal knowledge and service required in their various callings or pursuits both within and outside the country of their residence; and
- To preserve and foster the traditional role of a university in propagating knowledge both within and outside the country of its setting.

Those examples not only illustrate the degree of commitment but also the desire to contribute specifically towards knowledge and service required for the attainment of social development for the public at large.

5 As observed by Makhubu L.P, Vice-Chancellor of the University of Swaziland in her opening speech at the National Workshop on Tertiary Education held from 31 January to 1 February 1990. For details read *The Report of the Proceedings 1990 University of Swaziland* p.2.

6 For example the Mission Statement of the University of Fort Hare commits the university to ensuring that

knowledge and resources are shared with the wider community through outreach work.

7 *The University of Fort Hare Strategic Planning 1995 - 2000* at p.25.

8 *Faculty Handbook 1998/1999 of Makerere University Faculty of Law* p.7

2. Understanding the genesis and application of clinical legal education in African law schools

In earlier discussions we have dealt at length with the issues relating to the nature, genesis and fundamental characteristics of what is today generally referred to as clinical legal education.⁹ For the purposes of the present discussion only a few of the important points will be highlighted so as to understand the position generally in Africa.

Nature and genesis

Although authors differ in their definition of the term “clinical legal education”, a term originally associated with American law schools, one finds that in Africa what is commonly used are terms like “professional training”, “practical training” and more recently “skills training or development”. In a narrow sense, programmes dealing with all these terms focus on lawyer-client work by law students under law school supervision usually for credit toward the law degree. They aim at equipping law students with the necessary skills to function as lawyers and to help the lawyer-to-be with his/her emotional development so that he/she may cope adequately with the persons and institutions of the outside world.¹⁰ In the United States where clinical education was first introduced, it was associated with the medical school and involved the actual practice of the profession by students employing their skills on actual or real patients. The advantages of this system of education was acknowledged and eventually adopted by law schools in the late 19th Century to suit the needs of law students and was further employed to cater for the expanding needs for legal aid to indigent persons. The result was the emergence of a system of clinical legal education which not only served the educational needs of law students in terms of skills or practical training but also served the social needs of indigent persons in terms of providing legal services through legal aid clinics run by law schools.

The fundamental basis upon which law schools in the United States introduced clinical legal education was that in preparation for legal practice, classroom lectures were insufficient in providing practical skills without exposing the students to clinics where practical professional skills were acquired. Law schools in Africa also subsequently acknowledged this fact by introducing clinical programmes as part of their system of legal education. Instrumental in this process were Professors like Gower L C B, Twining W L, Paul, C N J and others who, during the 1960s, spearheaded and drove the process of implementing those programmes in Western Africa (Ghana, Nigeria), Eastern Africa (Uganda, Kenya) and Southern Africa (the BOLESWA countries of Botswana, Lesotho and Swaziland). In South Africa, at the time of the first international conference on legal aid held at the University of Natal, Durban in July 1983, there were only two university legal aid clinics in the country: at the University of the Witwatersrand run by staff and at the University of Cape Town run by students. The third clinic was set up at the University of Natal, Durban immediately after the conference, and thereafter there was a proliferation of legal

9 For details read: Iya, P.F: “Educating Lawyers for Practice – Clinical Experience as an Integral Part of Legal Education in the BOLESWA Countries of Southern Africa. (1994) *International Journal of the Legal Profession* Vol 1 No.3 pp.315–341. Read also Iya P.F: *Skills Development for Competent Practice of Law.*

An Analysis of the Skills Development Programmes for Lawyers in the BOLESWA countries of Southern Africa 1996 Unpublished Ph.D. Thesis especially chapter 5 pp.94–110.

10 Princes W., “Clinical Legal Education in the United States 1968-1975” (1975) *A.L.J.* p.420.

aid clinics with the result that by 1992 16 of the 21 law schools in South Africa had legal aid clinics.¹¹

Before discussing the dimension of clinical programmes in their operational details within different jurisdictions in Africa, one needs to also understand their wider social perspectives with particular reference to legal services and access to justice, the dimension of which have special features arising from the issues of poverty and ignorance of the majority Africans.

Implications for legal services and access to justice

In developing countries generally, and Africa in particular, where, as earlier indicated, there are vast economic and social differences between rich and poor and where the majority of the population are ignorant of their legal rights and do not have access to proper legal services, clinical legal education has come to play a much wider role than discussed above. Targeted are issues of poverty and ignorance of legal rights, the concerns for which are much more than what legal aid clinics can provide. Clinical programmes in Africa have, therefore, also come to encompass activities outside clinics such as dissemination of legal information with emphasis on teaching of human rights, production of simplified legal materials, training of paralegals etc. The motivation for such activities is based on the premise that law students can play a valuable role in assisting the majority poor and ignorant members of the society by satisfying their needs for access to justice through engaging in a variety of community service programmes, while at the same time acquiring legal/professional skills and values.¹²

In this endeavor law schools liaise and closely cooperate with other institutions and organisations outside the universities. The remarkable growth in the number of bodies carrying out legal services in the past ten years owes itself to a variety of prime movers at the local and international level. At the local level, for example, individuals concerned with various forms of injustices have adopted a critical and practical approach to addressing perceived injustices and have been a driving force in the establishment of organisations providing legal services. Also of significance has been the influence of organised bodies such as lawyers associations, non-governmental organisations, churches etc., with specific programmes that impact on access to justice and provision of legal services for rural and other disadvantaged communities. The role of international donor agencies and foundations in providing financial support to such organisations has also been significant in different African jurisdictions.¹³

The question, however, is to what extent are law schools committed to working with these organisations in promoting access to justice and eradicating poverty and ignorance? Given the above mission of some law schools, and in the context of that commitment, what programmes have law schools designed to achieve such noble objectives? In the view of the writer, any discussion on clinical legal education in Africa should not ignore this broader responsibility to disadvantaged communities as programmes intended for such purposes would supplement the role

11 McQuoid-Mason, D J: "Teaching Social Justice to Law Students through Community Service – The South African Experience" in *Transforming South African Universities* 1999 Alice p.76.

