

DJ McQuoid-Mason

Access to justice and the role of law schools in developing countries: Some lessons from South Africa: Part 2: 1990 until the present*

Abstract of Part 2

Access to justice in South Africa improved dramatically during the 1990s, especially after the introduction of a constitutional democracy in 1994. Although the Constitution guarantees access to legal representation in criminal cases this has posed new challenges for law schools and law clinics regarding civil cases. The right to legal representation in civil matters has not been tested in the Constitutional Court, and the burden of providing this service is increasingly falling on NGOs and law clinics, particularly in respect of social and economic rights. This has led to exciting new opportunities such as law clinics and NGOs entering into formal partnerships with the state-funded legal aid scheme to assist in the delivery of legal services and advice. As a result law clinic operations have become more focused and more sophisticated. At the same time "Street law" programmes are assisting the government in achieving its mission of promoting a culture of legality, human rights and democracy. The South African experience is that law schools in developing countries can make a significant contribution to access to justice in both repressive and democratic political environments. They can do likewise in educating ordinary citizens about their legal rights. What sets developing countries apart from developed countries is that law schools in the former have a special duty to serve their communities. This is because they often operate as a privileged island in a sea of scarce resources, particularly when it comes to providing access to justice for the poor.

Toegang tot die regstelsel en die rol van regsskole en regsfakulteite in ontwikkelende lande: sekere lesse uit Suid-Afrika: Deel 2: 1990 tot die hede

Toegang tot die regstelsel in Suid Afrika het dramaties verbeter sedert die 1990's. Dié verbetering het gevolg na die instelling van 'n konstitusionele demokrasie in Suid-Afrika. Die Grondwet waarborg toegang tot regsverteenvoording in strafsake. Regsverteenvoording in siviele sake het nuwe uitdagings gestel vir regsskole en regshulpklinieke. Die reg tot regsverteenvoording in siviele sake is nog nie getoets in die Konstitusionele hof nie. Die las om hierdie dienste, veral met betrekking tot sosio-ekonomiese regte, te verskaf word al hoe meer die verantwoordelikheid van regsskole en regshulpklinieke. Dit het aanleiding gegee tot nuwe moontlikhede en geleenthede. 'n Voorbeeld hiervan is die formele vennootskappe wat gesluit word tussen regshulpklinieke,

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DJ McQuoid-Mason, Advocate of the High Court of South Africa. Fellow of the University of Natal. James Scott Wylie Professor of Law, Howard College School of Law, University of KwaZul-Natal, Durban 4041, South Africa. Part 1 of this article appeared in 2004 Journal for Juridical Science 29(3):28-51.

nie-regerings organisasies en staatsgesubsidieerde regshulpskemas. Dit is die oogmerk van hierdie vennootskappe om regsdiens te lewer en regsadvies te verskaf. Terselfdertyd help die Allemansreg programme die regering om 'n kultuur van menseregte, demokrasie en legitimiteit te bevorder. Die Suid-Afrikaanse ondervinding is getuigenis daarvan dat regsskole in ontwikkelende lande 'n aansienlike bydrae kan maak om toegang tot die regstelsel te bevorder, in beide lande waar daar 'n kultuur van onderdrukking is en in lande met 'n demokrasie. Regsskole kan ook baie doen om die gewone burgers te onderrig oor hul regte. Regsskole in ontwikkelende lande verskil van regsskole in ontwikkelde lande omdat eersgenoemde 'n spesiale plig het om die gemeenskap te dien. Die rede hiervoor is omdat hulle funksioneer as die bevoordeelde eiland in 'n see van skaars hulpbronne, veral wanneer dit kom by die verskaffing van toegang tot die regstelsel aan die armes.

5. The decline of apartheid 1990-1994

Between 1990 and 1994 an increasing number of law schools became actively involved in promoting access to justice in the broader sense of human rights and democracy. The law clinics continued their usual operations. However, the Street law and other programmes began to focus on human rights and democracy education, in anticipation of the first democratic elections. At the same time legal academics with connections to political parties became involved in the technical committees drafting the first democratic Constitution for the country.

