

RE-THINKING UNIVERSITIES' LEGAL AID CLINIC

*A CONTRIBUTION AT THE SECOND ANNUAL LEGAL AID FORUM
CONDUCTED BY THE REVOLUTIONARY GOVERNMENT OF ZANZIBAR
PRESIDENT'S OFFICE CONSTITUTION, LEGAL AFFAIRS, PUBLIC SERVICE
AND GOOD GOVERNANCE (POCLAPSGG)-THE DEPARTMENT OF
CONSTITUTION AND LEGAL AID IN COLLABORATION WITH THE LEGAL
SERVICES FACILITY (LSF) AT THE STATE UNIVERSITY OF ZANZIBAR
TOURISM CAMPUS, HALL-MARUHUMBI*

13TH -14TH DECEMBER 2022

Presented by Barnabas Pascal Nyalusi

PAPER CONTENTS

- 1.0 Introduction
 - 1.1 Definition of terms
 - 1.1.1 Legal aid
 - 1.1.2 Clinical Legal Education
 - 1.2 Back ground of legal aid clinic in Tanzania
 - 1.3 Development of legal aid clinic
 - 1.4 The role of legal aid clinic
- 2.0 The importance of law clinic in legal education
- 3.0 Legal framework on legal aid
- 4.0 Legal aid and clinical legal education in universities in Tanzania
 - 4.1 The University of Dar es Salaam
 - 4.2 Ruaha Catholic University
 - 4.3 Mzumbe Univeristy
 - 4.4 University of Iringa
 - 4.5 University legal aid clinic a lesson from Makerere University
- 5.0 Re-thinking universities legal aid clinic
 - 5.1 Inclusion of legal aid in curriculum
 - 5.2 Clear universities policy on legal aid
 - 5.3 Law clinic rather than just legal aid
 - 5.4 Community engagement
- 6.0 Way forward

RE-THINKING UNIVERSITIES' LEGAL AID CLINIC

BY: BARNABAS PASCAL NYALUSI¹

1.0 Introduction

Legal aid is an inevitable component in access to justice to all. It assists the indigent and underprivileged to easily access justice. When legal aid is guaranteed, justice will easily be accessed as a result, other human rights will be enjoyed. Access to justice ensures and guarantees the Constitutional protected right to equality before the law.

Schools of laws and law faculties at universities are key stakeholders in the provision of legal aid for the needy. This may be done by establishing legal aid clinics. The clinics will not only enable students to be equipped with necessary technical and practical know-how in handling, advising, and solving clients' legal problems, but also will be an opportunity for the society to acquire legal assistance from the clinics from the students under close supervision by lecturers and experienced practitioners.

This paper's contribution focuses on re-thinking universities' legal aid clinics. A background of legal aid clinics will be discussed after key terms are defined; thereafter, the importance of law clinics in legal education will be discussed, and a legal framework on legal aid will be given, and a few selected legal aid models in selected universities in Tanzania will also be discussed, and a way forward will be suggested.

¹ LLB-Mzumbe University, LLM-Stellenbosch University, P.hD candidate (University of Dar es Salaam, Assistant lecturer Ruaha Catholic University Iringa Tanzania, Advocate of the High Court of Tanzania, and Accredited Arbitrator

1.1 Definition of key terms

1.1.1 Legal Aid

Legal aid is defined as free or subsidized legal services to indigent or vulnerable people to enhance their access to justice.² This is a narrow sense of the term legal aid, in a wider sense, legal aid is construed as a basic constitutional and human right in particular the right to equal access to justice. Therefore it is defined as a mechanism or device that ensures that opportunities for accessing justice are not denied to any person by reason of poverty, illiteracy or lack of other means³. Legal aid may through legal clinics be used as a tool to improve academic achievement for law students⁴.