12 *Ibid* p.75.

13 *Report on Legal Services in Rural Areas in Africa*

published in 1997 by the International Commission of Jurists, Switzerland p.15. The report provides details of programmes run by these organisations in a number of African countries including Benin, Burkina Faso, Cameroon, Ghana, Kenya, Nigeria, to mention but a few.

of law schools in community outreach activities, thereby providing a more holistic approach to the achievement of the objectives of legal education.

3. Sharing experiences with different jurisdictions

The challenge of clinical legal education

The discussion in the immediately preceding paragraphs was intended to analyse the nature of clinical legal education by emphasising its narrow focus on acquisition of professional/practical or legal skills while also acknowledging its broader function of providing the means to access to justice through promoting legal services. The critical emerging point is that legal educators have recognised the educational value of clinical programmes and have regarded it as a crucial step towards revolutionising the educational system since these programmes have broader aims for legal education beyond its academic component found in the books, libraries and lecture rooms. The result is that by exposing students to clinical work, lawyering skills as well as professional values are not only acquired but also nurtured and developed in an atmosphere of real life.¹⁴

In addition, legal educators have come to realise that the concept of clinical legal education had to expand far beyond the legal aid clinics, the focal point for student activities, to encompass programmes of broader community needs for social development. Provision of legal services to the majority poor and dissemination of legal information to the ignorant members of the society have now become pilot schemes of clinical education adopted by and well established in many law schools the world over.¹⁵

In the context of Africa, while some law schools have ignored the above challenges of clinical legal education, others have responded to a greater or lesser degree, depending on the circumstances and demands of their respective national and institutional policies and strategies of legal education and training of lawyers. The discussion that follows is intended to explore and establish these policies and strategies in the different law schools within African countries. In doing so, reliance for information and analysis is based on the writer's extensive research in the field of clinical legal education in the Eastern and Southern parts of Africa and more particularly in South Africa.¹⁶ The subsequent discussion is, therefore, the outcome of research based on various sources including personal experiences shared with law schools, legal educators, students and all those involved in the clinical legal education movement especially in the regions stated. A summary of the gathered information in each country is accordingly provided for the benefit of general comparative analysis.

Country studies: Eastern Africa

Tanzania

In meeting the demands of access to justice a number of institutions have been established in Tanzania to provide different forms of legal services for the poor and the ignorant members of the

14 Iya, P F : "Legal Education for Democracy and Human Rights in the New South Africa with Lessons from the American Legal Aid Movement" 1994 *The Journal of Professional Legal Education* Vol.12 p.216.

15 *Ibid.*

16 The writer has worked at the Law Development Centre and Makerere University in Uganda, East Africa, at the University of Swaziland and currently at the University of Fort Hare in Southern Africa. He has written a thesis on Clinical Legal Education in the countries of Botswana, Lesotho and Swaziland (BOLESWA countries).

society. They include¹⁷: SUWATA Legal Aid Scheme for Women established in 1989 the main objective of which are to run social services for women and children and a legal aid scheme for women with legal literacy as an important component of the scheme; WILDAF/Tanzania i.e. Women in Law and Development in Africa, (Tanzania Project) established in 1990 with activities focusing on law reform projects where women are strongly discriminated against and an on mass education campaign for women; TAMWA i.e., Tanzania media Women's Association started in 1988 as an NGO has as one of its main activities the publication of SAUTI YA SITI (literally "Women's Voice"), the focus being to inform and create discussion and awareness on women's legal rights; and other minor organisations.

While occasionally law students participate in the above programmes more for employment rather than for credit as part of their skills development programme, the formal mechanism for their practical training takes place in the law school's clinical programme established in 1978 and administered by the Legal Aid Committee of the Faculty of Law of the University of Dar es Salaam. The programme has three components:¹⁸ firstly, it provides legal aid to indigent persons, concentrating mainly on legal counseling and, in selected cases, court litigation in civil matters; secondly, it promotes legal literacy activities aimed at "educating the people on vital areas of the law which have a bearing on their political, civil and human rights".¹⁹ – the publication of a bulletin in Swahili called "HAKI" (literally "justice" or "right") and training of paralegals in basic aspects of the law form important aspects of this legal literacy; and thirdly, it generates law reform activities through for example, public debates on legal policy considerations, focussing especially on human rights, questions of democracy and political participation.

Student participation, though voluntary and not for credit, is highly encouraged in view of the benefits for professional skills development and social responsibility derived from the above activities. Funding support that is received from the university and other local and international agencies evidences the seriousness attributed to the programmes.

Kenya

There are initiatives in Kenya as well, aimed mainly at providing legal services to the disadvantaged communities but with little emphasis on skills development for law students. In this regard the experiences of five organisations serve as good examples of activities directed towards eradication of poverty and ignorance: They are those of FIDA-Kenya, Kituo Cha Sheria, the ICJ Kenya Section, the Legal Services Foundation and the Institute for Education in Democracy.²⁰ The common thread of activities for all these agencies include;

- providing legal services free of charge or at very reduced cost to disadvantaged people in Kenya who can not otherwise afford to pay for the services of a lawyer;
- assisting the disadvantaged people in acquiring basic knowledge of the laws affecting them in their daily lives;
- fostering a belief in equality for all with special emphasis on gender rights;

17 For details read: Olsnes, R. 1992 *Legal Education Programmes in Southern/Eastern Africa – Report from a Study Tour* pp25–33.