5.1 Law clinics

Law clinics continued to do much the same work, but a major change came when law clinics were able to take articled clerks.

5.1.2 Articles of clerkship at law clinics

In 1993 the *Attorneys Act*¹¹³ was amended¹¹⁴ to allow aspiring attorneys to “perform community service approved by the society concerned” — provided that the person who engages them is practising the profession of attorney, *inter alia*,

in the full-time employment of a law clinic, and if the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic.¹¹⁵

This has enabled a number of law school clinics to employ articled clerks as junior supervisors to assist the main supervisors with the supervision of the clinics. The candidate attorneys appear in the district courts and the principals in the regional and high courts. Interns who have been indentured for more than a year may also appear in the regional courts.

113 Act 53 of 1979 section 2 (1A) (b).

114 Section 2 of the *Attorneys Act Amendment Act* 115 of 1993.

115 Section 3(1)(f).

5.2 Street law

Street law was initially funded mainly by the Association of Law Societies but in the 1990s it withdrew its support and the United States Agency for International Development (USAID) became the main funder.¹¹⁶ The latter funded projects particularly aimed at increasing awareness concerning human rights and democracy. The focus of the Street law followed the unfolding of political events in the country with an increasing emphasis on human rights and democracy education and training. User-friendly books on human rights¹¹⁷ and democracy¹¹⁸ were published in the Street law format after field-testing by Street law coordinators and other non-governmental organisations.

5.2.1 Democracy for All

A national Democracy for All programme was set up, as an off-shoot of Street law, to prepare the electorate for the first democratic elections and to educate future generations about democracy and human rights. The training materials included a board game as well as the usual written materials.¹¹⁹ The Street law programme was also part of a consortium of non-governmental organisations that provided voter education in the run-up to the elections. At the time that the Democracy for All programme was launched, a year before the first democratic elections, non-governmental organisations were teaching people the mechanics of how to vote rather than how democracy works. It was the latter that the Democracy for All programme was designed to promote by dealing with such issues as what democracy is, how government works in a democracy, how abuse of government is checked in a democracy, how human rights underpin democracy, how elections work in a democracy and how citizens participate in a democracy.¹²⁰

5.3 Other human rights, democracy and voter education programmes

Apart from projects launched by law schools with Street law programmes a number of other creative voter, human rights and democracy education programmes were established by law schools.

116 Once democracy was achieved the Attorneys Fidelity Fund stopped providing funding through the Association of Law Societies for the Street law programme.

117 McQuoid-Mason, O'Brien and Greene 1991.

118 McQuoid-Mason, Mchunu, Govender, O'Brien and Larkin 1994.

119 The board game called *The democracy challenge game* is an interactive game played in teams whereby players collect the 13 signposts of democracy by throwing the dice, defining different terms associated with democracy, answering quiz questions and engaging in debates on issues of democracy and human rights. The game was based on the signposts of democracy in McQuoid-Mason, Mchunu, Govender, O'Brien and Curd Larkin 1994.

120 All these issues are dealt with in McQuoid-Mason, Mchunu, Govender, O'Brien and Curd Larkin 1994.

The Centre for Applied Legal Studies, University of the Witwatersrand mounted a highly popular television programme on constitutionalism democracy and human rights entitled "Future Imperfect" and assisted the Constitutional Assembly with another programme to popularise constitutional issues called "Constitutional Talk".¹²¹ It involved an interactive talk show with high profile politicians and legal experts who represented a cross-section of the political spectrum and kept the audiences abreast of important constitutional issues during and after the negotiations for a democratic constitution.