The constitution of The United Republic of Tanzania⁵ is the foundation of legal aid. Under Article 13⁶ the right to equality before the law is provided, this entails the right to access to justice which for the indigent and under privileged can best be guaranteed through legal aid.⁷

² The University of Dodoma Legal Aid Centre

³ Dr. Angelo M. Mapunda, (2012) Approaches to improving quality Legal aid Services in Tanzania, A paper presentation at work shop organized by LSF and Government of Denmark and the Government of The United Republic of Tanzania

⁴ Ibid The University of Dodoma Legal Aid Centre

⁵ Article 13 of The Constitution of the United Republic of Tanzania 1977, see also section 12 of The Revolutionary Government of Zanzibar 1984

⁶ Ibid

⁷ The Kenyan Constitution has expressly guaranteed access to justice. Under article 48 and 50

The Tanzania Legal Aid Act⁸ does not define legal aid, but it defines **legal aid services** to include the provision of legal education and information, legal advice, assistance or legal representation to indigent persons.⁹

1.1.2 Clinical Legal Education

Though there might be no single definition of the term Clinical Legal Education (CLE), different authors have attempted to define the term. R. Grimes¹⁰ defines CLE as;

“A learning environment where students identify, research and applies knowledge in a setting which replicates, at least in part, the world where it is practised.... It almost inevitably means that the student takes on some aspect of a case and conducts this as it would ... be conducted in the real world.”

CLE may also be defined as a method of practical teaching which is allowing students to actively work on real cases and involving them in legal aid projects¹¹. In legal clinics students are taught how to use the abstract and theoretical information while solving real juridical disputes, putting it different it entails putting law school student's theoretical information to practice.

Clinical legal education provides students with real life work experience by involving them to work in the real life cases under the supervision of lecturers and practitioners. While helping the needy, students learn about their professional responsibilities, gain exposure to the real problems faced by individuals in the society.

⁸ The Legal Aid Act, Cap 21 R.E 2019 also see section 2 of the Zanzibar Legal Aid Act Of 2018

⁹ Ibid S 3

¹⁰ R. Grimes, “The Theory And Practice Of Clinical Legal Education” in J. Webb and C. Maugham (eds.) Teaching Lawyers' Skills (1996) at p 138

¹¹ Alper Uyumaz & Kemal Erdogan (2015), The Theory of Legal Clini in Education of Law, Elsevier Ltd, <http://creativecommons.org> accessed on the 02nd December 2022

The elements of CLE include; it is linked to a law school, the mode of instructions involve real facts taken from real cases, and participants are exposed to experiential learning (students represent actual clients) as well as class room based pedagogy (instructions from lecturers).¹²

1.2 Back ground of University legal aid clinic in Tanzania

Legal aid can be traced back in 1967 at the Faculty of Law University of Dar Es Salaam (Now the School of Law) and it started as Legal Aid Committee.¹³ The committee was appointed by The Faculty of Law of the University of Dar es Salaam to look into and propose ways of expanding certain legal aid facilities which existed in fact, although not in law.¹⁴

The committee worked hand in hand with the Tanganyika Law Society (TLS) through its legal aid scheme (which had an employed advocate working for the scheme).¹⁵ Members of the Faculty of Law, students and the advocate from the TLS worked in the clinic by providing legal assistance for the needy. The committee first had set up a centre in Magomeni Dar Es Salaam where services were rendered once a week at evening hours, later on another station was set at Temeke Dar Es salaam.

In 1972 the legal aid program conducted by the legal aid committee became virtually non-existent and the only source of legal aid by then was the legal Aid (Criminal Proceedings) Act of 1969. A number of factors were responsible for this failure including; low level of public response, intervention of university vacations and the pressing need for students to prepare for examinations

¹² Open Society Justice Initiative (2009) www.justiceinitiative.org

¹³ Kapinga W.B (1985) "A survey of voluntary legal assistance for the poor in Tanzania" Third World legal studies, Vol. 4 Art 12 <https://scolar.valpo.edu>

¹⁴ Ibid

¹⁵ Ibid p 179

especially during the 3rd term, the in accessible location of the clinic, office opening hours not being friendly for prospective clients and the public not being litigious.¹⁶

The program resurrected in the second half of 1979 and by 1985 the legal aid committee was doing much better because some of the lecturer was already enrolled into the Bar as advocates of the High Court of Tanzania. But the legal aid was neither mandatory to students nor on the duty list to lecturers.¹⁷

The legal aid committee apart from issue legal advice and representing clients , it also issued a bulletin know as HAKI in 1981 which was mainly aimed at publicity if the committees activities and sensitization of the general public on legal issues, the committee also conducted outreach programs.¹⁸

Apart from the legal aid committee of the Faculty of Law University of Dar es salaam, other faculties of law in universities that came after the University of Dar es salaam Faculty of Law did not set up legal clinic. Most of the university use either students' law societies or human right centres at the universities as law clinics. In 2016 the University of Dodoma school of law established the University of Dodoma Legal aid centre.