18 *Ibid* p.28–31.

19 *Ibid* p.29.

20 *Report on ICJ on Legal Services in Rural Areas in Africa. Op. Cit.* pp.55-67.

- publishing legal and educational materials and otherwise to assist in enhancing the level of literacy; and
- promoting Kenyans to become better citizens.

Whilst the methods used may reflect a movement away from legalistic approaches, the content of the above objectives is largely reflective of orthodox and individual-centered legal aid concerns. The problem however being that student participation in these activities in the narrow sense of the clinical legal education programmes appears minimal. No available literature associates these programmes with law students who should be benefiting from them for skills development purposes. Nevertheless, a country where the majority of the people have no access to lawyers or to legal information as a whole, the limited role (to the exclusion of student's participation) of legal aid and emphasis on increasing people's awareness of the law needs some commendation. Hopefully, emphasis on student's participation as part of skills development programmes will be realized and implemented sooner than later. The role of the Kenya Law School and the faculty of law of Nairobi University in this regard should necessitate a review of their present curricula.

Uganda

Unlike Kenya, the policies and strategies for clinical legal education programmes are more comprehensive in Uganda. There is involvement of a variety of organisations including FIDA-Uganda in implementing programmes of access to justice, but issues of clinical legal education are more prominently associated with Uganda's Law Development Centre, an institution charged, amongst others, with the legal duty of providing legal aid and advice to indigent litigants.²¹ The basis for this is a report by Professor Gower which recommended as follows:

*“One valuable method of instruction, and at the same time a valuable social service, and one obviously needed in Uganda, is the running of a legal aid clinic in connection with the (bar) course... At this clinic, the student under the watchful eye of a qualified supervisor, would interview, advise indigent litigants and, ideally, carry out any necessary correspondence and negotiations on their behalf”.*²²

What resulted from this recommendation was the establishment of the Centre with the function of organising and conducting courses of instruction for the acquisition of legal knowledge, professional skills and experience by persons intending to practice as attorneys.²³ While noting the importance of this function as the basis for introduction of clinical programmes in Uganda, it is also important to note that it was the Centre and not the Law School at Makerere which was vested with that responsibility, the reason being the acknowledgment by the then government of the distinction between the academic or intellectual legal education at the University and the professional or practical skills training at the Centre as an independent vocational training institute. The Law Development Centre Act of 1970 was meant to effect this separation.

²¹ Section 2 (1) (e) of the Law Development Centre Act, 1970.

²² See paragraphs 64-5 of Sessional Paper No.3 of 1969 on Government Memorandum on the Report of a

Committee Appointed to Study and Make Recommendations Concerning Legal Education 1969 Government Printer, Entebbe, Uganda.

²³ Section 2(1) (a) of the Act.

In discharging its statutory obligation with particular reference to clinical legal education, the Centre's mission is "to enhance the professional training of post graduate law students at the Centre and promote the lawyer's role of service to the community through practical experience based on learning and legal representation of needy persons".²⁴ To that end two activities currently exist in pursuit of its clinical legal education programme:²⁵

- ensuring that postgraduate law students at the Centre acquire practical training through real-situation cases so that they can, under supervision, interview indigent litigants, advise them, carry out any necessary correspondence and negotiations on their behalf and hopefully represent them in courts (Magistrates' Courts only);
- ensuring the education of the general public with regard to their legal rights and duties.

Due to logistical problems the above activities were set in motion only in 1998 through the generous donations of the American Bar Association and the United States Information Service. There is no available literature to suggest that student participation in these programmes is compulsory and for credit, but one can understand the fact that since the activities are still at an initial stage, more will have to be done to ensure effective student participation if the noble objectives are to be realised.

The BOLESWA countries of Southern Africa

*A General Overview*²⁶

The term "BOLESWA countries" refers to the three countries Botswana, Lesotho and Swaziland. They are lumped together in this discussion not so much because they all are located in the southern region of Africa but more importantly because they have a common origin of legal education and also because they are currently struggling to establish (as is the case with Lesotho and Swaziland) or (as is in the case of Botswana) strengthen their programmes of clinical legal education as discussed below.²⁷

Prior to the split of the then University i.e. the University of Botswana, Lesotho and Swaziland in 1975, practical training had two main components: through procedural/adjectival courses involving teaching in the final year of the LLB of practical courses like Laws of Evidence, Criminal and Civil Procedure and Administration of Estates; and through limited skills' development courses like Moot (Appellate) Court and Mock Trial Practice, Conveyancing, Notarial Practice and Legal Research. With the attainment of independent status, each university took steps to improve on and initiate new programmes to strengthen the already available activities of clinical education. The progress made has varied from one university to another as illustrated by the following experiences.

24 *The Legal Aid Clinic 1999 (Flyer) Publication of the Centre p2.*

25 *Law Development Prospectus 1999/2000 p.100.*

26 For a detailed discussion read: Iya, PF "Educating Lawyers for Practice – Clinical Experience as an Integral Part of Legal Education in the BOLESWA Countries of Southern Africa" in 1994 *International Journal of the Legal Profession* Vol 1 No.3 pp.315–342.