The Community Law Centre, University of Natal, Durban, worked closely with the Street Law programme and produced a series of illustrated books and plays in English and Zulu that explained to literate and illiterate rural people about human rights, democracy and how the elections should work. The format was similar to that used by the Street law programme. Bilingual workbooks that were published included *Human rights*,¹²² *Waiting for democracy*¹²³ and *Creating your constitution*.¹²⁴

In 1991 the present writer negotiated with the Military Police to allow Lawyers for Human Rights¹²⁵ to commission Artists for Human Rights to paint the Universal Declaration of Human Rights (UDHR) on the old Durban Central Prison walls at the intersection of two busy roads¹²⁶ so as to educate Durban's citizens about the Declaration. This was done to celebrate the publication of *Human rights for all*¹²⁷ which provided South Africans with an overview of the UDHR as it related to the South African situation. In 1993 a mural dealing specifically with voter education was commissioned for the walls near the Durban station during the run up to the country's first democratic elections. In 1994, after the prison had been demolished to make way for the Durban International Convention Centre, the interim Bill of Rights was painted on the inside of the remaining prison wall. Eventually, in 1996 a mural of the final Bill of Rights replaced the UDHR mural after part of the prison wall on which the Declaration had been painted was demolished in order to widen the road.¹²⁸

A Community Law Centre was established at the University of the Western Cape in 1990 to focus on constitutional issues, democracy and human rights.¹²⁹

121 The programmes were anchored by Professor Denis Davis, the then Director of the Centre, who is now a high court judge.

122 Baekey and Gabriel 1992.

123 Wilson 1992.

124 Peens 1994.

125 In his capacity as Chairperson of the Durban Chapter of Lawyers for Human Rights.

126 Near the present day site of the Durban International Convention Centre.

127 McQuoid-Mason, O'Brien and Greene 1991.

128 In 1996 the present writer had to negotiate with the Durban City Council to prevent the old prison wall from being demolished when the road was widened. This involved reducing the length of the wall and sliding one of the prison towers about 10 metres. At the same time the outside surface of the wall was renovated and the original paintings of the UDHR that had become damaged replaced with murals depicting the 1996 Bill of Rights.

129 Community Law Centre 2001:2.

It housed experts from the constitutional committee of the African National Congress who were involved in the constitutional negotiations and the drafting of the interim Constitution.¹³⁰ A Street law programme was also located at the Centre.

A Centre for Criminal Justice was established at the University of Natal, Pietermaritzburg in 1990 to focus specifically on issues of criminal justice.¹³¹ In 1993 an Independent Medico-Legal Unit was set up at the University of Natal, Durban to employ the services of independent forensic pathologists to assist with autopsies for families whose relatives had died as a result of state violence.¹³²

5.4 Constitutional and human rights education programmes for the judiciary and the legal profession

A number of law schools became involved in providing education programmes for the judiciary and the legal profession on the likely impact of a Bill of Rights on the law in South Africa. The Centre for Applied Legal Studies continued its annual Mount Grace seminars aimed at judges, senior practitioners and legal academics, while other law schools mounted long and short courses on the likely impact of a Bill of Rights, as well as one day seminars specifically aimed at the judiciary.¹³³

5.5 Drafting the new Constitution

A number of legal academics were involved in the drafting of the interim¹³⁴ and final¹³⁵ democratic South African Constitutions. They served on both the technical committees and the specialist subject committees. They were drawn from several university law schools in the country, and several of them went on to write books on the new Constitution.

5.6 Lessons learned

With the demise of apartheid the law schools that had embraced access to justice programmes found themselves increasingly in harmony with the new political developments towards an open and democratic society. The law school programmes began to converge with the initiatives of the legal profession and the state. The *Attorneys Act*¹³⁶ was amended to allow service in a legal

130 *Republic of South Africa Constitution Act* 200 of 1993.

131 Centre for Criminal Justice 2001:1.

132 Independent Medico-Legal Unit 1998.

133 Examples were the diploma or certificate courses for the legal profession offered by the Universities of Pretoria and Natal, and the seminars for the judiciary at the Universities of the Witwatersrand, Cape Town, Pretoria and Natal.