1.3 Development of legal aid clinic

In the context of CLE legal aid should be understood as both a tool to provide free legal assistance to eligible individuals or groups mainly the poor and vulnerable as a means to strengthen their access to justice and as a tool to enhance academic achievement for students participating in provision of legal aid under the supervision of the clinic.

¹⁶ Ibid p 181

¹⁷ Ibid p 184

¹⁸ Ibid p 189

CLE entails two denominators; the delivery of legal services (actual or simulated) and the participation of law students acting under professional supervision where necessary.¹⁹ The structures enable each student to receive feedback on their contributions where they get an opportunity to learn from their interactions with clients, supervisors, their fellow students and the ethical dimension of the issue raised and the impact of the law and legal processes.

Legal clinics involve the combination of legal information, advice, casework representation to client on an individual basis, but may also include different models such as public legal education, research, projects and externships.²⁰

There are two dimensions to the development of legal aid clinics;

The organization dimension which concerns how clinics are run. Under this dimension factors to be considered are such as whether students' engagement is compulsory or on voluntary basis, whether activities are assessed and whether the focus of the clinic is primarily social justice or just student learning.

The activities dimension which concerns the physical location of the clinic (whether on campus or within the community) service offered whether generalist legal advice or more specialist legal advice, whether the services include public education about legal rights as opposed to advising only an existing problem.²¹

The decision on what modal to undertake highly depends on factors such as; availability of personnel who are professionals to act as supervisors; the location of the campus and the funding of the program.

¹⁹ Linden T & Nick J (Eds) (2020) The clinical Legal Education Handbook, Institute of advanced legal studies, University of London Press, p 8

²⁰ Ibid p 9

²¹ Ibid

Schools of law must consider the following before developing a model for CLE

- Who do you want to work with and why?
- What will be the staffing model of the clinic? Will you offer appointments or drop-in-basis? Will you use your staffs only?
- Will the clinic offer advice and/or filing only or will you go as far as representation?
- How will you incorporate flexibility within the clinic, not only for clients and lawyers but also students? Consideration like time for other classes and attendance to the clinic by the students (crush of classes) , time for attendance of clients and time for attendance for practitioners and other professionals.

2.0 The importance of legal aid clinic in legal education

Legal clinic not only exposes the students to practical aspect of a lawyer's work but also has many positive impacts on legal education generally. Some of the importances of legal aid clinic to legal education include;

Development of students' skills and awareness. Students can gain research skills, note-taking skills, drafting skills, interviewing skills, team work, time management, client care, ethical awareness, emotional intelligence and professional responsibility. Students can be exposed to gain confidence through situations that might take them outside of their comfort zones. Through legal clinics students will be exposed to practical aspects of the law and prepare them for a variety work processes with diverse client groups and service users.

Professional insight: through legal clinics, students are afforded to a greater hands-on-insight into legal profession, this is because at the law clinics students are supervised by experienced law professors and practitioners

Community engagement; clinics will afford the community to be engaged by receiving legal advise and assistance. This will be a way of the university to contribute positively to the local community

3.0 Legal frame work of legal aid

There are several legislation and international treaties and conventions both international and domestic that provide for and regulate legal aid. Some of the conventions which Tanzania is a signatory and legislation are discussed below;

The Universal Declaration of Human Rights 1948 (UDHR); article 7 of the UDHR is to the effect that;

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and any incitement to such discrimination.”

This article is incorporated in the Constitution of the United Republic of Tanzania 1977. Equality before the law entails access to justice to all whether indigent or not.

International Covenant on Civil and Political Rights (ICCPR) of 1966; article 14(3)(d) provides for the requirement for a person to defend himself through legal assistance of his own choosing right to be informed of the right to be informed of a right to have legal assistance without payment by him if he does not have sufficient means to pay for it.

The African Charter on Human and People Rights 1981: Article 3 provides that every individual shall be equal before the law and every individual shall be entitled to equal protection of the law. The African Charter more or less works out as a follow-up to UDHR and ICCPR and it elaborates the human rights much broader in the African context.

The Constitution of the United Republic of Tanzania 1977; the Constitution incorporated the Bill of Rights, specifically Article 13 provides for equality before the law. To ensure equality before the law, there must be a readily access to justice for all. and access to justice to all entails access to justice to all individual despite of their economic situation (indigent), illiteracy or lack of other means.