27 *The origin relates to the establishment in 1964 at Rome in Lesotho of the Department of Law to serve as the focal point of legal education for the three countries in the then University of Basutoland, Bechuanaland and Swaziland. It is this humble beginning which laid the foundation to the establishment of the law faculties/departments of the current respective universities of Botswana, (1982) Swaziland (1975) and the National University of Lesotho (since 1964).*

Universities of Swaziland and Lesotho

In 1986 the Council of Swaziland Churches established a Department of Legal Aid mainly to educate people on their rights according to the laws of the country. This programme was, however, supplemented by a very limited activity of representation in litigation for people who could not afford to pay lawyers. Another activity of a limited nature was participation in research into laws related to the Department's work, namely family law issues, including child maintenance, marital problems like divorce, custody, inheritance etc.²⁸ The cooperation that was eventually established between this Department and the Department of Law of the University availed the law students the opportunity to a wider scope of clinical education.²⁹

The nature of the cooperation and student participation started in 1990 when law students were allowed to engage in the work of the Legal Aid Department (LAD) on a voluntary basis. The aim was to use the project as a stepping stone to a comprehensive clinical programme for the law students. In describing the students' contribution and benefits derived from the programme it is stated as follows:

*"It is very good to make use of students. It enables LAD to do more educational work, and it is also an advantage for the students to acquire some practical skills and to learn about the legal problems of people in Swaziland through experience. From having participated in various seminars, it is our impression that the students do a good job giving talks in a clear and confident way and making the audience respond".*³⁰

Despite this favourable evaluation, the programme clearly remains far from the type of a comprehensive programme of clinical education that one would expect students to participate in.³¹ Nevertheless what is offered for the law students in Swaziland can not be compared to the situation in Lesotho where no such programme exists.³²

University of Botswana

A typical example of a comprehensive clinical legal education programme in the BOLESWA countries exists at the Department of Law, University of Botswana. In emphasising the need for the programme, one of the founders stated as follows:

*"In designing the new programme, the Department of Law was conscious of the fact that lawyers' competence in most, if not all, areas of law practice demands a wide range of fundamental skills. The Department, therefore, departed from the traditional approach which unnecessarily separated academic and professional education and introduced a clinical legal education built in the LLB programmes."*³³

28 Poulsen, K and Jensen, M: *Legal aid and Education in Ghana and Swaziland – A Comparative Analysis with a Human Rights Perspective* 1992 Danchurchaid, Denmark. pp.35–38.

29 The project of cooperation was initiated by the writer of this paper.

30 Poulsen and Jensen Op.Cit p.30.

31 The available report reveals that the cooperation between LAD and the Law Department no longer exists. LAD recruits only students in search of vocational employment.

32 With effect from 1999, the National University of Lesotho has transformed its system of legal education and the introduction of a comprehensive system of clinical education is expected to be implemented as from the year 2000 as part of the new system of legal education.

33 Kakuli, GM: "Experimentation in Clinical Legal Education in Botswana" The Commonwealth Legal Education Association Newsletter of October 1989, ANNEX IV p1.

The clarity of objectives is further emphasised by the depth and holistic approach in executing them, important aspects are the following:³⁴

- a) **Emphasis of practical elements of a course.** In teaching any course lecturers are required to delineate the practical elements of the course. For example, they are expected to show the students how pleadings pertaining to certain causes of action may be drafted.
- b) **Practical courses.** Procedural and other practical courses are taught at various levels of the LLB programme. These courses include:
 - Criminal Procedure
 - Civil Procedure
 - Evidence
 - Legal Ethics
 - Accounting for Lawyers
 - Conveyancing and Notarial Practice.
 - Law of Business Associations.
 - Legal Research (Dissertations)
- c) **Clinical Legal Education Programme (CLEP).** CLEP is the major vehicle that the Department employs to impart lawyering and professional skills. It has 4 components:
 - (i) **Moot court and mock trials.** Each student is required to participate in a minimum number of moot court and mock trial sessions each semester. The moot court introduces students to appellate advocacy while the mock trials introduces them to trial techniques in both civil and criminal proceedings. The sessions are usually presided over by lecturers and by experienced practitioners and magistrates.
 - (ii) **Legal aid clinic:** Each student is required to attend at the legal aid clinic 2 to 3 hours every week. The clinic enables students to experience real client-lawyer situations. Under the supervision of a member of staff, the students interview clients, give the advice on their rights and obligations and draft letters of demand as well as all the requisite pleadings, affidavits and notices. Students also attend pre-trial conferences and participate in the negotiations on behalf of 'their clients'. The students actually manage cases, short of going to court. The legal aid clinic is analogous to a teaching hospital at a medical school.
 - (iii) **Clinical Seminars.** At these seminars, skills that the students need for effective participation in the moot court and mock trial sessions, as well as the legal clinic, are taught. They include such skills as interviewing, negotiating, case management, trial tactics, and court etiquette. They also include office management and the handling of cases in specialised areas, such as divorce and motor vehicle insurance claims. Simulations as well as videos are used as instructional tools.
 - (iv) **Internship.** During their long vacations, students are placed as interns in various legal establishments, including private law firms, High Court, Magistrates' Courts, financial and insurance institutions, and police stations. They perform legal duties assigned to them by their supervisors at the place of internship. At the end of the internship, they write a

34 Iya, P: " *Educating Lawyers for Practice*: " *Op.Cit* pp.331–332.

comprehensive report on their experience. The internship helps them observe the law in action and learn by doing – thus supplementing their legal aid experience. It was also argued that the above programme would assist the students to develop the following “lawyer skills”.