134 *Republic of South Africa Constitution Act* 200 of 1993.

135 *Republic of South Africa Constitution Act* 108 of 1996.

136 *Attorneys Act Amendment Act* 115 of 1993 section 3(1)(f).

aid clinic to satisfy the internship requirement and the state began to ease up on public order policing and to encourage dialogue amongst diverse political groupings. These changes also reduced tensions amongst law students and between law faculty and law students, particularly when greater efforts were made by universities and the state to put more accessible bursary and financial aid schemes in place. At the historically black universities students were no longer expelled for political reasons. Some faculty members at these institutions, like the students, began to see their universities as part of the vanguard of the struggle against apartheid rather than as the stepchildren of apartheid.

The new human rights centres established at law schools were no longer under threat by the state and were encouraged by the latter to join the constitutional debate. A number of law schools saw the negotiations leading up to a new constitution as heralding an important income-generating opportunity. Courses and workshops were mounted for the legal profession, the judiciary and state employees concerned with the administration of justice because many lawyers and judges were insecure about the changes and concerned that a justiciable bill of rights would undermine the common law and destroy its certainty.

The technical committees set up during the multi-party negotiations for a new constitution opened up other opportunities for the legal academics and the law schools. It provided room for legal academics from all shades of political opinion to participate in the constitution-making process. Conservative legal academics who under apartheid would have regarded a bill of rights as an aberration eagerly embraced it as an essential protective device under the proposed new order. Law teachers and law schools that had been trying to influence the development of a democratic state for years during the apartheid era found themselves ideally placed to assist in its final realization.

6. Democratic South Africa from 1994 to the present

With the advent of a democratic legal order in South Africa in 1994 and the demands of the new Constitution the legal aid clinics and Street law programmes changed their tactics. The increasing demands on the Legal Aid Board to provide access to justice in criminal cases under the Constitution led to new models of cooperation in the delivery of legal services in civil matters being developed between law schools and the Board. At the same time the Street law programme became involved in the planning of the restructured high school curriculum to include legal and human rights education. The specialist centres at university law schools also began to focus on strengthening the delivery potential of the new democratic government.

6.1 Law clinics

A survey in 1997 showed that law clinics existed at all 21 law schools in South Africa,¹³⁷ some of which were funded by the Legal Aid Board.¹³⁸ Access to justice in terms of legal representation in criminal cases in South Africa improved dramatically after 1994. By 1998, some 28 years since its inception, the Legal Aid Board had referred 997 707 legal aid cases to attorneys the vast majority of which were criminal cases. Of these 559 238 (or 46%) were referred in the five years after 1994.¹³⁹ The overall increase in referrals from 1990 to 1998 was 709%.¹⁴⁰ This exponential increase in criminal cases left the Legal Aid Board with little money for civil cases and presented new challenges for law schools and law clinics regarding civil cases, especially in respect of the delivery of the social and economic rights¹⁴¹ promised by the Constitution.¹⁴²

6.1.1 Types of work by law clinics

The legal aid clinics are still dealing with poverty law problems, such as housing, health, welfare and education, in part due to a failure by the new democratic government to deliver.¹⁴³ As a result one or two clinics, as well as the Legal Resources Centre (LRC),¹⁴⁴ have moved from general practice to more specialised constitutional issues.

At the University of KwaZulu-Natal, Durban, (formerly the University of Natal, Durban), the legal aid clinic, after consultations with community-based organisations, now specialises in four areas: Administrative and juvenile justice (police brutality, juvenile detentions); gender and children's rights (domestic violence, customary law issues, maintenance); developmental law (access to land and housing, legal issues confronting small and micro-enterprises); and HIV/AIDS and the law.¹⁴⁵ The clinic also builds the capacity of community-based organisations, (eg by helping them negotiate rent and maintenance of premises with landlords and teaching them about the laws and processes they can use on their own).¹⁴⁶

137 See Maisel 2000:2.

138 See below para 6.1.4.

139 Legal Aid Board 1998a:8; McQuoid-Mason 2000: S 120, S 124.

140 *Ibid.*

141 See for instance, ss 26 (housing — within available resources), 27 (health care, food, water and social security — within available resources), 28 (children) and 29 (education).