The legal aid act No. 21 of 2019: this is an act to regulate and coordinate the provision of legal aid services to indigent persons, to recognize paralegal to repeal the legal aid (Criminal Proceedings) Act and provide for other matters related to legal aid services.

The Tanganyika Law Society Act Cap 307: section 4(e) of this Act provides that, one of the objects of for which the Society is established is to protect and assist the public in Tanzania in all matters touching ancillary or incidental to the law. And section 17 empowers the council of the Society to establish committees through this powers the Legal aid committee is establish to receive applications for legal aid from qualified individuals, and once the applications are received and evaluated the committee appoints members to handle the matters on *probono* basis.

The Judicature and Application of Laws (Legal aide in Civil proceedings) Rules 2019 GN No. 153 of 2019: the rules specifically under rule 3(1)(a)(b) provide among other things that, where it appears that a party in civil proceedings is indigent and the interest of justice requires that person to have legal aid, then that party shall be provided with legal aid.

4.0 Legal aid by legal clinic in selected universities in Tanzania

Most universities offering Law degree have legal aid clinics. Almost all the clinics are attached to the faculties of law/school of law at the particular University. Some of these Universities and their clinics are discussed below and at the end; a lesson from Makerere University will be displayed.

4.1 The University of Dar Es Salaam

This is the oldest legal clinic in the country. It was established in 1967 and it was set up as Legal Aid Committee which by then worked hand in hand with the Tanganyika Law Society Legal Aid Scheme.²² It started up by setting up offices outside the university where members of the Faculty

²² Ibid Kapinga W.B p179

of Law, students and TLS advocates volunteered by providing legal assistance to the needy.²³ Currently the legal aid clinic is attached at the School of Law where it is headed by the school staff supervising students in issuance of legal aid to the needy in specified days.

4.2 Dodoma University

The University of Dodoma Legal Aid Clinic (UDOM-LAC) was established as a unit in the school of law in 2016 with an objective to provide legal aid and assistance to eligible and needy people and train students in the provision of legal services to clients. The services provided preparing manuals and toolkits for effective discharge of legal services, regular training and orientation to students and paralegals, court representation and preparation of documents, carrying out studies and consultancies, building knowledge base and information in respect of legal aid services.

The UDOM-LAC is registered as a legal aid provider. The UDOM School of Law has set-up an auditorium for legal clinic operations among other things. School staffs and students are working at the legal aid clinic on a volunteering basis.

4.3 Ruaha Catholic University

There is no specific legal aid clinic. Legal aid is provided under the auspices of the Ruaha University Human Right Centre and the Faculty of Law students' Law Society. The Human Right Centre is registered as an NGO with Board of Directors with objectives to advance human rights and economic rights through advocacy, research, outreach and legal aid.

The Students' Law Society is a student organized society with membership from all the students undertaking Law and coordinated with two faculty of Law lectures. The Society conducts legal aid in selected days per semester especially on the law day of the faculty and on specified events organized by the society or the faculty.

²³ Ibid p180

4.4 Iringa University

Legal aid clinic is under the University of Iringa Students' Law Society under the supervision of Faculty Staff who is a coordinator. The Society conducts legal aid by outreach programs to surrounding community and providing legal advice to the needy. The law clinic is availed with an office that is open all the working days for the needy and if the client needs representation the coordinator is consulted.

4.5 Mzumbe University

The Mzumbe University Legal Aid Clinic was registered as a legal aid provider in 2019 to provide legal aid within Morogoro region. The clinic provides legal aid through providing advice and counseling to the needy in the neighborhood every Friday at the clinic located at the Faculty of Law building.

The clinic conducts outreach programs and offers court representation using the faculty of Law staffs who are advocates. The clinic also liaises with Morogoro Paralegal Centre (MPLC) who refer clients who are in need of court representation.

At the moment the clinic does not involve students in its operations. The plan is to expand and use the clinic as a learning tool and introduce court studio.

4.6 University legal aid clinic a lesson from Makerere University

At Makerere University Legal aid clinic is set up at the School of Law, legal aid is set up as a course offered to law students. Clinical Legal Education (CLE) is offered as Law 411 offered in year four semester one. It is a practical course that exposes students to real legal and court room practice. The course covers the skills and procedures that are necessary for legal practice.