- (i) analysis of legal problems;
- (ii) performance of legal research;
- (iii) the collection and sorting of facts;
- (iv) effective writing and drafting (both in general and in a variety of specialized lawyers’ applications such as pleadings, opinion letters, memoranda, contracts, bills of legislation);
- (v) effective oral communication in a variety of settings;
- (vi) performance of important lawyer tasks calling on both communication and interpersonal skills, e.g., interviewing, counseling and negotiations; and
- (vii) organization and management of legal work.

Currently, therefore, the above range of fundamental skills are being developed and strengthened within the Department’s component of practical training

*The specific experiences of South Africa*³⁵

Historical Perspectives

As already discussed, the early 1970s marked the foundation and consolidation of clinical legal education programmes in South Africa. Instrumental in advancing this process further was the first international legal aid conference held in 1983 at the University of Natal, Durban by which time the two law schools of the Universities of Cape Town (UCT) and of the Witwatersrand (WITS) were already undertaking some form of clinical programmes. It is reported that by 1987 law students in these universities were required to either take the Practical Legal Studies courses including service in the clinic, or to produce a socially relevant research paper under faculty supervision.³⁶ The relevance of the programme at Wits was positively appraised thus:

*“The requirement constitutes a quantum leap in legal education at Wits. Its impact on South African legal education could be substantial as well, since no other law school in the country has yet developed so comprehensive a clinical programme.”*³⁷

However, the same report was quick to remark that although the clinic’s teaching components, administrative system, and service delivery had generally served the objectives of the programme

35 In discussing the position of South Africa, I am indebted to the following scholars from whose reports I have derived a lot of inspiration and information as acknowledged hereunder.

(a) McQuid-Mason, D J, *An outline of Legal Aid in South Africa* (1982) Juta and Co Ltd; “The Organisation, Administration and Funding of Legal Aid Clinics in South Africa” (1986), NULSR p.189; and “Teaching Social Justice to Law Students Through Community Service – The South African Experience” 1999 *Transforming*

South African Universities Alice p.75.

(b) Gilbert, SM (passed away in South Africa while on this research) *Report on Clinical Legal Education in South Africa 1993* University of Witwatersrand and Ford Foundation, Johannesburg in South Africa.

(c) Bluemenson, ED and Nilsen ES: *Clinical Legal Education at the University of Witwatersrand – Reports and Proposals 1987* University of Witwatersrand.

36 Bluemenson and Nilsen, *Ibid* p.59.

37 *Ibid*.

well, major and immediate restructuring was necessary in anticipation of the new educational and social demands.

The above new demands were soon ushered in by the release from jail of Nelson Mandela, the former President of South Africa and their challenge required a review not only of the system of legal education but more so of clinical programmes. In response to the challenge, the Ford Foundation together with the U.S. Centre for Constitutional Rights sponsored a South Africa – US Public Interest Law Symposium in November, 1992,³⁸ the significance of which was not so much the sharing of ideas and strategies for the general strengthening of South African public interest law organisations, but rather the recognition of an opening of the doors to justice for the majority of South Africans emerging from generations of white minority domination, repression and denial of legal and human rights. In recognition of the emerging problems, further development and strengthening of clinical legal programmes were identified as important strategies. The argument in support was that a focus on the law clinics would enhance training opportunities especially for black law students and improve their accessibility to the legal profession, including improving their skills for better service. Thus restructuring and funding were identified as critical weapons to improving legal aid clinics attached to university law schools.

To that end, and since the above conference, Ford Foundation support coupled with the Attorneys' Fidelity Fund which have continued to provide financial and human resources made it possible for many law schools to establish and successfully operate legal aid clinics under the general supervision of the Association of University Legal Aid Institutions.³⁹ The degree of their success varies but the objectives of the programme in the context of South Africa remain the same, namely acquisition of legal skills, professional awareness and responsibility, promotion of social values by providing legal services to the larger society especially the majority poor; and provision of an alternative route into the profession especially for the black law graduates who serve their articles in these clinics. Today these activities form constituent parts of an integrated programme the details of which are described in the manuals prepared by each university law school clinic.

In addition to legal aid clinics as vehicles of clinical legal education, most South African law schools also have Street Law programmes as part of their broader system of clinical legal education. It has been argued that by enabling students to go out to schools and communities to teach about the law, the programme gives students an insight into the legal needs and aspirations of ordinary people.⁴⁰ Besides, the programme also compliments the students acquisition of professional values and sensitises them far beyond the formal professional ethics to broader issues of the role of law in society. The educational value of the programme is recognised by some universities which have not only established the course but also give students academic credit in the same way they do for legal aid clinic activities.

In South Africa Street Law programmes as a law course started in 1985 at the University of Natal, Durban and soon spread to other universities. Today 17 law schools offer courses in street law and their strength and development is based on funds received from the Attorneys' Fidelity Fund and the US Agency for International Development.⁴¹

38 Gilbert, SM. *Op.Cit* p.1.

39 The Association was established in 1987 and the Attorneys' Fidelity Fund which started giving support in 1988 now provides funds on annual basis including the

salary of Directors of legal aid clinics affiliated to the Association.