142 *Constitution of the Republic of South Africa Act 108 of 1996.*

143 *Constitution of the Republic of South Africa Act 200 of 1993 s 236(2).*

144 In 1995 the LRC took the strategic decision mainly to concentrate on three specialist areas: Constitutional litigation, land and development and gender — Legal Resources Centre 1995: 8-9.

145 The latter was included because KwaZulu-Natal is at the epicentre of the HIV/AIDS pandemic in South Africa — cf Fassin and Schneider 2003:495.

146 McClymont and Golub (eds) 2000:39.

The majority of clinics, however, continue to engage in general practice¹⁴⁷ and fewer restrictions have now been imposed by the law societies. As yet law students still do not have the right to appear in the lower courts on behalf of indigent litigants. It is hoped that the third democratic government will introduce student practice rules in the proposed new *Legal Practitioner's Act* that is still under discussion.

6.1.2 The emergence of state-funded law clinics

The Legal Aid Board began with a pilot project of funding five university law clinics in 1994. The state-funded clinics were joint projects between the Board and the universities with the Board employing articulated clerk interns and supervising attorneys up to a maximum ratio of ten interns to one supervisor. The scheme was designed to render legal services to indigent persons who satisfy the means test, and to alleviate the shortage of internship opportunities for prospective attorneys by providing "contracts of community service" for law graduates.¹⁴⁸

The Board calculated that the average cost of the 24 513 criminal and 12 997 civil cases handled by the state-funded law clinics during the pilot project period 1 July 1994 to 31 December 1996 was less than half the cost per case under the *judicare* system during the same period.¹⁴⁹ The twenty state-funded law clinics completed 33 951 cases during 1997-1998, of which 20 042 (59%) were criminal, and 13 909 (41%) civil,¹⁵⁰ compared with the 18 263 civil cases done under the *judicare* scheme for the same period¹⁵¹ at probably twice the cost.

Prior to the absorption of the state-funded law clinics into the legal aid justice centres the Legal Aid Board was allocating up to R430 000 per clinic per annum to 20 state-funded university law clinics and two others to enable them to employ supervising attorneys and community service interns. The senior staff in the state-funded clinics appeared in the regional magistrate's courts and the interns in the lower courts.¹⁵² The state-funded clinics have now been incorporated into the legal aid justice centres. By 31 March 2003 some 44 justice centres had been established with the result that the number of *judicare* cases handled by the Board had fallen to 33% of the total.¹⁵³ Eventually there will be 60 justice centres throughout the country.¹⁵⁴

147 See generally, Maisel 2000 for the type of work done by the law clinics.

148 Legal Aid Board 1994:35.

149 This figure is the average for criminal and civil cases — about 75% of the work in the clinics is criminal and 25% civil — Legal Aid Board 1998a:8.

150 Calculations by present writer based on statistics in Legal Aid Board 1998b:1-5.

151 Legal Aid Board 1998a:8.

152 McQuoid-Mason 2000: S 124.

153 Legal Aid Board 2003:7.

154 Legal Aid Board 2002:10.

6.1.3 The establishment of the Association of University Legal Aid Institutions Trust (AULAI Trust)

The AULAI Trust was established in 1998 with the aim of creating a fund for the benefit of all the university legal aid institutions in South Africa.¹⁵⁵ The Trust began with a \$1 million grant from the Ford Foundation to establish “an income-earning reserve fund”.¹⁵⁶ Shortly thereafter the Trust received an initial amount of 3,5 million Swedish crowns from the Swedish sector of the International Commission of Jurists for university law clinics to provide training and legal back-up services for para-legal advice offices over a two year period. Over the years the grant for supporting para-legal advice office clusters has been renewed. The programme operates on the basis that participating law clinics work with clusters of para-legal advice offices in their regions.¹⁵⁷ This arrangement has also been mainstreamed into some of the franchise arrangements between the Legal Aid Board and the university law clinics.¹⁵⁸