Though the course the students learn by practice by participating in real cases as advisors, defendants or plaintiffs. Students are closely supervised by faculty members, legal practitioners and experts in the field of law. The clinic under the scheme is both a learning tool and a legal aid clinic.

5.0 Re-thinking universities legal aid clinic

The Universities legal aid clinics are not only supposed to just combine theory and practice, they need to go a mile further by extracting lessons from real cases, closely supervise students and have a clear policy on legal clinics. Universities have to re-think on legal aid clinics from their set up to their operation and sustainability.

The practical aspects of legal education may be imparted to the students through various activities such as; simulations example moot court, mock trials, negotiation exercises, clients interviewing exercises, transactions exercises and legal writing and drafting programs. Through placements; internships and externships programs to firms, courts and to other practitioners.

The following are some suggestions on how to have better legal aid clinics.

5.1 Inclusion of legal aid in curriculum

There is a need to integrate clinical legal education into existing legal education curriculums. Clinical legal education should be an independent course where students will have to acquire course works and sit for exams and should be assigns credits for the same. This could be a final year course where the students have already covered enough general law subjects.

5.2 Clear universities policy on legal aid

The Universities offering Law program should have a clear policy on Provision of legal aid to the community through legal aid clinics. These clinics may be established as units in the faculty/schools which should be provided with an independent budget for running the clinic.

5.3 Law clinic rather than just legal aid

Faculties of Law and Law schools should have Law clinics rather than just legal aid programs. The law clinics should be well equipped and faculties should find a way to make the participation in the law clinics compulsory for the students and lecturers. By establishing academic credits for students and incentives for the lecturers.

5.4 Community engagement

Even though law clinics will be established at universities, if the community is neither informed nor engaged then it will be of no use. The community should be well informed about the working of the clinic and they should be well informed of the advisory role of the clinics and other legal works and even litigating the cases. If the community is well engaged then the clinics will perfectly work and be useful.

6.0 Way forward

Forums like this should be conducted as often as possible to sensitize the public and stake holders in the provision of legal aid. I commend the efforts by The Revolutionary Government of Zanzibar specifically The President's Office Constitution, Legal Affairs, Public Service and Good Governance (POCLAPSGG)-The Department of Constitution and Legal Aid and The Legal Services Facility (LSF) for organizing and facilitating this event.

Universities offering Law, Law Societies (TLS and ZLS) should have special outreach programs for paralegals as they are the centre for legal assistance as they are from the community and the communities trust them and work more freely with them. Paralegals should be treated as special ingredient towards the well prepared *legal aid meal*. Young practitioners (junior practitioners) should be encouraged to have the spirit of giving legal assistance in form of legal aid this should be cultivated from universities and law schools.

The Government through the respective Ministries should subsidize provision of legal aid. The subsidy should not only be during the legal aid day only usually at the beginning of a judiciary calendar year but should be at constant and defined modality.

Practitioners should be encouraged to register as legal aid providers as per the requirement of the Legal Aid Act. This will make provision of legal aid smooth and reliable. The more legal practitioners registered as legal aid providers the more access to justice for the indigent and needy.

REFERENCES

Angelo M. Mapunda, (2012) Approaches to improving quality Legal aid Services in Tanzania, A paper presentation at work shop organized by LSF and Government of Denmark and the Government of The United Republic of Tanzania

Alper Uyumaz & Kemal Erdogan (2015), The Theory of Legal Clini in Education of Law, Elsevier Ltd, <http://creativecommons.org> accessed on the 02nd December 2022

Donald Nicolson (2016) Donald Nicolson's matrix for plotting clinical models, "our roots begal in South Africa" Modeling Law Clinics to maximize social justice ends", International Journal of Clinical Legal Education 23(3), 87-136

Grimes, (1996) "The Theory And Practice Of Clinical Legal Education" in J. Webb and C. Maugham (eds.) Teaching Lawyers' Skills

Kapinga W.B (1985) "A survey of voluntary legal assistance for the poor in Tanzania" Third World legal studies, Vol. 4 Art 12 <https://scolar.valpo.edu>

Linden T & Nick J (Eds) (2020) The clinical Legal Education Handbook, Institute of advanced legal studies, University of London Press, London

Open Society Justice Initiative (2009) www.justiceinitiative.org

The Revolutionary Government of Zanzibar, The Ministry of Constitution and Legal Affairs, (2020) the Legal Aid Baseline Assessment Report of 2020