40 McQuoid-Mason, DJ "Teaching Social Justice... *Op.Cit* p.80.

41 *Ibid.*

Current Dynamics

The core activities of clinical legal education programmes are matters of common knowledge and practice in most law schools the world over. What has, however, taxed the minds of most legal educators especially in Africa is how to strengthen the programmes in both qualitative and quantitative terms to meet the objectives for which they were designed. In the context of South Africa, for example, it has to be appreciated that the programme has flourished amidst greatly adverse circumstances, swimming against the tide of conservatism, white supremacy, in some cases oppression and constant underresourcing. All the same, progress has been made and the most recent research reveals the following:⁴²

1. Most of the clinics engaged in general practice, although some areas of law such as divorce, motor vehicle assurance (third party) claims and deceased estates (except for very small estates), were closed to them by the law societies. The vast majority of cases involved labour matters such as wrongful dismissals, unemployment insurance and workmen's compensation for injuries; consumer law problems such as credit agreements (hire-purchase), defective products, loan sharks and unscrupulous debt collection practices; housing problems such as fraudulent contracts, non-delivery and poor workmanship; customary law matters such as emancipation of women and succession rights; maintenance; and criminal cases. During the struggle against Apartheid many of the clinics at the progressive universities were involved with civil rights cases involving pass laws, police brutality, forced removals, detention without trial and other breaches of fundamental human rights.
2. With the advent of democracy in South Africa in April 1994 the legal aid clinics are still dealing with poverty law problems, some of which, like housing, the quality of police services and social security have continued as a result of non-delivery by the new Government, partly due to inefficiencies and obstruction by bureaucrats employed by the old regime, many of whom retained their jobs as part of the political settlement.
3. One or two clinics have moved from general practice to more specialised constitutional issues. Thus at the University of Natal, Durban, in addition to the ordinary Legal Aid course there is a specialist Clinical Law course which focuses on women and children, administrative justice and land restitution. However, the majority of clinics continue to engage in general practice and fewer restrictions have now been imposed by the law societies. Furthermore the latter also allow candidate attorneys to do their mandatory internships in accredited clinics. As yet law students do not have the right to appear in the lower courts on behalf of indigent litigants, although student practice rules have been in the pipeline since 1985. It is hoped that the new Government will introduce these in the near future.
4. The Street Law programme uses a wide variety of student-centred activities in its teaching methods. These include role-plays, simulations, games, small group discussions, opinion polls, mock trials, debates, and field trips and street theatre. At a national level it hosts an annual mock trial and human rights debating competition as well as a youth parliament. Participants are high school children involved in the Street Law programmes from all nine provinces in the country. The school children come from all walks of life and a special effort is made to include children from very disadvantaged families.

To improve both quality and quantity of clinical legal education, a variety of strategies have been

⁴² *Ibid* pp.76-77 and 80-81.

put in place and continue to be emphasised, namely:⁴³

- (a) Effective teaching of lawyering skills and values and greater structuring of client service components have been enhanced by increased student participation in casework;
- (b) During the final year of the LLB, student participation in the clinics as an integral part of their legal education curriculum has been considered critical. Compulsory participation and credit allocation for work in the clinics are also ensured by many law schools;
- (c) The use of small groups for simulations, case analysis and issues discussions are also being implemented to enhance the quality of teacher-student interaction and the clinical learning process;
- (d) Articulated models for evaluating the quality of all phases of students' casework and for providing students with systematic and continuous feedback on their work characterise most clinical programmes. These models identify areas of improvement and provide direction on how that improvement may be attained;
- (e) The number of supervising attorneys; candidate attorneys who assist supervising attorneys and the rest of the supporting (administrative) staff is not only growing but programmes for their further training to improve efficiency are in place;
- (f) Community-based as opposed to faculty-based clinics have also mushroomed in an effort to extend legal services as far as possible aimed at meeting the goal of supporting greater access to justice for the nation's poor;
- (g) Street Law programmes have been integrated into academic teaching by most law schools so as to achieve the twin aims of providing students with the opportunity to acquire professional values and of disseminating legal information as part of alleviating and eradicating ignorance of legal and human rights; and
- (h) Support in terms of financial, human and material resources have continued to be received from national (e.g. Attorney's Fidelity Fund) and international (e.g. The Ford Foundation) institutions thus providing the necessary catalyst required to advance the stated goals of quality and quantity.

It is such activities as enumerated above that have combined to build the capacity of South African clinical legal education programmes, thereby increasing their potential to meet the growing demands of students in terms of improving the quality of their legal education and of society the majority of whom are still poor, let alone ignorant especially of their legal and human rights. At the end of the day, it is the millions of South Africans who will benefit from better quality education of their lawyers and greater access to justice assisted by thousands of more compassionate, well-trained lawyers for whom doors to fulfillment of their potential have been opened wide for the first time in history.⁴⁴

4. New challenges and initiatives for the 21st Century

Emerging Challenges

Despite the above revelation of successful and progressive experiences in clinical education by law schools in Eastern and Southern Africa, these developments are not without obstacles. Assessment

⁴³ For details read Gilbert , *SM Op. Cit.* pp.6-19.

⁴⁴ *Ibid.* p24.

reports have identified a variety of factors that have combined to frustrate further developments. Areas of general concern and requiring particular attention include curriculum component, client service component, staff and funding components. In our earlier evaluation the critical areas to focus improvement are:⁴⁵ more emphasis on skills development; addressing more seriously issues of quality and quantity through curriculum review; greater participation in research and publication for purposes of sharing experiences and debating areas of improvement; networking and cooperation to strengthen linkages.

While improvements in the above areas may appear more beneficial only to enhancing the educational quality of law students, in the context of challenges facing Africa, a broader approach needs greater focus. It is for this latter reason that the debate in the present paper raises issues of poverty and ignorance as emerging challenges to clinical legal education. Despite the positive democratic, socio-political and economic gains of many African states, justice will for quite some time continue to remain distant and inadequate especially in the rural areas where the majority of the African population live. The legal system will continue to be inaccessible to these people because:

- they are poor and can not even afford to pay for lawyers;
- they live far away from centres providing legal services and have very few legal resources and facilities in their communities;
- they do not know about the law, human and legal rights; and
- many lawyers are ill equipped to efficiently and competently provide for their needs for development generally.