The Trust initially provided support to law clinics at the historically black universities that were disadvantaged during apartheid,¹⁵⁹ but has since expanded its support to 18 university law clinics.¹⁶⁰

6.1.4 Cooperative agreements between law clinics and the Legal Aid Board

The majority of the Legal Aid Board’s budget is allocated to criminal cases because of the impact of the Constitution.¹⁶¹ This means that the burden of

155 Association of University Legal Aid Institutions 1998: para 20, which states that the Trust has the following objectives: (a) the promotion of legal aid in South Africa in particular through the coordination and promotion of the activities and interests of legal aid institutions attached to the universities in South Africa; (b) the encouragement and promotion of practical legal education of law students by members of the association; (c) the provision of programme support and capacity building to law clinics; and (d) the fostering, maintenance, and extension of public confidence in the law and the administration of justice.

156 Grant letter from Ford Foundation dated 23 October 1998.

157 Cooperation Agreement between AULAI Trust and the Swedish Section of the International Commission of Jurists dated 31 May 1999.

158 Cf Legal Aid Board and Potchefstroom University 2003: clause 3.

159 Cf Maisel 2000:2-3.

160 Law clinics at the following Universities have been supported: the North, Durban-Westville, the North West, Free State, Western Cape, Cape Town, Stellenbosch, Natal (Pietermaritzburg), Rhodes, Fort Hare, Pretoria, Port Elizabeth, Rand Afrikaans, Zululand, Transkei, Natal (Durban), Potchefstroom and Venda — Association of University Legal Aid Institutions Trust 2001:9; Association of University Legal Aid Institutions Trust 2004:42.

161 For instance, of the 108 295 cases referred to private attorneys in 1995-6 85 606 or 77% involved criminal matters — cf McQuoid-Mason 1999:240. In 1997-8 private attorneys were paid for completing 105 732 cases of which 87 469 (83%) involved criminal cases — Legal Aid Board 1998a:8. The figure has not changed to any great degree with the move to justice centres where the majority of the work involves criminal cases.

providing a service in civil cases is increasingly falling on non-governmental organisations and law clinics, particularly in respect of social and economic rights. Recently, the Legal Aid Board has approved a number of cooperative agreements between itself and law clinics and non-governmental organisations such as the Legal Resources Centre to assist in the delivery of legal services and advice. These agreements also require the clinics to service clusters of para-legal advice offices located in neighbouring communities along the lines of the model developed by the AULAI Trust programme.¹⁶²

6.2 Street law

The Street law programme has been assisting the government informally and formally in achieving its mission of promoting a culture of legality, human rights and democracy. Informally the programme has continued to operate in hundreds of high schools and several prisons.

6.2.1 Training activities

During 2000 over 6 200 school educators were trained to teach human rights and democracy as part of the new school curriculum and lessons on these topics were taught at over 600 schools involving thousands of learners.¹⁶³ Some 1 385 law students were trained to present Street law, human rights and democracy lessons, and over 7 000 prisoners and more than 900 juveniles in places of safety were also exposed to the programme. Community-based training was also provided to trainers from advice offices, para-legal offices, adult education programmes, youth development groups, non-governmental organisations, community-based organisations, and government officials from the departments of education, safety and security, social welfare and forestry.¹⁶⁴ More recently Street law has introduced and HIV/AIDS training programme for high schools.¹⁶⁵

6.2.2 Institutionalisation of democracy and human rights education

The Street law and Democracy for All programmes through their national offices at the Centre for Socio-Legal Studies, University of KwaZulu-Natal, Durban have been involved in the process of including democracy and human rights education into the formal school curriculum with a view to ensuring that all citizens understand their legal rights and responsibilities. The programmes

¹⁶² For example, the Legal Aid Board and Potchefstroom University cooperation agreement requires the law clinic to provide: "Back-up legal services to, and cooperation with, paralegal advice offices, training workshops to paralegals, the establishment of clusters of legal NGOs, as a result of which networks will be put in place to enhance access to justice to the poor and marginalized people in the area and more specifically the people within the rural areas" — Legal Aid Board and Potchefstroom University 2003: clause 3.