To many of us the above sufficiently lays the basis for the challenges which clinical legal education faces and must address more directly and urgently than ever before. For that reason, any new mindset and alternative suggestion can not miss out such important considerations. Future developments in the clinical legal education movement should, therefore, focus attention towards that direction.

It has to be noted, however, that emerging challenges discussed above and the degree of their impact on social development in the various countries of Africa have been influenced by and are the result of specific social, cultural, legal, political and economic realities in the different countries. Several arguments have been advanced to illustrate this point:⁴⁶ Firstly, the dual nature of the legal system which exists in most African countries has largely resulted in people not being aware of their rights under the mostly received State Law as compared to knowledge of customary or religious law and the problem of lack of awareness has been exacerbated by limited resources for legal services; secondly; the growing focus on democracy and human rights in civic education is partly explained by the intolerant nature of most African governments during the past two to three decades; thirdly, the concerns about women's issues which has also emerged as a key challenge has to be understood in the general context of broad social practices and the patriarchal nature of most African societies which sanction the subordinate position of women. Focusing on women's legal rights is intended to improve the position of women in society by stimulating an increase in the level of awareness amongst women and the wider society in general on the problems

⁴⁵ Iya, PF: "Educating Lawyers for Practice... Op. ;Cit. pp.366-338.

⁴⁶ ICJ : *Legal Services in Rural Areas in Africa* Op. Cit. pp.17-19 presents a few of those arguments.

affecting women; and lastly (though not least) even in the area of legal education, the question of access to justice plays a major role in explaining the need for alternative strategies. As a starting point it should be recognised and emphasized:⁴⁷

- that in addition to knowledge of legal doctrines and legal methods , lawyers need knowledge of all fundamental skills and values that competent, ethical and socially responsible practitioners use in solving problems;
- that lawyers need knowledge of the art of lawyering i.e. the process of acquiring those lawyering skills;
- that a significant amount of education and training in the art of lawyering should occur in schools;
- that law students must learn the art of lawyering through reflective (critique); live-client clinical education in a realist setting under close supervision of experienced clinical teachers; and
- that professional responsibility on the part of law students require their sensitivity and positive contribution to social development through clinical programmes.

By achieving the values legal education will be seen as contributing effectively to the social transformation and development in Africa and beyond.

New initiatives

Despite differences in the level and scope of development of clinical legal education programmes among countries and within countries in Africa to meet the above values, three intertwined strategies have emerged over the years and are being utilised to achieve their objectives: education (acquisition of knowledge) and training (acquisition of professional skills values); provision of legal aid and information dissemination. It is in this context that we would like to share experiences over a few new strategies currently being experimented especially in South Africa to strengthen and develop further programmes of clinical legal education.

Towards a Progressive Integrated and Holistic Skills Development Programmes in University Law School Curricula

Many law schools of universities in Southern Africa have reviewed their curricula with a view to strengthening their clinical programmes. The review at the Law Department of the University of Botswana earlier discussed is a case in point. In South Africa, the general transformation of legal education in the context of the new dispensation has necessitated the revisiting of the status and role of clinical programmes at law schools. Although there is general agreement on the need to strengthen clinical programmes at law schools, the specific nature of and level at which such programmes should be offered has remained contentious. The position taken by a few universities, notably the University of Fort Hare supported by the Black Lawyers Association and the National Association of Democratic Lawyers, is the introduction of a progressive, integrated and holistic skills development programmes at the law school rather than as postgraduate studies at the

47 For details read Laser, GL's article "Educating for Professional Competence in the 21st Century : Educational Reform at Chicago-Kent College of Law

"Chicago-Kent Law Review (1993) Vol.68 No1 pp.244-245.

universities or various Schools of Legal Practice run by the Attorney's Association. The rationale for this position is stated as follows:

*“Developments in legal education have tended to compartmentalise the study of law into stages: academic, vocational and continuing education and have created dichotomies which have placed a wedge between scholars and practitioners. However, what is generally recognised is that such division of legal education into stages or compartments is arbitrary, unnecessary and confusing. More importantly it confuses the objectives of legal education and encourages a division within the legal profession instead of abolishing it. In the eyes of those who view legal education as a continuum such divisions are more destructive than constructive”.*⁴⁸

Currently the goal of a progressive, integrated and holistic clinical programme incorporated in the new four-year undergraduate curriculum of the LLB is being experimented not only at the University of Fort Hare with a similar programme like that at the University of Newcastle in Australia but also at the Universities of Natal, Durban and Potchesstroom.⁴⁹ The distinction between this programme and that at the University of Botswana and other similar programmes, is its progressive nature i.e. the teaching of skills being available and integrated at every level/year of the four year curriculum.

Teaching Social Justice Through Clinical Programmes

Clinical education of law students is said to achieve the following objectives: professional ethics/responsibility, acquisition of skills, substantive law and jurisprudence, policy, law reform and community service.⁵⁰ Whereas other jurisdictions outside Africa have introduced other socially related teaching goals when using a clinical teaching method, in Africa such an approach has not featured prominently.⁵¹ Currently the law school of the University of Natal, Durban is engaged in the experimentation of teaching social justice through clinical programmes, the initiator of which defines social justice as the concerns for satisfying the needs of society for fair distribution of health, housing, welfare, education and legal resources including distribution of such resources on affirmative action basis to disadvantaged members of the community.⁵² The initiative involves teaching methods far distinct from the traditional systems used in legal aid clinics and Street Law programmes.