¹⁶³ Centre for Socio-Legal Studies 2001:6.

¹⁶⁴ Centre for Socio-Legal Studies 2001:7.

¹⁶⁵ Centre for Socio-Legal Studies 2002:18.

have continuously liaised with the national and provincial departments of education to provide outcomes-based democracy and human rights training for educators, and have participated in the design of learning programmes. Street law has worked with the bodies responsible for generating uniform standards and accrediting qualifications and coordinated national and provincial democracy and human rights education forums to ensure a wide range of stakeholders participate in the above process. The programmes have also developed democracy and human rights education learner and educator support materials for schools with independent publishers¹⁶⁶ and liaised with tertiary education faculties to include democracy and human rights education modules in teacher training courses.¹⁶⁷

6.3 Other law school centres assisting in promoting and delivering justice

After preparing rural communities for elections and democracy the Community Law and Rural Development Centre (CLRDC), University of Natal, Durban has developed materials to institutionalize democracy and constitutionalism. Thus it has published further workbooks on About our constitution,¹⁶⁸ Achieving equality¹⁶⁹ and Good governance.¹⁷⁰

The Centre for Applied Legal Studies (CALS), University of the Witwatersrand, established an AIDS Law Project to provide advice and engage in impact litigation. It also conducts research and lobbies for policy changes and treatment access.¹⁷¹ In addition it has an outreach and public education programme and has produced an AIDS law manual.¹⁷² The Community Law Centre, University of Western Cape, set up a social and economics unit to do research and educate the public about socio-economic rights. It has produced a user-friendly handbook on socio-economic rights.¹⁷³ Other universities¹⁷⁴ have set up gender units that, amongst other things, have helped to train magistrates to be sensitive to gender issues.

The Independent Medico-Legal Unit (IMLU), University of Natal, Durban conducted a series of workshops to strengthen the administration of criminal justice by training the police, police watch-dog organisations, district surgeons,

166 For example, Chimusoro, Earle, Keats, Le Roux, Proctor, Scott, Weldon and Williams 1999.

167 Centre for Socio-Legal Studies 2001:5.

168 Hicks, Khumalo, Naicker and Naidoo 1997.

169 Hicks, Khumalo, Mtshali, Naicker, Naidoo, Nkabinde and Voigts 1997.

170 Abraham, Hicks, Khumalo, Mtshali, Naidoo, Ngcobo and Nkabinde 1997. In 2003 the CLRDC had to cut back on its material development because of funding defalcations and difficulties.

171 AIDS Law Project 2000:9-13.

172 Barrett-Grant, Fine, Heywood and Strode (eds) 1997; Barrett-Grant, Fine, Heywood and Strode (eds) 2001.

173 Liebenberg and Pillay (eds) 2000.

174 For instance, the gender units attached to the law schools at the Universities of the Witwatersrand and Cape Town.

prosecutors, lawyers, magistrates and non-governmental organisations on proper crime investigation and evidence collection for crimes of violence.¹⁷⁵ Recently IMLU has extended the programme to deal with crimes against women and children in a series of three day workshops for police officers, prosecutors, district surgeons, nurses, social workers and NGOs.¹⁷⁶

6.4 Lessons learned

Once a democratic legal order with a justiciable bill of rights was established new opportunities opened up for the law clinics. Instead of dealing with the consequences of the repressive apartheid legal system the clinics now began to focus on compelling the new government to deliver on the promises of the Constitution. Human rights considerations became mainstreamed across the law curricula as the Bill of Rights impacted on all areas of the law — private and public. The legal profession and the state also began to realize the importance of understanding the impact of the Bill of Rights on legal practice and law enforcement.