48 Iya, PF “Strategies for Skills Development: The Fort Hare Experience in Curriculum Design for the New LLB” 1998 the Journal of Professional Legal Education Vol.16 No.1 p.142.

49 For details of the experiment read : Iya, PF “Strategies for Skills Development...”Ibid pp.137-149.

50 Rice, S: A Guide to Implementing Clinical Teaching Method in the Law School Curriculum 1996 Centre for Legal Education, Australia pp.21-30 (focussing on teaching goals when using a clinical teaching method.

51 For experiences in other jurisdictions outside Africa Read Gold, N: “Legal Education, Law and Justice: The clinical Experience” (1979-80) 44 Saskatchewan Law Review p.97 and Quigley, F: “Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics” (1995) 2 Clinical Law Review p.37.

52 McQuoid-Mason, DJ: Transforming South African Universities – Op. Cit p75. He further describes the details of implementation in his article.

Compulsory Community Service by all Law Graduates

The debate on clinical education received a new dimension when the President of the Constitutional Court of South Africa recently argued that in view of the substantial contribution made by the State to the cost of university education, the advantage flowing from a professional degree which has been subsidised by the state's contribution, and the need for practical training after the completion of the four-year LLB degree, there are compelling reasons why practical training should be combined with service to the community as public defenders or staffers of legal aid clinics. He was addressing a workshop of a Legal Task Team consisting of legal experts appointed by the Minister of Justice to review legal aid programme in the wake of failure by the Legal Aid Board (of South Africa) to meet the demands for legal services. He argued in support of internship programmes for lawyers similar to that being effected for graduate doctors in the medical profession. Under the project, graduates have to do one year compulsory community service as part of the Government's plan to provide legal services to the community while at the same time providing a perfect opportunity to develop well-rounded legal (or medical) skills that would otherwise not be possible in the teaching at the university. In the case of doctors the relevant legislation is in place. The same is being proposed for law and pharmacy graduates.⁵³

South African Universities Pilot Projects: Towards Establishing Justice Centres

One needs no emphasis on the fact that from a socio-economic and political perspective, apartheid created and sustained a discriminatory culture against the African masses. Those hardest hit are rural and township dwellers and especially the youth in these areas bear the brunt of these injustices and inequalities. In addressing the particular challenge students from different universities have initiated a pilot project aimed at establishing a culture of community service in the Higher Education Project.⁵⁴ From the success of such a project a Justice Centre involving interdisciplinary activities will hopefully emerge to meet the social and legal needs of the rural community.

The relevance of this pilot project to clinical education is the opportunity of participation of law students in these projects for purposes of enriching their commitment to community service. Besides, getting to make decisions on their own and becoming multi-skilled in a variety of ways are invaluable experiences consistent with the broad goals of clinical legal education.

The above-mentioned initiatives are by no means the only steps taken by legal educators and others. However, they are indicative of the commitment on their part to advance further the cause of clinical education for the benefit not only of law students but also the wider African community especially those seriously disadvantaged by the evils of poverty and ignorance.

Conclusion

Down the line of the last 40 years of independence of African countries, concerted efforts have not only been directed towards commitments to democracy and social transformation for a better life for Africans, but the same have also been confronted with perennial problems and challenges

⁵³ Details discussed in the *Sowetan (South Africa)* of 15 October, 1999 (Section on Politics) p.2 and also in the *Mail and Guardian (South Africa)* of 21 January 2000.

⁵⁴ For details read: Mecoamere, V: "Universities Pilot Projects" *Sowetan* of 31 August 1999 p.4 and Khumalo, S: "Wakeup and take and interest in the Community" *Sowetan* of 26 August 1999 p.14.

the result of which is the emerging search for options for a better future in the 21st Century and beyond. Poverty and ignorance rank very high amongst those obstacles of social development and the fight for their alleviation and/or eradication has tasked the efforts not only of governments but international organisations, NGOs and other institutions which had to address these problems. The present discussion has revealed that African universities through their mission statements have indicated their commitment towards social development and their various institutions of legal education have risen to the same challenge.

Legal Education is one area where the challenge has generated some concerns as to the extent to which it can or actually does contribute to social transformation. In that context it became necessary in this paper to establish the role of clinical legal education generally and its contribution to and impact specifically on alleviating and/or eradicating two of Africa's most "deadly" evils - poverty and ignorance. The analysis and arguments in this paper go to show that the importance of clinical legal education programmes in that regard have not only been realised and appreciated, but their implementation have also been affected in several countries throughout Africa. The experiences of those programmes in East and Southern Africa have revealed that there are variations in the implementation aspects within the different countries, although there is also much in common with regard to objectives and areas of concern. The fact that the programmes have different strengths and weaknesses make them, in our view, relevant activities to learn from one country to another with the purpose of advancing their scope and quality implementation strategies. The value of comparing these experiences is to learn from each other's successes and shortcomings, a healthy process for addressing the challenges facing clinical education.

The present paper does not claim to have achieved much by way of introducing change. The little there is, if any, goes to strengthen the hope that the discussion contained herein will successfully prompt further debate, further experimentation and continued support, taking into account the benefits to be derived from the programmes by the students and society generally in the process of achieving education and training as well as fighting poverty and ignorance. All these call for constant reviews of existing programmes based on properly researched findings and for networking and cooperation to achieve successful implementation of all clinical programmes.