The Street law, human rights and democracy education programmes were ahead of their time in respect of outcomes-based teaching methods and are in harmony with the post-apartheid changes in school education. The challenge for law schools is to encourage the provincial education departments to fast-track the process using the skills and experience developed by the law school institutions during the past decade — rather than trying to reinvent the wheel themselves. Once democracy was achieved the Law Society of South Africa and the Attorneys Fidelity Fund abandoned their financial support of the Street law programme and focused on assisting the university law clinics.

Despite the advent of democracy the new government has struggled with delivery because of a lack of capacity, and several law school centres are actively involved in providing capacity-building training for public service officials, particularly in the field of access to justice. Some law clinics have entered into cooperation agreements with the Legal Aid Board in order to assist with the delivery of legal services to indigent communities, especially in the rural areas. The advent of the democratic order has increased rather than lessened the challenge to law schools to discover how they can assist in providing access to justice and strengthening the administration of justice.

175 McQuoid-Mason and Dada 2000. More than 500 law enforcement officials and other persons were trained in the programme.

176 The first day covers medical law and ethics, the second counselling and sociological aspects, and the third the collection and preservation of forensic evidence — McQuoid-Mason, Pillemer, Friedman and Dada 2002.

7. Conclusions

The following conclusions can be drawn concerning the role of South African law schools in bringing access to justice to ordinary citizens.

Initially under the apartheid era prior to the 1970s the law schools played a minor role in contributing to access to justice in South Africa. As a result of their generally apolitical stance, there were less tensions between law faculty, students, the legal profession and the state.

During the 1970s, in line with developments in clinical legal education in the United States, law schools began to set up legal aid clinics, together with limited public legal education programmes. Law clinics were also acceptable at conservative law schools where they were perceived as vehicles for providing skills-training rather than access to justice for the disenfranchised majority. At some of the liberal law schools the clinics were initially viewed with suspicion by both the legal profession and the state.

In the 1980s university law clinics became well-established, particularly when funding was provided by the Attorneys Fidelity Fund and other donors. During the same period a complimentary Street law programme was established to ensure that lay people became aware of their legal rights and responsibilities. This too was funded by the Attorneys Fidelity Fund and other donors who recognized the educational value of the programmes.

During the 1990s until South Africa's first democratic elections in 1994 the law clinics and Street law programmes continued to grow. The clinics continued to be supported financially by the Attorneys Fidelity Fund but financial support for Street law was withdrawn. The Street law programme received foreign donor funding to support public education in voting, human rights and democracy during the lead up to the first democratic elections.

After 1994 law clinics began to enter into cooperation agreements with the Legal Aid Board and to be mainstreamed into the national legal aid scheme. At the same time donor support has been supplemented by national initiatives like the Association of University Legal Aid Institutions Trust. In addition some law clinics have begun to specialise in areas of the law directly linked to the delivery of social justice in terms of the Constitution. The Attorneys Fidelity Fund has suggested that in future it may only provide funding for law clinics where at least 50% of the law students in the faculty have been exposed to clinic work.

Since 1994 the Street law programmes based at university law schools have been increasingly involved in promoting human rights and democracy in addition to public awareness about the law. They have also been actively involved in ongoing negotiations with the Department of Education to incorporate human rights and democracy education and as part of the formal school curriculum.

Other law school initiatives have focused on strengthening a human rights culture and improving the administration of justice in the country. Today, unlike under apartheid, such activities are no longer seen as a threat by the state or meddling in politics by the legal profession.

The South African experience is that law schools in developing countries can make a significant contribution to access to justice in both repressive and democratic political environments. They can make a similar contribution by educating ordinary citizens about their legal rights. What sets developing countries apart from developed countries is that law schools in the former have a special duty to serve their communities. This is because they often operate as a privileged island of resources in a sea of scarcity, particularly when it comes to providing access to justice for the poor.

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